

Bharat's

GST

Smart Guide

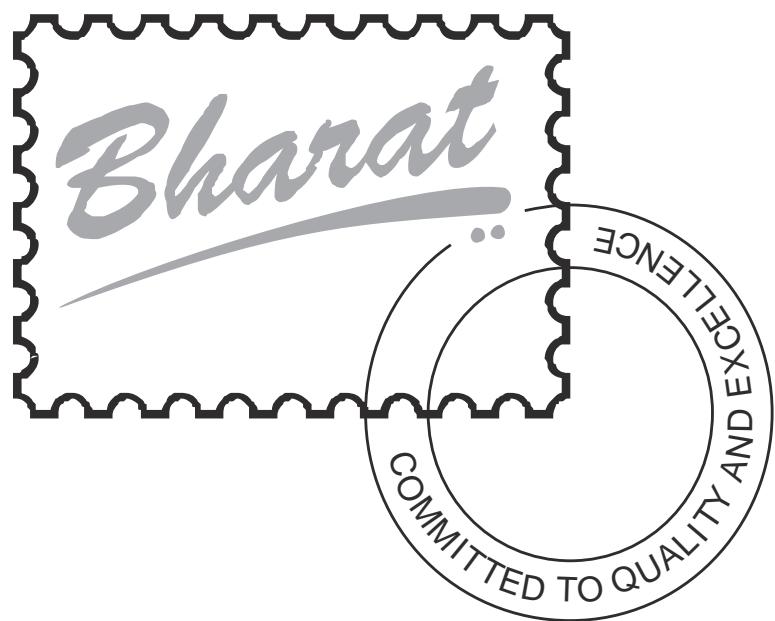
(A comprehensive practitioner's companion to GST law
with Charts, Tables, Notifications, Circulars, Instructions,
Advance Rulings & Case Laws)

Ramesh Chandra Jena
Advocate

3rd Edition
2024



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Smart Guide



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(A comprehensive practitioner's companion to
GST law with Charts, Tables, Notifications, Circulars,
Instructions, Advance Rulings & Case Laws)

RAMESH CHANDRA JENA

Advocate

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Preface to the Third Edition

It is our pleasure to present the Third Edition of “GST Smart Guide” to all professionals in the field of GST and all field formations officers of the CGST & SGST across the country. This book is widely acknowledged as ready reckoner for day-to-day workings. Practically, A to Z provisions of GST have been incorporated in one place for reference of the users.

GST regime has completed more than six years from its implementation; the Government has taken various measures and steps for the simplification of GST system in the country. The Government has brought various amendments in CGST Act, CGST Rules and procedures as per the recommendations of the GST Council from time to time. The Government has taken serious initiative for the establishment & functioning of the GST Tribunal in the coming days to reduce over burden of litigations at High Courts and sort out GST litigations of the taxpayers. Like earlier editions, our endeavour is to incorporate the important CBIC Circulars, Notifications, Instructions, Landmark Judicial Pronouncements of the Supreme Court and various High Courts and Advance Rulings of AAR & AAAR relating to each subject matter for easy reference of the readers.

I am extremely grateful to the Puliani brothers - Ravi Puliani and Mahesh Puliani at “Bharat Law House Pvt Ltd” for publishing this book for the GST professionals, students, taxpayers and stakeholders for their references on “Goods & Services Tax”.

I solicit comments and suggestions of the esteemed readers to further improvement of this book and make it easier. The author may be reached at his e-mail id: rameshjena2009@gmail.com

21st February, 2024

Ramesh Chandra Jena

About the Author

Ramesh Chandra Jena, Advocate, is an indirect tax expert with practical experience of more than 34 years with industries and corporate sectors in India. He carries deep knowledge and has proven track career on indirect tax matters. During his long exposed professional career in Industrial and Corporate Sectors, he has handled indirect tax issues in industries of multi products, such as, Paper & Paper Board, Automobiles Components Manufacturers, Textile & Cotton and Power Sectors, etc. He carries long exposures in the area of Central Excise, Customs & Service Tax, EXIM, Supply Chain Management, DGFT, SEZs and EOUs. Due to his conceptual knowledge and practical exposures, he has penned “GST Smart Guide (A Complete Practical Approach to Goods and Services Tax in India)’.

Mr. Jena is a prolific writer. He has contributed more than 500 articles on the subject matter of taxation to the print media, namely, Excise Law Times, Service Tax Review, GST Law Times and electronic media such as TIOL, Taxongo, Taxman and Taxguru. He has been spreading the knowledge on tax matters amongst professionals through his publication of articles not only for the corporate professionals but also for the department officers. With the pre-implementation of GST regime and post-implementation of GST regime he has contributed a good number of articles on GST issues and suggestions for improvement. Now, he is a practicing advocate at Orissa High Court, Cuttack. On behalf of All Odisha Tax Advocates Association he is representing as a member of ‘Grievance Redressal Committee’ of GST, Central Excise & Customs, Bhubaneswar Zone, Odisha.

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Chapter 1

GST – Concept & Status

Synopsis

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The uniform system of taxation, which, with a few exceptions of no great consequence, takes place in all the different parts of the United Kingdom of Great Britain, leaves the interior commerce of the country, the inland and coasting trade, almost entirely free. The inland trade is almost perfectly free, and the greater part of goods may be carried from one end of the kingdom to the other, without requiring any permit or let-pass, without being subject to question, visit, or examination from the revenue officers. This freedom of interior commerce, the effect of uniformity of the system of taxation, is perhaps one of the

principal causes of the prosperity of Great Britain; every great country being necessarily the best and most extensive market for the greater part of the productions of its own industry. If the same freedom, in consequence of the same uniformity, could be extended to Ireland and the plantations, both the grandeur of the state and the prosperity of every part of the empire, would probably be still greater than at present”

— Adam Smith in ‘Wealth of Nations’

1. Introductory

Goods and Services Tax, which is better known by its acronym, GST, is the biggest indirect tax reform in India, since independence. GST introduces a single tax within the federal structure of our nation. It is a tax on the supply of goods and services, levied at every point of consumption of goods or services, from the stage of the manufacturer to the final stage of consumer. GST is a destination based tax and is based on the principles of Value Added Taxation. Most of the provisions of GST have been borrowed from the erstwhile provisions of Central Excise, Service Tax and State’s VAT laws.

GST has a dual tax structure wherein it comprises of Central Goods and Services Tax (CGST) on the one hand and State Goods and Services Tax (SGST) or Union Territory Goods and Services Tax (UTGST) on the other. The tax has been implemented in the country with effect from 1st July, 2017.

2. Constitutional scheme of indirect taxation in India before GST

2.1 Article 265 of the Constitution of India provides that no tax shall be levied or collected except by authority of law. As per Article 246 of the Constitution, Parliament has exclusive powers to make laws in respect of matters given in Union List (List-I of the Seventh Schedule) and State Government has the exclusive jurisdiction to legislate on the matters containing in State List (List-II of the Seventh Schedule). In respect of the matters contained in Concurrent List (List-III of the Seventh Schedule), both the Central Government and State Governments have concurrent powers to legislate.

2.2 Before advent of GST, the most important sources of indirect tax revenue for the Union were Customs duty (entry 83 of Union List), Central Excise duty (entry 84 of Union List), and Service Tax (entry 97 of Union List). Although entry 92C was inserted in the Union List of the Seventh Schedule of the Constitution by the Constitution (Eighty-eighth Amendment) Act, 2003 for levy of taxes on services, it was not notified. So tax on services were continued to be levied under the residual entry, i.e. entry 97, of the Union List till GST came into force. The Union also levied tax called Central Sales Tax (CST) on inter-State sale and purchase of goods and on inter-State consignments of goods by virtue of entry 92A and 92B respectively. CST however is assigned to the State of origin, as per Central Sales Tax Act, 1956 made under Article 269 of the Constitution.

2.3 On the State side, the most important sources of tax revenue were tax on sale and purchase (entry 54 of the State List), excise duty on alcoholic liquors, opium and narcotics (entry 51 of the State List), Taxes on luxuries, entertainments, amusements, betting and gambling (entry 62 of the State List), octroi or entry tax (entry 52 of the State List) and electricity tax ((entry 53 of the State List). CST was also an important source of revenue though the same was levied by the Union.

3. Historical evolution of indirect taxation in post-independence India till GST

3.1 In post-Independence period, Central Excise duty was levied on a few commodities which were in the nature of raw materials and intermediate inputs, and consumer goods were outside the net by and large. The first set of reform was suggested by the Taxation Enquiry Commission (1953-54) under the chairmanship of Dr. John Matthai. The Commission recommended that sales tax should be used specifically by the States as a source of revenue with Union governments' intervention allowed generally only in case of inter-State sales. It also recommended levy of a tax on inter-State sales subject to a ceiling of 1%, which the States would administer and also retain the revenue.

3.2 The power to levy tax on sale and purchase of goods in the course of inter-State trade and commerce was assigned to the Union by the Constitution (Sixth Amendment) Act, 1956. By mid-1970s, Central Excise duty was extended to most manufactured goods. Central Excise duty was levied on unit, called specific duty, and on value, called *ad valorem* duty. The number of rates was too many with no offsetting of taxes paid on inputs leading to significant cascading and classification disputes.

3.3 The Indirect Taxation Enquiry Committee constituted in 1976 under Shri L.K. Jha recommended, *inter alia*, converting specific rates into *ad valorem* rates, rate consolidation and input tax credit mechanism of Value Added Tax at Manufacturing Level (MANVAT). In 1986, the recommendation of the Jha Committee on moving on to Value Added Tax in manufacturing was partially implemented. This was called Modified Value Added Tax (MODVAT). In principle, duty was payable on value addition but in the beginning it was limited to select inputs and manufactured goods only with one-to-one correlation between input and manufactured goods for eligibility to take input tax credit. The comprehensive coverage of MODVAT was achieved by 1996-97.

3.4 The next wave of reform in indirect tax sphere came with the New Economic Policy of 1991. The Tax Reforms Committee under the chairmanship of Prof. Raja J. Chelliah was appointed in 1991. This Committee recommended broadening of the tax base by taxing services and pruning exemptions, consolidation and lowering of rates, extension of MODVAT on all inputs including capital goods. It suggested that reform of tax structure must have to be accompanied by a reform of tax administration, if complete benefits were to be derived from the tax reforms. Many of the recommendations of the Chelliah Committee were implemented. In 1999-2000, tax rates were merged in three

rates, with additional rates on a few luxury goods. In 2000-01, three rates were merged into one rate called Central Value Added Tax (CENVAT). A few commodities were subjected to special excise duty.

3.5 Taxation of services by the Union was introduced in 1994 bringing in its ambit only three services, namely general insurance, telecommunication and stock broking. Gradually, more and more services were brought into the fold. Over the next decade, more and more services were brought under the tax net. In 1994, tax rate on three services was 5% which gradually increased and in 2017 it was 15% (including cess). Before 2012, services were taxed under a ‘positive list’ approach. This approach was prone to ‘tax avoidance’. In 2012 budget, negative list approach was adopted where 17 services were out of taxation net and all other services were subject to tax. In 2004, the input tax credit scheme for CENVAT and Service Tax was merged to permit cross utilization of credits across these taxes.

3.6 Before state level VAT was introduced by States in the first half of the first decade of this century, sales tax was levied in States since independence. Sales tax was plagued by some serious flaws. It was levied by States in an uncoordinated manner the consequences of which were different rates of sales tax on different commodities in different States. Rates of sales tax were more than ten in some States and these varied for the same commodity in different States. Inter-State sales were subjected to levy of Central Sales Tax. As this tax was appropriated by the exporting State credit was not allowed by the dealer in the importing State. This resulted into exportation of tax from richer to poorer states and also cascading of taxes. Interestingly, States had power of taxation over services from the very beginning. States levied tax on advertisements, luxuries, entertainments, amusements, betting and gambling.

3.7 A report, titled “Reform of Domestic Trade Taxes in India”, on reforming indirect taxes, especially State sales tax, by National Institute of Public Finance and Policy under the leadership of Dr. Amaresh Bagchi, was prepared in 1994. This Report prepared the ground for implementation of VAT in States. Some of the key recommendations were; replacing sales tax by VAT by moving over to a multistage system of taxation; allowing input tax credits for all inputs, including on machinery and equipment; harmonization and rationalization of tax rates across States with two or three rates within specified bands; pruning of exemptions and concessions except for a basic threshold limit and items like unprocessed food; zero rating of exports, inter-State sales and consignment transfers to registered dealers; taxing inter-State sales to non-registered persons as local sales; modernization of tax administration, computerization of operations and simplification of forms and procedures.

3.8 The first preliminary discussion on transition from sales tax regime to VAT regime took place in a meeting of Chief Ministers convened by the Union Finance Minister in 1995. A standing Committee of State Finance Ministers was constituted, as a result of meeting of the Union Finance Ministers and Chief Ministers in November, 1999, to deliberate on the design of VAT which was

later made the Empowered Committee of State Finance Ministers (EC). Haryana was the first State to implement VAT, in 2003. In 2005, VAT was implemented in most of the states. Uttar Pradesh was the last State to implement VAT, from 1st January, 2008.

4. International perspectives on GST/VAT

4.1 VAT and GST are used inter-changeably as the latter denotes comprehensiveness of VAT by coverage of goods and services. France was the first country to implement VAT, in 1954. Presently, more than 160 countries have implemented GST/VAT in some form or the other. The most popular form of VAT is where taxes paid on inputs are allowed to be adjusted in the liability at the output. The VAT or GST regime in practice varies from one country to another in terms of its technical aspects like ‘definition of supply’, ‘extent of coverage of goods and services’, ‘treatment of exemptions and zero rating’ etc. However, at a broader level, it has one common principle, it is a destination based consumption tax. From economic point of view, VAT is considered to be a superior system over sales tax of taxing consumption because the former is neutral in allocation of resources as it taxes value addition. Besides, there are certain distinct advantages of VAT. It is less cascading making the taxation system transparent and anti-inflationary. From revenue point of view, VAT leads to greater compliance because of creation of transaction trails.

4.2 When compared globally, VAT structures are either overly centralized where tax is levied and administered by the Central government (Germany, Switzerland, Austria), or dual GST structure wherein both Centre and States administer tax independently (Canada) or with some co-ordination between the national and sub-national entities (Brazil, Russia). While a centralized structure reduces fiscal autonomy for the States, a decentralized structure enhances compliance burden for the taxpayers. Canada is a federal country with unique model of taxation in which certain provinces have joined federal GST and others have not. Provinces which administer their taxes separately are called ‘non-participating provinces’, whereas provinces which have teamed up with the Federal Government for tax administration are called ‘participating provinces’.

4.3 The rate of GST varies across countries. While Malaysia has a lower rate of 6% (Malaysia though scrapped GST in 2018 due to popular uproar against it), Hungary has one of the highest rate of 27%. Australia levies GST at the rate of 10% whereas Canada has multiple rate slabs. The average rate of VAT across the EU is around 19.5%.

5. Need for GST in India

5.1 The introduction of CENVAT removed to a great extent cascading burden by expanding the coverage of credit for all inputs, including capital goods. CENVAT scheme later also allowed credit of services and the basket of inputs, capital goods and input services could be used for payment of both Central Excise duty and service tax. Similarly, the introduction of VAT in the States has removed the cascading effect by giving set-off for tax paid on inputs as

well as tax paid on previous purchases and has again been an improvement over the previous sales tax regime.

5.2 But both the CENVAT and the State VAT have certain incompleteness. The incompleteness in CENVAT is that it has yet not been extended to include chain of value addition in the distributive trade below the stage of production. Similarly, in the State-level VAT, CENVAT load on the goods has not yet been removed and the cascading effect of that part of tax burden has remained unrelieved. Moreover, there are several taxes in the States, such as, Luxury Tax, Entertainment Tax, etc. which have still not been subsumed in the VAT. Further, there has also not been any integration of VAT on goods with tax on services at the State level with removal of cascading effect of service tax.

5.3 CST was another source of distortion in terms of its cascading nature. It was also against one of the basic principles of consumption taxes that tax should accrue to the jurisdiction where consumption takes place. Despite remarkable harmonization in VAT regimes under the auspices of the EC, the national market was fragmented with too many obstacles in free movement of goods necessitated by procedural requirement under VAT and CST.

5.4 In the constitutional scheme, taxation powers on goods was with Central Government but it was limited up to the stage of manufacture and production while States have powers to tax sale and purchase of goods. Centre had powers to tax services and States also had powers to tax certain services specified in clause (29A) of Article 366 of the Constitution. This sort of division of taxing powers created a grey zone which led to legal disputes. Determination of what constitutes a goods or service is difficult because in modern complex system of production, a product is normally a mixture of goods and services.

5.5 As can be seen from the previous paragraphs, India moved towards value added taxation both at Central and State level, and this process was complete by 2005. Integration of Central VAT and State VAT therefore is nothing but an inevitable consequence of the reform process. The Constitution of India envisages a federal nature of power bestowed upon both Union and States in the Constitution itself. As a natural corollary of this, any unification of the taxation system required a dual GST, levied and collected both by the Union and the States.

6. GST: A historical perspective

6.1 The Kelkar Task Force on Fiscal Responsibility and Budget Management (FRBM) recommended in 2005 introduction of a comprehensive tax on all goods and service replacing Central level VAT and State level VATs. It recommended replacing all indirect taxes except the Customs duty with Value Added Tax on all goods and services with complete set off in all stages of making of a product.

6.2 In the year 2000, the then Prime Minister introduced the concept of GST and set up a committee to design a GST model for the country. In 2003, the Central Government formed a taskforce on Fiscal Responsibility and Budget Management, which in 2004 recommended GST to replace the existing tax

regime by introducing a comprehensive tax on all goods and services replacing Central level VAT and State level VATs. It recommended replacing all indirect taxes except the Customs duty with Value Added Tax on all goods and services with complete set off in all stages of the value chain. An announcement was made by the then Union Finance Minister in Budget (2006-07) to the effect that GST would be introduced with effect from April 1, 2010 and that the EC, on his request, would work with the Central Government to prepare a road map for introduction of GST in India. After this announcement, the EC decided to set up a Joint Working Group in May 10, 2007, with the then Adviser to the Union Finance Minister and Member-Secretary of the Empowered Committee as its Co-conveners and four Joint Secretaries of the Department of Revenue of Union Finance Ministry and all Finance Secretaries of the States as its members. This Joint Working Group got itself divided into three Sub-Groups and had several rounds of internal discussions as well as interaction with experts and representatives of Chambers of Commerce & Industry. On the basis of these discussions and interaction, the Sub-Groups submitted their reports which were then integrated and consolidated into the report of Joint Working Group (November 19, 2007).

6.3 This report was discussed in detail in the meeting of the EC on November 28, 2007, and the States were also requested to communicate their observations on the report in writing. On the basis of these discussions in the EC and the written observations, certain modifications were considered necessary and were discussed with the Co-conveners and the representatives of the Department of Revenue of Union Finance Ministry. With the modifications duly made, a final version of the views of EC on the model and road map for the GST was prepared (April 30, 2008). These views of EC were then sent to the Government of India, and the comments of Government of India were received on December 12, 2008. These comments were duly considered by the EC (December 16, 2008), and it was decided that a Committee of Principal Secretaries/Secretaries of Finance/Taxation and Commissioners of Trade Taxes of the States would be set up to consider these comments, and submit their views. These views were submitted and were accepted in principle by the EC (January 21, 2009). Based on discussions within the EC and between the EC and the Central Government, the EC released its First Discussion Paper (FDP) on GST in November, 2009. This spelled out the features of the proposed GST and has formed the basis for discussion between the Centre and the States.

7. Challenges in designing GST

7.1 In the discussion that preceded amendment in the Constitution for GST, there were a number of thorny issues that required resolution and agreement between Central Government and State Governments. Implementing a tax reform as vast as GST in a diverse country like India required the reconciliation of interests of various States with that of the Centre. Some of the challenging issues, addressed in the run up to GST, were the following:

7.2 Origin-based versus Destination-based taxation

GST is a destination based consumption tax. Under destination based taxation, tax accrues to the destination place where consumption of the goods or services takes place. The earlier VAT regime was based on origin principle where Central Sales Tax was assigned to the State of origin where production or sale happened and not to the State where consumption happened. Many manufacturing States expressed concerns over the loss of revenue on account of shift from origin based taxation to destination based taxation.

7.3 An argument put forward on behalf of producing states in support of origin based taxation is that they need to collect at least some tax from inter-State sales in order to recover the cost of infrastructure and public services provided by the State Governments to the industries producing the goods which are consumed in other states. This line of reasoning is based on the assumption that in the absence of a tax on inter-State sales, the location of export industries within their jurisdiction would not contribute to the tax revenues of the exporting state. This view was missing the fact that any value addition in a jurisdiction necessarily means extra income in the hands of the residents of that jurisdiction. Spending of this income on consumer goods expands the sales tax base of the producing states and thereby contributes to their revenues. In fact, to the extent that consumer expenditures are dependent on the level of income of the residents of a State, it is the producing States that stand to gain the most in additional sales tax revenues (even under the destination basis of consumption taxes) from increased export output.

7.4 Rate Structure and Compensation

There was uncertainty about gains in revenue after implementation of GST. Though attempts were made to estimate a revenue neutral rate, nonetheless it remains an estimate only. It was difficult to estimate accurately as to how much the States will gain from tax on services and how much they will lose on account of removal of cascading effect and phasing out of CST. In view of this, States asked for compensation during the first five years of implementation of GST.

7.5 A Committee headed by the Chief Economic Adviser Dr. Arvind Subramanian on possible tax rates under GST suggested RNR (Revenue Neutral Rate). The term RNR refers to that single rate, which preserves revenue at desired (current) levels. This would differ from the standard rate, which is the rate that would apply to a majority of goods and services. In practice, there will be a structure of rates, but for the sake of analytical clarity and precision it is appropriate to think of the RNR as a single rate. It is a given single rate that gets converted into a whole rate structure, depending on policy choices about exemptions, what commodities to charge at a lower rate and what to charge at a very high rate.

7.6 The Committee recommended RNR of 15-15.5% (to be levied by the Centre and States combined). The lower rates (to be applied to certain goods

consumed by the poor) should be 12%. Further, the sin or demerit rates (to be applied on luxury cars, aerated beverages, pan masala, and tobacco) should be 40%.

8. Dispute Settlement

A harmonized system of taxation necessarily required that all stakeholders stick to the decisions taken by the supreme body, which was later constituted as the Goods and Services Tax Council (the Council). However, the possibility of departure from the recommendations of such body cannot be completely ruled out. Any departure would definitely affect other stakeholders and in such circumstances there must be a statutory body to which affected parties may approach for dispute resolution. The nature of such dispute resolution body was a bone of contention. Under the Constitution (One Hundred Fifteenth Amendment) Bill, 2011, a Goods and Services Tax Dispute Settlement Authority was to be constituted for this purpose. This body was judicial in nature. The proposed constitution of this Authority was challenged because its powers would override the supremacy of the Parliament and the State Legislatures. The Constitution (One Hundred Twenty Second Amendment) Bill, 2014 departed from the previous GST amendment bill and proposed that the Goods and Services Tax Council may decide about the modalities to resolve disputes arising out of its recommendations.

9. Alcohol and Petroleum products

Alcoholic liquor for human consumption and petroleum products are major contributor to revenue of States. As States were uncertain about impact of GST on their finances and moreover loss of autonomy in collection of tax revenue, States unanimously argued for exclusion of these products from the ambit of GST. In the 115th Amendment Bill alcoholic liquor for human consumption and five petroleum products namely crude petroleum, high speed diesel, motor spirit or petrol, aviation turbine fuel and natural gas were kept out of GST. But in the 122nd Amendment Bill, only alcoholic liquor for human consumption was kept outside GST and above mentioned five petroleum products were proposed to be brought under GST from a date to be recommended by the Council. The Central Government has also retained its power to tax tobacco and tobacco products, though these are also under GST. Thus, to ensure smooth transition and provide fiscal buffer to States, it was agreed to keep alcohol completely out of the ambit of GST.

10. Constitutional amendment

10.1 As explained above, unification of Central VAT and State VAT was possible in form of a dual levy under the constitutional scheme. Power of taxation is assigned to either Union or States subject-wise under Schedule VII of the Constitution. While the Centre is empowered to tax goods up to the production or manufacturing stage, the States have the power to tax goods at distribution stage. The Union can tax services using residuary powers but States could not. Under a unified Goods and Services Tax scheme, both should have power to tax the complete supply chain from production to distribution, and both

goods and services. The scheme of the Constitution did not provide for any concurrent taxing powers to the Union as well as the States and for the purpose of introducing goods and services tax amendment of the Constitution conferring simultaneous power on Parliament as well as the State Legislatures to make laws for levying goods and services tax on every transaction of supply of goods or services was necessary.

10.2 The Constitution (115th Amendment) Bill, 2011, in relation to the introduction of GST, was introduced in the Lok Sabha on 11-3-2011. The Bill was referred to the Standing Committee on Finance on 29-3-2011. The Standing Committee submitted its report on the Bill in August, 2013. However, the Bill, which was pending in the Lok Sabha, lapsed with the dissolution of the 15th Lok Sabha.

10.3 The Constitution (122nd Amendment) Bill, 2014 was introduced in the 16th Lok Sabha on 19-12-2014. The Constitution Amendment Bill was passed by the Lok Sabha in May, 2015. The Bill was referred to the Select Committee of Rajya Sabha on 12-5-2015. The Select Committee submitted its Report on the Bill on 22-7-2015. The Bill with certain amendments was finally passed in the Rajya Sabha and thereafter by Lok Sabha in August, 2016. Further the bill was ratified by required number of States and received assent of the President on 8th September, 2016 and has since been enacted as Constitution (101st Amendment) Act, 2016 w.e.f. 16-9-2016.

11. The important changes introduced in the Constitution by the 101st Amendment Act are the following

- (a) Insertion of new Article 246A which makes enabling provisions for the Union and States with respect to the GST legislation. It further specifies that Parliament has exclusive power to make laws with respect to GST on inter-State supplies.
- (b) Article 268A of the Constitution has been omitted. The said article empowered the Government of India to levy taxes on services. As tax on services has been brought under GST, such a provision was no longer required.
- (c) Article 269A has been inserted which provides for goods and services tax on supplies in the course of inter-State trade or commerce which shall be levied and collected by the Government of India and such tax shall be apportioned between the Union and the States in the manner as may be provided by Parliament by law on the recommendations of the Goods and Services Tax Council. It also provides that Parliament may, by law, formulate the principles for determining the place of supply, and when a supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.
- (d) Article 270 has been amended to provide for distribution of goods and Services Tax collected by the Union between the Union and the States.

- (e) Article 271 has been amended which restricts power of the Parliament to levy surcharge under GST. In effect, surcharge cannot be imposed on goods and services which are subject to tax under Article 246A.
- (f) Article 279A has been inserted to provide for the constitution and mandate of GST Council.
- (g) Article 366 has been amended to exclude alcoholic liquor for human consumption from the ambit of GST, and services have been defined.
- (h) Article 368 has been amended to provide for a special procedure which requires the ratification of the Bill by the legislatures of not less than one half of the States in addition to the method of voting provided for amendment of the Constitution. Thus, any modification in GST Council shall also require the ratification by the legislatures of one half of the States.
- (i) Entries in List-I and List-II have been either substituted or omitted to restrict power to tax goods or services specified in these Lists or to take away powers to tax goods and services which have been subsumed in GST.
- (j) Parliament shall, by law, on the recommendation of the Goods and Services Tax Council, provide for compensation to the States for loss of revenue arising on account of implementation of the goods and services tax for five years.
- (k) In case of petroleum and petroleum products, it has been provided that these goods shall not be subject to the levy of Goods and Services Tax till a date notified on the recommendation of the Goods and Services Tax Council.

12. Goods & Service Tax Council

12.1 As provided for in Article 279A of the Constitution, the Goods and Services Tax Council (the Council) was notified with effect from 12-9-2016. The Council is comprised of the Union Finance Minister (who will be the Chairman of the Council), the Minister of State (Revenue) and the State Finance/Taxation Ministers as members. It shall make recommendations to the Union and the States on the following issues:

- (a) the taxes, cesses and surcharges levied by the Centre, the States and the local bodies which may be subsumed under GST;
- (b) the goods and services that may be subjected to or exempted from the GST;
- (c) model GST laws, principles of levy, apportionment of IGST and the principles that govern the place of supply;
- (d) the threshold limit of turnover below which the goods and services may be exempted from GST;
- (e) the rates including floor rates with bands of GST;

- (f) any special rate or rates for a specified period to raise additional resources during any natural calamity or disaster;
- (g) special provision with respect to the North-East States, J&K, Himachal Pradesh and Uttarakhand; and
- (h) any other matter relating to the GST, as the Council may decide.

12.2 The Council shall recommend the date on which the Goods and Services Tax be levied on petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel. While discharging the functions conferred by this article, the Goods and Services Tax Council shall be guided by the need for a harmonized structure of Goods and Services Tax and for the development of a harmonized national market for goods and services.

12.3 One half of the total number of Members of the Goods and Services Tax Council shall constitute the quorum at its meetings. The Goods and Services Tax Council shall determine the procedure in the performance of its functions. Every decision of the Goods and Services Tax Council shall be taken at a meeting, by a majority of not less than three-fourths of the weighted votes of the members present and voting, in accordance with the following principles, namely:—

- (a) the vote of the Central Government shall have a weightage of one-third of the total votes cast, and
- (b) the votes of all the State Governments taken together shall have a weightage of two-thirds of the total votes cast, in that meeting.

12.4 The Council has met for 36 times and no occasion has arisen so far that required voting to decide any matter. Till its 34th meeting, GST Council has taken 1064 decisions which include 219 decisions taken by the GST Implementation Council (GIC). As on 14-5-2019, 1006 decisions have been implemented and only a total of 58 decisions (of which 39 were unique issues) were under implementation at different stages with different sections of DoR/CBIC/GSTN. In other words, 94.5% of the decisions of the GST Council have already been implemented, which is a significant achievement, given the complicated nature and wide area of subjects/issues involved and the fact that all decisions were taken unanimously.

The following major recommendations have been made by the Council:

13. Legal/Rules

13.1 Recommending GST laws, namely CGST Law, UTGST Law, IGST Law, SGST Law and GST Compensation Law paving the way for implementation of GST.

13.2 Rules on composition, registration, input tax credit, invoice, determination of value of supply, accounts and records, returns, payment, refund, assessment and audit, advance ruling, appeals and revision, transitional provisions, anti-profiteering, E-way Bill, inspection, search and seizure, demands and recovery and offences and penalties have been recommended.

14. Registration and Threshold

14.1 Threshold limit of aggregate turnover for exemption from registration and payment of GST for suppliers of services would be ₹20 lakhs and ₹10 lakhs in the States of Manipur, Mizoram, Nagaland and Tripura.

14.2 Threshold limits of aggregate turnover for exemption from registration and payment of GST for the suppliers of goods would be ₹40 lakhs and ₹20 lakhs in the States of Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Puducherry, Sikkim, Telangana, Tripura and Uttarakhand with effect from 1-4-2019.

14.3 The following classes of taxpayers shall be exempted from obtaining registration:

- (a) Suppliers of services, having turnover up to ₹20 lakh, making inter-State supplies;
- (b) Suppliers of services, having turnover up to ₹20 lakh, making supplies through e-commerce platforms.

14.4 Taxpayers may opt for multiple registrations within a State/Union territory in respect of multiple places of business located within the same State/Union territory.

14.5 Mandatory registration is required for only those e-commerce operators who are required to collect tax at source.

14.6 Registration to remain temporarily suspended while cancellation of registration is under process, so that the taxpayer is relieved of continued compliance under the law.

14.7 A Removal of Difficulty order has been issued to allow revocation of cancellation of those registrations, which were cancelled till 31-3-2019. The application for revocation can be filed till 22-7-2019.

15. Migration

15.1 One more window for completion of migration process is being allowed.

The due date for the taxpayers who did not file the complete **FORM GST REG-26** but received only a Provisional ID (PID) till 31-12-2017 for furnishing the requisite details to the jurisdictional nodal officer was extended till 31-1-2019. Also, the due date for furnishing **FORM GSTR-3B** and **FORM GSTR-1** for the period July, 2017 to February, 2019/quarters July, 2017 to December, 2018 by such taxpayers was extended till 31-3-2019.

16. Composition Scheme

16.1 Composition scheme has been formulated for small businessmen being supplier of goods and supplier of restaurant services. Under the scheme, person with annual turnover up to ₹1.5 crore (₹75 lakhs in States of Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura and Uttarakhand) needs to pay tax equal to 1% to 5% on his turnover and needs to file his returns annually with quarterly payment from FY 2019-20.

16.2 Composition scheme has been made available for suppliers of services (to those who are not eligible for the presently available Composition Scheme) with a tax rate of 6% (3% CGST + 3% SGST) having an annual turnover in the preceding FY up to ₹50 lakhs. They would be liable to file one Annual Return with quarterly payment of taxes. This has been made effective from 1-4-2019.

16.3 Taxpayers under Composition scheme have been allowed to pay ‘self-assessed tax’ on a quarterly basis till 18th of the month succeeding such quarter and furnish a return till 30th April for the previous financial year.

16.4 A taxpayer who wants to opt for Composition Scheme for a financial year or during the middle of a financial year has to inform the government about his choice by filing **FORM GST CMP-02**.

16.5 The GST Council in its 36th meeting held on 27-7-2019 decided that the last date for filing of intimation, in **FORM GST CMP-02**, for availing the option of payment of tax under notification No. 2/2019-Central Tax (Rate) dated 7.3.2019 (by exclusive supplier of services), be extended from 31-7-2019 to 30-9.2019.

16.6 The last date for furnishing statement containing the details of the self-assessed tax in **FORM GST CMP-08** for the quarter April, 2019 to June, 2019 (by taxpayers under composition scheme), has been extended from 31-7-2019 to 31-8-2019.

16.7 Composition scheme shall not be available to inter-State suppliers and specified category of manufacturers.

17. E-way bill system

17.1 The generation of e-way bill would be barred if a supplier or recipient does not file GST returns for 2 consecutive tax periods. This was made applicable from 21-8-2019.

18. Tax Administration

18.1 In order to ensure single interface, all administrative control over 90% of taxpayers having turnover below ₹1.5 crore would vest with State tax administration and over 10% with the Central tax administration. Further all administrative control over taxpayers having turnover above ₹1.5 crore shall be divided equally in the ratio of 50% each for the Central and State tax administration.

18.2 Powers under the IGST Act shall also be cross-empowered on the same basis as under CGST and SGST Acts with few exceptions.

18.3 Power to collect GST in territorial waters shall be delegated by Central Government to the States.

18.4 Power to take enforcement action over entire taxpayer’s base would be with both Central as well as State tax administration.

19. Compensation to States

19.1 Formula and mechanism for GST Compensation Cess has been finalized.

20. Reverse Charge Mechanism (RCM)

20.1 Levy of GST on reverse charge mechanism on receipt of supplies from unregistered suppliers, to be applicable to only specified goods in case of certain notified classes of registered persons, on the recommendations of the GST Council. In this regard, notification No. 7/2019-Central Tax (Rate), dated 29-3-2019 has been issued which prescribes that the promoter shall pay tax on reverse charge basis w.e.f. 1-4-2019 on following supplies received from unregistered suppliers—

- (a) such supplies which constitute the shortfall from the minimum value of goods or services or both required to be purchased by a promoter for construction of a project as prescribed in notification No. 11/2017-Central Tax (Rate) dated 28-6-2017;
- (b) cement which constitute the shortfall from the minimum value of goods or services or both required to be purchased by a promoter for construction of project as prescribed in notification No. 11/2017-Central Tax (Rate); and
- (c) capital goods supplied to a promoter for construction of a project on which tax is payable or paid at the rate prescribed in notification No. 11/2017-Central Tax (Rate).

20.2 Earlier the reverse charge mechanism under sub-section (4) of section 9 of the CGST Act, 2017 and under sub-section (4) of section 5 of the IGST Act, 2017 was kept under suspension till 30-9-2019.

21. Payment of Tax

21.1 There shall be no requirement on payment of tax on advances received for supply of goods by all taxpayers.

21.2 A Group of Ministers constituted for promoting digital payment has recommended to allow cash back to an amount equal to 20% of GST paid or ₹100/-, whichever is lower for cases where payment is made by BHIM or Rupay card. The necessary infrastructure is being developed and soon the scheme would be implemented on pilot basis in State of Assam and few other States which volunteer for the same.

21.3 In principle approval has been given for amendment of section 50 of the CGST Act to provide that interest should be charged only on the net tax liability of the taxpayer, after taking into account the admissible input tax credit, i.e. interest would be leviable only on the amount payable through the electronic cash ledger. This would be implemented once the law is amended.

22. Exemption

22.1 Supply from GTA to unregistered persons has been exempted from tax.

23. Refunds

23.1 A scheme of single authority for disbursement of the refund amount sanctioned by either the Centre or the State tax authorities has been implemented. The modalities for the same are being finalized.

23.2 All the supporting documents/invoices in relation to a claim for refund in **FORM GST RFD-01A** shall be uploaded electronically on the common portal at the time of filing of the refund application itself, thereby obviating the need for a taxpayer to physically visit a tax office for submission of a refund application.

23.3 Fully automated refund module is being developed and will be deployed soon.

24. Return

24.1 All taxpayers, except those registered under Composition scheme are required to file return **FORM GSTR-3B** & pay tax on monthly basis.

24.2 Taxpayers with turnover up to ₹1.5 crore are required to file information in **FORM GSTR-1** on a quarterly basis. Other taxpayers would have to file **FORM GSTR-1** on a monthly basis.

24.3 The due date for furnishing the annual returns in **FORM GSTR-9**, **FORM GSTR-9A** and reconciliation statement in **FORM GSTR-9C** for the Financial Year 2017-2018 is 31-8-2019.

25. QRMP Scheme

25.1 QRMP Scheme

As a trade facilitation measure and in order to further ease the process of doing business, the GST Council in its 42nd meeting held on 05th October, 2020 had recommended that registered persons having Aggregate Annual Turnover up to ₹5 Cr may be allowed to furnish return on quarterly basis along with monthly payment of tax, with effect from 01.01.2021. This scheme of quarterly return filing along with monthly payment of taxes is referred to as “QRMP Scheme”

25.2 Eligibility for the Scheme:

In terms of Notification No. 84/2020-Central Tax, dated 10.11.2020, a registered person who is required to furnish a return in **FORM GSTR- 3B**, and who has an Aggregate Annual Turnover of up to ₹5 Cr in the preceding financial year, is eligible for the QRMP Scheme.

The Aggregate Annual Turnover for the preceding financial year shall be calculated on the common portal taking into account the details furnished in the returns by the taxpayer for the tax periods in the preceding financial year. In case the Aggregate Annual Turnover exceeds ₹5 Cr during any quarter in the current financial year, the registered person shall not be eligible for the Scheme from the next quarter.

25.3. Quarterly return:

The registered person opting for the Scheme would be required to furnish the details of outward supply in **FORM GSTR-1** quarterly as per the Rule 59 of the CGST Rules.

25.4 Monthly Payment of Tax:

The registered person under the QRMP Scheme would be required to pay the tax due in each of the first two months of the quarter by depositing the due

amount in **FORM GST PMT-06**, by the twenty-fifth day of the month succeeding such month. While generating the challan, taxpayers should select “Monthly payment for quarterly taxpayer” as reason for generating the challan. The said person can use any of the following two options provided below for monthly payment of tax during the first two months

25.5 Quarterly filing of FORM GSTR-3B:

Such registered persons would be required to furnish **FORM GSTR- 3B**, for each quarter, on or before 22nd or 24th day of the month succeeding such quarter. In **FORM GSTR-3B**, they shall declare the supplies made during the quarter, ITC availed during the quarter and all other details required to be furnished therein. The amount deposited by the registered person in the first two months shall be debited solely for the purposes of offsetting the liability furnished in that quarter’s **FORM GSTR-3B**. However, any amount left after filing of that quarter’s **FORM GSTR-3B** may either be claimed as refund or may be used for any other purpose in subsequent quarters. In case of cancellation of registration of such person during any of the first two months of the quarter, he is still required to furnish return in **FORM GSTR-3B** for the relevant tax period.

25.6 Applicability of Interest:

In case **FORM GSTR-3B** for the quarter is furnished beyond the due date, interest would be payable as per the provisions of Section 50 of the CGST Act on the tax liability net of ITC. Interest payable, if any, shall be paid through **FORM GSTR-3B**.

25.7 Applicability of Late Fee:

Late fee is applicable for delay in furnishing of return/details of outward supply as per the provision of Section 47 of the CGST Act. As per the Scheme, the requirement to furnish the return under the proviso to sub-section (1) of Section 39 of the CGST Act is quarterly. Accordingly, late fee would be the applicable for delay in furnishing of the said quarterly return/details of outward supply. It is clarified that no late fee is applicable for delay in payment of tax in first two months of the quarter.

25.8 ITC:

25.9 ITC in relation to invoices issued by the supplier during FY 2017-18 may be availed by the recipient till the due date for furnishing of **FORM GSTR-3B** for the month of March, 2019, subject to specified conditions.

25.10 The due date for submitting **FORM GST ITC-04** for the period July 2017 to March 2019 was extended till 31-8-2019.

25.11 TDS/TCS:

25.12 TDS/TCS provisions shall be implemented from 1-10-2018.

25.13 Further, to provide some more time to TDS deductors to familiarize them with the new system, last date for furnishing return in **FORM GSTR-7** for the months of October, 2018 to December, 2018 and January, 2019 was extended up to 28-2-2019. Further, exemption from TDS for been made for supply made by Government/PSU to another Government/PSU.

25.14 Export:

25.15 E-Wallet Scheme shall be introduced for exporters from 1-4-2020 and till then relief for exporters shall be given in form of broadly existing practice.

25.16 Supply of services to Nepal and Bhutan shall be exempted from GST even if payment has not been received in foreign convertible currency - such suppliers shall be eligible for input tax credit.

25.17 Supply of services to qualify as exports, even if payment is received in Indian Rupees, where permitted by the RBI.

25.18 Rate of Interest:

25.19 Rate of interest on delayed payments and delayed refund has been recommended.

25.20 MSME:

25.21 A Group of Ministers has been constituted to look into the issues being faced by MSMEs and to provide solutions for the same.

25.22 Revenue Mobilization:

25.23 A Group of Ministers has been constituted to study the revenue trend, including analyzing the reasons for structural patterns affecting the revenue collection in some of the States. The study would include the underlying reasons for deviation from the revenue collection targets vis-à-vis original assumptions discussed during the design of GST system, its implementation and related structural issues.

25.24 The Group of Ministers will be assisted by the committee of experts from Central Government, State Governments and the NIPFP (National Institute of Public Finance and Planning), who would study and share the findings with GoM. The GoM in turn would give its recommendation to the GST Council.

25.25 The amount of IGST not apportioned to the Centre or the States/UTs may, for the time being, on the recommendations of the Council, be apportioned at the rate of fifty per cent to the Central Government and fifty per cent to the State Governments or the Union territories, as the case may be, on *ad-hoc* basis and this amount shall be adjusted against the amount finally apportioned.

25.26 Fifty per cent of such amount, as may be recommended by the Council, which remains unutilized in the Compensation Fund, at any point of time in any financial year during the transition period shall be transferred to the Consolidated Fund of India as the share of Centre, and the balance fifty per cent shall be distributed amongst the States in the ratio of their base year revenue.

25.27 In case of shortfall in the amount collected in the Fund against the requirement of compensation to be released for any two months' period, fifty per cent of the same, but not exceeding the total amount transferred to the Centre and the States as recommended by the Council, shall be recovered from the Centre and the balance fifty per cent from the States in the ratio of their base year revenue.

25.28 Real Estate:

25.29 The GST Council in its 33rd & 34th meetings held on 24-2-2019 & 19-3-2019 respectively have made following decisions with respect to the real estate sector:

1.25.30 GST shall be levied at effective rate of 5% on residential properties outside affordable segment and 1% on affordable housing properties.

25.31 Definition of affordable housing:

A residential house/flat of carpet area of up to 90 sqm in non-metropolitan cities/towns and 60 sqm in metropolitan cities having value up to ₹45 lacs (both for metropolitan and non-metropolitan cities). Metropolitan Cities are Bengaluru, Chennai, Delhi NCR (limited to Delhi, Noida, Greater Noida, Ghaziabad, Gurgaon, and Faridabad), Hyderabad, Kolkata and Mumbai (whole of MMR).

25.32 Conditions for new tax rate:

(a) Input tax credit shall not be available

(b) 80% of inputs and input services [other than capital goods, TDR/JDA, FSI, long-term lease (premiums)] shall be purchased from registered persons. On shortfall of purchases from 80%, tax shall be paid by the builder @ 18% on RCM basis. However, Tax on cement purchased from unregistered person shall be paid @ 28% under RCM, and on capital goods under RCM at applicable rates.

25.33 GST exemption on TDR/JDA, long term lease (premium), FSI

Intermediate tax on development right, such as TDR, JDA, lease (premium), FSI shall be exempted only for such residential property on which GST is payable.

25.34 The new rate has become applicable from 1-4-2019.

25.35 One time transition option given to real estate firms to continue to pay tax at the old rates (effective rate of 8% or 12% with ITC) on on-going projects (buildings where construction and actual booking have both started before 1-4-2019) which have not been completed by 31-3-2019. Real estate firms can communicate their option till 20-5-2019 to the jurisdictional officers.

25.36 Lottery

25.37 The GST Council in its 32nd Meeting held on 10-1-2019 constituted a Group of Ministers to examine the GST Rate Structure on Lotteries.

The GST Council's 50th meeting decided that online gaming, horse racing, and casinos would be subject to a 28% GST rate on the face value. The transaction value for taxability was determined as follows:—

- Online gaming - Full value of the bets placed
- Horse Racing - Full value of the bets placed with book makers/totalizators
- Casinos - Face value of the chips purchased.

The 51st meeting, the GST Council finalized specific amendments to the Central Goods and Services Tax Act, 2017 ('CGST Act'), and Integrated Goods and Services Tax Act, 2017 ('IGST Act').

25.38 Natural Calamity Cess:

25.39 GST Council in its 32nd Meeting held on 10-1-2019 approved levy of Cess on intra-State Supply of Goods and Services within the State of Kerala at a rate not exceeding 1% for a period not exceeding 2 years.

25.40 Electronic Invoicing:

25.41 The Council in its 35th meeting held on 21-6-2019 decided to introduce electronic invoicing system in a phase-wise manner for B2B transactions.

25.42 E-invoicing system was introduced in the GST regime with effect from 01.10.2020 for B2B transactions as well as exports, for taxpayers with annual aggregate turnover of ₹500 crore and above. This threshold has been reduced progressively over a period of time and was reduced to ₹10 crores from 01.10.2022. This threshold limit has been further reduced to ₹5 crore with effect from 01.08.2023 vide notification no. 10/2023-Central Tax dated 10.05.2023.

25.43 Refund related measures.

- (a) A new functionality has been made available on the common portal which allows unregistered persons to take a temporary registration and apply for refund. Also, the manner and procedure for filing of refund applications by unregistered persons in certain circumstances has been prescribed vide Circular no. 188/20/2022-GST, dated 27.12.2022.
- (b) Manner for processing and sanction of such IGST refunds, which were withheld on account of exporters being flagged as risky on the basis of risk parameters and data analytics, was prescribed vide Instruction No.04/2022-GST, dated 28.11.2022.

25.44 Registration Related Measures:

- (a) A proviso(3rd proviso) has been inserted in rule 21A (4) to provide for automatic revocation of such system-based suspension upon compliance with provisions of rule 10A.
- (b) Amendment has been made in rule 9and rule 25 of CGST Rules, 2017 to do away with the requirement of the presence of the applicant for the physical verification of business premises and also to provide for physical verification in high risk cases even where Aadhaar has been authenticated.
- (c) Vide Notification No. 03/2023-CT, dated 31.03.2023, for such registrations which were cancelled for non-filing of returns on or before 31.12.2022 and application for revocation was not filed or appeal has been rejected or appeal is pending within the specified time, the time limit for filing of application for revocation of cancellation of registration, was extended till 30.06.2023. Further, vide Notification No.

23/2023-CT dated 17.07.2023, the time limit for filing of application for revocation of such cancellation of registration, was extended till 31.08.2023.

- (d) Vide Notification No. 33/2023-CT dated 31.07.2023, “Account Aggregator” has been notified as the systems with which information may be shared by the common portal based on consent provided by the registered person/taxpayer. This will help MSMEs in getting credit/business loan based on their GST registration.

25.45 Other facilitation measures:

- (a) In order to simplify and decriminalize certain provisions of the GST Act, based on the recommendation of GST Council, amendments have been made in provisions of CGST Act, 2017.
- (b) Provision for automatic restoration of provisionally attached property after completion of one year: An amendment in sub-rule (2) of Rule 159 of CGST Rules, 2017 and FORM GST DRC-22 has been made to provide that the order for provisional attachment in FORM GST DRC-22 shall not be valid after expiry of one year from the date of the said order. This will facilitate release of provisionally attached properties after expiry of period of one year, without need for separate specific written order from the Commissioner.
- (c) Vide notification no. 26/2022-Central Tax dated 26.12.2022, Rule 109C and FORM GST APL-01/03W has been inserted in the CGST Rules, 2017 w.e.f. 26.12.2022 to provide for the facility for withdrawal of an application of appeal up to certain specified stage.
- (d) Measure for improving cash flow: Provision has been made to provide for transfer of balance in electronic cash ledger of a registered person to electronic cash ledger of a distinct person. This provision would help taxpayer in easily transferring unutilized balance in cash ledger between the registered persons having same PAN, without need for filing refund claim with tax officers. This would provide ease of doing business and would improve liquidity and cash flows of such taxpayers.
- (e) This threshold limit for E-invoicing has been further reduced to annual aggregate turnover of ₹5 crore with effect from 01.08.2023 vide notification no. 10/2023-Central Tax, dated 10.05.2023.
- (f) Sub Rule (3) of rule 108 and rule 109 of the CGST Rules, 2017 have been amended w.e.f. 26.12.2022 to provide clarity on the requirement of submission of certified copy of the order appealed against and the issuance of final acknowledgment by the appellate authority.
- (g) Vide notification no.18/2022-Central Tax dated 28.09.2022, w.e.f. 01.10.2022, amendments have been brought in the CGST Act to extend the time period for rectification/amendment of returns/issuance of credit notes and for availment of input tax credit upto30th day of November following the end of the financial year to which such details pertain.

Earlier it was allowed upto the due date for furnishing of return for the month of September. This provides additional time to the taxpayers for rectification/amendment of returns. Issuance of credit notes and for availment of input tax credit.

- (h) Rule 37A has been inserted in CGST Rules, 2017 *vide* notification no. 26/2022-Central Tax, dated 26.12.2022 w.e.f. 26.12.2022 to prescribe the mechanism for reversal and re-availment of input tax credit in the case of non-payment of tax by the supplier. The said rule provides that in cases where return in FORM GSTR-3B for a certain tax period has not been furnished by the supplier till the 30th day of September following the end of financial year and recipient has availed input tax credit in respect of such invoice or debit note as filed in supplier's GSTR-1 for that period, the said

25.46 Mera Bill Mera Adhikaar Scheme launched:

- **Mera Bill Mera Adhikaar Scheme** has been launched as a pilot project in select States/UTs providing for rewards to the persons uploading B2C invoices on the Mera Bill Mera Adhikaar Application to encourage consumers to demand GST invoices for their purchases, fostering transparency and accountability in commercial transactions.

25.47 Annual Return related measure:

Vide Notification No. 32/2023-CT, dated 31.07.2023 the registered person, whose aggregate turnover in the financial year 2022-23 is up to two crore rupees, has been exempted from filing annual return for the said financial year

25.48 Various Amnesty Schemes to provide relief to the taxpayers:

- (a) As a relief to the taxpayers from high late fees, vide Notification No. 07/23-CT, dated 31.03.2023, late fee payable for delayed filing of FORM GSTR-9/GSTR-9C for FY 2017-18 to FY 2021-22 was capped to maximum of ₹20,000/- (₹10,000/- + ₹10,000/-) if filed between 01.04.23 to 30.06.23 and the due date was further extended till 31.08.2023
- (b) vide Notification No. 25/2023-CT, dated 17.07.2023. Further, vide Notification No. 08/23-CT, dated 31.03.2023, late fee payable for delayed furnishing of final return in FORM GSTR-10 was capped to maximum of ₹1,000/- (₹500/- + ₹500/-) if filed between 01.04.23 to 30.06.23 and the due date was further extended till 31.08.2023 vide Notification No. 26/2023-CT, dated 17.07.2023.
- (c) Amnesty Scheme for filing of appeals against demand orders in cases where appeal could not be filed within the allowable time period: The Council has recommended providing an amnesty scheme for taxable persons, who could not file an appeal under section 107 of the CGST Act, 2017 against the demand order passed on or before the 31st day of March, 2023, or whose appeal against the said order was rejected solely on the grounds that the said appeal was not filed within the time period specified in sub-section (1) of section 107. In all such cases, filing of

appeal by the taxpayers will be allowed against such orders upto 31st January 2024, subject to the condition of payment of an amount of pre-deposit of 12.5% of the tax under dispute, out of which atleast 20% (i.e. 2.5% of the tax under dispute) should be debited from Electronic Cash Ledger. This will facilitate a large number of taxpayers, who could not file appeal in the past within the specified time period. vide Notification No.53/2023-CT dated 2.11.2023.

25.49 Electric Vehicles:

25.50 The Council in its 36th meeting held on 27-7-2019 decided to reduce the GST rates on electric vehicles from 12% to 5% and charger or charging stations for electric vehicles from 18% to 5% w.e.f. 1-8-2019.

25.51 Hiring of electric buses (of carrying capacity of more than 12 passengers) by local authorities has been exempted from GST w.e.f. 1-8-2019.

25.52 Law amendments w.e.f. 1-2-2019:

25.53 Scope of input tax credit has been widened, and it would now be made available in respect of the following:

- (a) Most of the activities or transactions specified in Schedule-III;
- (b) Motor vehicles for transportation of persons having seating capacity of more than thirteen (including driver), vessels and aircraft;
- (c) Services of general insurance repair and maintenance in respect of motor vehicles, vessels and aircraft on which credit is available;
- (d) Goods or services which are obligatory for an employer to provide to its employees, under any law for the time being in force.

25.54 The order of cross-utilization of input tax credit has been rationalized.

25.55 Commissioner empowered to extend the time limit for return of inputs and capital sent on job work, up to a period of one year and two years, respectively.

25.56 Place of supply in case of job work of any treatment or process done on goods temporarily imported into India and then exported without putting them to any other use in India, would be outside India.

25.57 The following transactions to be treated as no supply (no tax payable) under Schedule III:

- (a) Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India;
- (b) Supply of warehoused goods to any person before clearance for home consumption;
- (c) Supply of goods in case of high sea sales.

25.58 Registered persons may issue consolidated credit/debit notes in respect of multiple invoices issued in a Financial Year.

25.59 Amount of pre-deposit payable for filing of appeal before the Appellate Authority and the Appellate Tribunal capped at ₹25 crore and ₹50 crore respectively.

25.60 Recovery can be made from distinct persons, even if present in different State/Union territories.

25.61 Others:

25.62 In principle approval has been given for creation of a Centralized Appellate Authority for Advance Ruling (AAAR) to deal with cases of conflicting decisions by two or more State Appellate Advance Ruling Authorities on the same issue. This would be implemented once the law is amended.

25.63 Existing tax incentive schemes of Central or State governments may be continued by respective government by way of reimbursement through budgetary route. The schemes, in the present form, would not continue in GST.

25.64 50% of the GST paid will be refunded to CSD (Defense Canteens).

25.65 Centralized UIN shall be issued to every Foreign Diplomatic Mission/UN Organization by the Central Government for handling their refund related applications.

25.66 There would be a single cash ledger for each tax head. The modalities for implementation would be finalized in consultation with GSTN and the Accounting authorities.

25.67 Free Accounting and Billing Software shall be provided to Small Taxpayers by GSTN.

25.68 A scheme for grant of refund of taxes paid on inward supply of indigenous goods by retail outlets established at departure area of the international airport beyond immigration counters when supplied to outgoing international tourist against foreign exchange has been introduced w.e.f. 1-7-2019.

26. The design of Indian GST

26.1 Concurrent dual model of GST

India has adopted dual GST model because of its unique federal nature. Under this model, tax is levied concurrently by the Centre as well as the States on a common base, i.e. supply of goods or services or both. GST to be levied by the Centre would be called Central GST (Central tax/CGST) and that to be levied by the States would be called State GST (State Tax/SGST). State GST (State Tax / SGST) would be called UTGST (Union territory tax) in Union Territories without legislature. CGST & SGST/UTGST shall be levied on all taxable intra-State supplies.

26.2 The IGST Model

Inter-State supply of goods or services shall be subjected to integrated GST (Integrated tax/IGST). The IGST model is a unique contribution of India in the field of VAT. The IGST Model envisages that Centre would levy IGST (Integrated Goods and Service Tax) which would be CGST plus SGST on all

inter-State supply of goods or services or both. The inter-State supplier will pay IGST on value addition after adjusting available credit of IGST, CGST, and SGST on his purchases. The Exporting State will transfer to the Centre the credit of SGST used in payment of IGST. The person based in the destination State will claim credit of IGST while discharging his output tax liability in his own State. The Centre will transfer to the importing State the credit of IGST used in payment of SGST. The relevant information will also be submitted to the Central Agency which will act as a clearing house mechanism, verify the claims and inform the respective governments to transfer the funds. The major advantages of IGST Model are:

- (a) Maintenance of uninterrupted ITC chain on inter-State transactions.
- (b) No upfront payment of tax or substantial blockage of funds for the inter-State supplier or recipient.
- (c) No refund claim in exporting State, as ITC is used up while paying the tax.
- (d) Self-monitoring model.
- (e) Model takes ‘Business to Business’ as well as ‘Business to Consumer’ transactions into account.

26.3 Tax Rates:

Owing to unique Indian socio-economic milieu, four rates namely 5%, 12%, 18% and 28% have been adopted. Besides, some goods and services are exempt also. Rate for precious metals and affordable housing are an exception to ‘four-tax slab-rule’ and the same has been fixed at 3% and 1% respectively. In addition, unworked diamonds, precious stones, etc. attracts a rate of 0.25%. A cess over the peak rate of 28% on certain specified luxury and demerit goods, like tobacco and tobacco products, pan masala, aerated water, motor vehicles is imposed to compensate States for any revenue loss on account of implementation of GST. The list of goods and services in case of which reverse charge would be applicable has also been notified.

26.4 Compensation to States:

The Goods and Services Tax (Compensation to States) Act, 2017 provides for compensation to the States for the loss of revenue arising on account of implementation of the goods and services tax. Compensation will be provided to a State for a period of five years from the date on which the State brings its SGST Act into force. For the purpose of calculating the compensation amount in any financial year, 2015-16 will be assumed to be the base year, for calculating the revenue to be protected. The growth rate of revenue for a State during the five-year period is assumed to be 14% per annum. The base year tax revenue consists of the states’ tax revenues from: (i) State Value Added Tax (VAT), (ii) central sales tax, (iii) entry tax, octroi, local body tax, (iv) taxes on luxuries, (v) taxes on advertisements, etc. However, any revenue among these taxes arising related to supply of alcohol for human consumption, and five specified petroleum products, will not be accounted as part of the base year revenue. A GST

Compensation Cess is levied on the supply of certain goods and services, as recommended by the GST Council to finance the compensation cess.

26.5 E-Way Bill System:

The introduction of e-way (electronic way) bill is a monumental shift from the earlier “Departmental Policing Model” to a “Self-Declaration Model”. It envisages one e-way bill for movement of the goods throughout the country, thereby ensuring a hassle free movement for transporters throughout the country. The e-way bill system has been introduced nation-wide for all inter-State movement of goods with effect from 1-4-2018. As regards intra-State supplies, option was given to States to choose any date on or before 3-6-2018. All States have notified e-way bill rules for intra-State supplies last being NCT of Delhi where it was introduced w.e.f. 16-6-2018. New features in the e-way bill system have been introduced such as the auto calculation of distance based on PIN codes for the generation of e-way bill and blocking the generation of multiple e-way bills against one invoice.

26.6 Anti-Profiteering Mechanism:

Implementation of GST in many countries was coupled with increase in inflation and the prices of the commodities. This happened in spite of the availability of the tax credit. This was happening because the supplier was not passing on the benefit to the consumer and thereby indulging in illegal profiteering. Any reduction in rate of tax or the benefit of increased input tax credit should have been passed on to the recipient by way of commensurate reduction in prices.

26.7 National Anti-profiteering Authority (NAA) has been constituted under GST by the Central Government to examine the complaints of non-passing the benefit of reduced tax incidence. The Authority shall cease to exist after the expiry of two years from the date on which the Chairman enters upon his office unless the Council recommends otherwise.

26.8 The Authority may determine whether any reduction in the rate of tax or the benefit of input tax credit has been passed on to the recipient by way of commensurate reduction in prices. It can order reduction in prices, imposition of penalty, cancellation of registration and any other decision as may deem fit, after inquiry into the case.

Govt. empowered the Competition Commission as Authority under 171(2) of CGST Act, 2017 has been notified w.e.f. 1-12-2022

26.9 Concept of Supply:

GST would be applicable on supply of goods or services as against the present concept of tax on manufacture of goods or on sale of goods or on provision of services. It includes all sorts of activities like manufacture, sale, barter, exchange, transfer etc. It also includes supplies made without consideration when such supplies are made in certain specified situations.

26.10 Threshold Exemption:

Threshold limits of aggregate turnover for exemption from registration and payment of GST for the suppliers of goods would be ₹40 lakhs and ₹20 lakhs (in case of States of Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Puducherry, Sikkim, Telangana, Tripura and Uttarakhand) with effect from 1-4-2019.

Threshold limit of aggregate turnover for exemption from registration and payment of GST for suppliers of services would be ₹20 lakhs and ₹10 lakhs (in case of States of Manipur, Mizoram, Nagaland and Tripura).

A common threshold exemption applies to both CGST and SGST. The benefit of threshold exemption, however, is not available in inter-State supplies of goods.

26.11 Composition Scheme:

Composition scheme has been formulated for small businessmen being supplier of goods and supplier of restaurant services. Under the scheme, person with turnover up to ₹1.5 crore (₹75 lakhs in States of Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura and Uttarakhand) needs to pay tax equal to 1% to 5% on his turnover and needs to file his returns annually with quarterly payment from FY 2019-20.

Composition scheme has also been formulated for supplier of services (to those who are not eligible for the presently available composition scheme). Under the scheme, person with turnover up to ₹50 lakhs needs to pay tax equal to 6% on his turnover and needs to file his returns annually with quarterly payment from FY 2019-20.

26.12 Zero rated Supplies:

Export of goods and services are zero rated. Supplies to SEZs developers and SEZ units are also zero rated. The benefit of zero rating can be taken either with payment of integrated tax, or without payment of integrated tax under bond or Letter of Undertaking.

26.13 Cross-utilization of ITC:

IGST credit can be used for payment of all taxes. CGST credit can be used only for paying CGST or IGST. SGST credit can be used only for paying SGST or IGST.

The credit would be permitted to be utilized in the following manner:

- (a) ITC of CGST allowed for payment of CGST & IGST in that order;
- (b) ITC of SGST allowed for payment of SGST & IGST in that order;
- (c) ITC of UTGST allowed for payment of UTGST & IGST in that order;
- (d) ITC of IGST allowed for payment of IGST, CGST & SGST/UTGST in that order.

ITC of CGST cannot be used for payment of SGST/UTGST and vice versa. It has been further provided that IGST balances shall be exhausted for payment of IGST, CGST or SGST, as the case may be, before utilization of CGST or SGST.

26.14 Settlement of Government Accounts:

Accounts would be settled periodically between the Centre and the State to ensure that the credit of SGST used for payment of IGST is transferred by the originating State to the Centre. Similarly, the IGST used for payment of SGST would be transferred by Centre to the destination State. Further the SGST portion of IGST collected on B2C supplies would also be transferred by Centre to the destination State. The transfer of funds would be carried out on the basis of information contained in the returns filed by the taxpayers.

26.15 Modes of Payment:

Various modes of payment of tax available to the taxpayer including internet banking, debit/credit card and National Electronic Funds Transfer (NeFT)/Real Time Gross Settlement (RTGS).

26.16 Tax Deduction at Source:

Obligation on certain persons including Government departments, local authorities and government agencies, who are recipients of supply, to deduct tax at the rate of 1% from the payment made or credited to the supplier where total value of supply, under a contract, exceeds two lakh and fifty thousand rupees. The provision for TDS has been operationalized w.e.f. 1st October, 2018. Exemption from the provisions of TDS has been given to certain authorities under the Ministry of Defence.

26.17 Refunds:

Refund of tax to be sought by taxpayer or by any other person who has borne the incidence of tax within two years from the relevant date. Refund of unutilized ITC also available in zero rated supplies and inverted tax structure.

26.18 Tax Collection at Source

Obligation on electronic commerce operators to collect ‘tax at source’, at such rate not exceeding two per cent of net value of taxable supplies, out of payments to suppliers supplying goods or services through their portals. The provision for TCS has been operationalized w.e.f. 1st October, 2018.

26.19 Self-assessment

Self-assessment of the taxes payable by the registered person shall be the norm. Audit of registered persons shall be conducted on selective basis. Limitation period for raising demand is three (3) years from the due date of filing of annual return or from the date of erroneous refund for raising demand for short-payment or non-payment of tax or erroneous refund and its adjudication in normal cases. Limitation period for raising demand is five (5) years from the due date of filing of annual return or from the date of erroneous refund for raising demand for short-payment or non-payment of tax or erroneous refund and its adjudication in case of fraud, suppression or willful misstatement.

26.20 Recovery of Arrears:

Arrears of tax to be recovered using various modes including detaining and sale of goods, movable and immovable property of defaulting taxable person.

26.21 Appellate Tribunal:

Goods and Services Tax Appellate Tribunal would be constituted by the Central Government for hearing appeals against the orders passed by the Appellate Authority or the Revisional Authority. States would adopt the provisions relating to Tribunal in respective SGST Act.

26.22 Advance Ruling Authority:

Advance Ruling Authority would be constituted by States in order to enable the taxpayer to seek a binding clarity on taxation matters from the department. Centre would adopt such authority under CGST Act.

26.23 Transitional Provisions:

Elaborate transitional provisions have been provided for smooth transition of existing taxpayers to GST regime.

26.24 Subsuming of taxes, duties etc.

Among the taxes and duties levied and collected by the Union, Central Excise duty, Duties of Excise (Medicinal and Toilet Preparations), Additional Duties of Excise (Goods of Special Importance), Additional Duties of Excise (Textiles and Textile Products), Additional Duties of Customs (commonly known as CVD), Special Additional Duty of Customs (SAD), Service Tax and cesses and surcharges insofar as they related to supply of goods or services were subsumed. As far as taxes levied and collected by States are concerned, State VAT, Central Sales Tax, Purchase Tax, Luxury Tax, Entry Tax, Entertainment Tax (except those levied by the local bodies), Taxes on advertisements, Taxes on lotteries, betting and gambling, cesses and surcharges insofar as they related to supply of goods or services were subsumed.

26.25 GST legislations:

26.26 Four Laws namely CGST Act, UTGST Act, IGST Act and GST (Compensation to States) Act were passed by the Parliament and since been notified on 12-4-2017. All the other States and Union territories (except J&K) with legislature have passed their respective SGST Acts. The economic integration of India was completed on 8-7-2017 when the State of J&K also passed the SGST Act and the Central Government also subsequently extended the CGST Act to J&K.

26.27 In its 28th meeting held in New Delhi on 21-7-2018, the GST Council recommended certain amendments in the CGST Act, IGST Act, UTGST Act and the GST (Compensation to States) Act. These amendments have been passed by Parliament and have been enacted w.e.f. 1-2-2019, as the Central Goods and Services Tax (Amendment) Act, 2018, the Integrated Goods and Services Tax (Amendment) Act, 2018, the Union Territory Goods and Services Tax (Amendment) Act, 2018 and the Goods and Services Tax (Compensation to States) Amendment Act, 2018, respectively.

26.28 On 22-6-2017, the first notification was issued for GST and notified certain sections under CGST. Since then, 189 notifications under CGST Act have

been issued notifying sections, notifying rules, amendment to rules and for waiver of penalty, etc. 19, 34 and 2 notifications have also been issued under IGST Act, UTGST Act and GST (Compensation to States) Act respectively. Further, 90, 94, 90 and 10 rate related notifications each have been issued under the CGST Act, IGST Act, UTGST Act and GST (Compensation to States) Act respectively. Similar notifications have been issued by all the States under the respective SGST Act. Apart from the notifications, 114 circulars, 18 orders and 14 Removal of Difficulty Orders have also been issued by CBIC on various subjects like proper officers, ease of exports, and extension of last dates for filling up various forms, etc.

26.29 Role of C.B.I. & C.

26.30 CBIC is playing an active role in the drafting of GST law and procedures, particularly the CGST and IGST law, which will be exclusive domain of the Centre. This apart, the CBIC has prepared itself for meeting the implementation challenges, which are quite formidable. The number of taxpayers has gone up significantly. The existing IT infrastructure of CBIC has been suitably scaled up to handle such large volumes of data. Based on the legal provisions and procedure for GST, the content of work-flow software such as ACES (Automated Central Excise & Service Tax) would require re-engineering. The name of IT project of CBIC under GST is 'SAKSHAM' involving a total project value of ₹2,256 Cr.

26.31 Augmentation of human resources would be necessary to handle large taxpayers' base in GST scattered across the length and breadth of the country. Capacity building, particularly in the field of Accountancy and Information Technology for the departmental officers has to be taken up in a big way. A massive four-tier training programme has been conducted under the leadership of NACIN. This training project is aimed at imparting training on GST law and procedures to more than 60,000 officers of CBIC and Commercial Tax officers of State Governments.

26.32 CBIC would be responsible for administration of the CGST and IGST law. In addition, excise duty regime would continue to be administered by the CBIC for levy and collection of Central Excise duty on five specified petroleum products as well as on tobacco products. CBIC would also continue to handle the work relating to levy and collection of customs duties.

26.33 Director General of Anti-profiteering, CBIC has been mandated to conduct detailed enquiry on anti-profiteering cases and should give his recommendation for consideration of the National Anti-profiteering Authority.

26.34 CBIC has been instrumental in handholding the implementation of GST. It had set up the Feedback and Action Room which monitored the GST implementation challenges faced by the taxpayer and act as an active interface between the taxpayer and the Government.

27. Goods & Services Tax Network

27.1 Goods and Services Tax Network (GSTN) has been set up by the Government as a private company under erstwhile Section 25 of the Companies Act, 1956. GSTN would provide three front end services to the taxpayers namely registration, payment and return. Besides providing these services to the taxpayers, GSTN would be developing back-end IT modules for 27 States who have opted for the same. Infosys has been appointed as Managed Service Provider (MSP). GSTN has selected 73 IT, ITeS and financial technology companies and 1 Commissioner of Commercial Taxes (CCT, Karnataka), to be called GST Suvidha Providers (GSPs). GSPs would develop applications to be used by taxpayers for interacting with the GSTN.

27.2 The Central Government holds 24.5 per cent stake in GSTN while the state government holds 24.5 per cent. The remaining 51 per cent are held by non-Government financial institutions, HDFC and HDFC Bank hold 20%, ICICI Bank holds 10%, NSE Strategic Investment holds 10% and LIC Housing Finance holds 10%. The GST Council in its 27th meeting held on 4-5-2018 has approved the change in shareholding pattern of GSTN. Considering the nature of ‘state’ function’ performed by GSTN, the GST Council felt that GSTN be converted into a fully owned Government company. Accordingly, the Council approved acquisition of entire 51 per cent of equity held by non-Governmental institutions in GSTN amounting to ₹5.1 crore, equally by the Centre and the State Governments.

27.3 The design of GST systems is based on role based access. The taxpayer can access his own data through identified applications like registration, return, view ledger etc. The tax official having jurisdiction, as per GST law, can access the data. Data can be accessed by audit authorities as per law. No other entity can have any access to data available with GSTN.

28. GST: A game changer for Indian economy

28.1 GST will have a multiplier effect on the economy with benefits accruing to various sectors as discussed below.

28.2 Benefits to the exporters:

The subsuming of major Central and State taxes in GST, complete and comprehensive setoff of input goods and services and phasing out of Central Sales Tax (CST) would reduce the cost of locally manufactured goods and services. This will increase the competitiveness of Indian goods and services in the international market and give boost to Indian exports. The uniformity in tax rates and procedures across the country will also go a long way in reducing the compliance cost.

28.3 Benefits to small traders and entrepreneurs:

GST has increased the threshold for GST registration for small businesses. Those units having aggregate annual turnover more than ₹20 lakhs (₹10 lakhs in certain cases) in case of supplier of services and ₹40 lakhs (₹20 lakhs in certain cases) in case of supplier of goods have to be registered under GST. Unlike multiple registrations under different tax regimes earlier, a single registration is needed

under GST in one State. An additional benefit under Composition scheme has also been provided for businesses with aggregate annual turnover up to ₹1.5 crore (₹75 lakhs in certain cases) in case of supplier of goods and restaurant services and ₹50 lakhs in case of supplier of services. With the creation of a seamless national market across the country, small enterprises will have an opportunity to expand their national footprint with minimal investment.

28.4 Benefits to agriculture and Industry:

GST will give more relief to industry, trade and agriculture through a more comprehensive and wider coverage of input tax set-off and service tax set-off, subsuming of several Central and State taxes in the GST and phasing out of CST. The transparent and complete chain of set-offs which will result in widening of tax base and better tax compliance may also lead to lowering of tax burden on an average dealer in industry, trade and agriculture.

28.5 Benefits for common consumers:

With the introduction of GST, the cascading effects of CENVAT, State VAT and service tax will be more comprehensively removed with a continuous chain of set-off from the producer's point to the retailer's point than what was possible under the prevailing CENVAT and VAT regime. Certain major Central and State taxes will also be subsumed in GST and CST will be phased out. Other things remaining the same, the burden of tax on goods would, in general, fall under GST and that would benefit the consumers.

29. Promote “Make in India”

GST will help to create a unified common national market for India, giving a boost to foreign investment and “Make in India” campaign. It will prevent cascading of taxes and make products cheaper, thus boosting aggregate demand. It will result in harmonization of laws, procedures and rates of tax. It will boost export and manufacturing activity, generate more employment and thus increase GDP with gainful employment leading to substantive economic growth. Ultimately it will help in poverty eradication by generating more employment and more financial resources. More efficient neutralization of taxes especially for exports thereby making our products more competitive in the international market and give boost to Indian Exports. It will also improve the overall investment climate in the country which will naturally benefit the development in the states. Uniform CGST & SGST and IGST rates will reduce the incentive for evasion by eliminating rate arbitrage between neighbouring States and that between intra and inter-State supplies. Average tax burden on companies is likely to come down which is expected to reduce prices and lower prices mean more consumption, which in turn means more production thereby helping in the growth of the industries. This will create India as a “Manufacturing hub”.

29.1 Ease of Doing Business

Simpler tax regime with fewer exemptions along with reduction in multiplicity of taxes that are at present governing our indirect tax system will lead to simplification and uniformity. Reduction in compliance costs as multiple record-keeping for a variety of taxes will not be needed, therefore, lesser

investment of resources and manpower in maintaining records. It will result in simplified and automated procedures for various processes such as registration, returns, refunds, tax payments. All interaction shall be through the common GSTN portal, therefore, less public interface between the taxpayer and the tax administration. It will improve environment of compliance as all returns to be filed online, input credits to be verified online, encouraging more paper trail of transactions. Common procedures for registration of taxpayers, refund of taxes, uniform formats of tax return, common tax base, common system of classification of goods and services will lend greater certainty to taxation system.

30. Challenges & future ahead

30.1 Any new change is accompanied by difficulties and problems at the outset. A change as comprehensive as GST is bound to pose certain challenges not only for the government but also for business community, tax administration and even common citizens of the country. Some of these challenges relate to the unfamiliarity with the new regime and IT systems, legal challenges, return filing and reconciliations, passing on transition credit. Lack of robust IT infrastructure and system delays makes compliance difficult for the taxpayers. Many of the processes in the GST are new for small and medium enterprises in particular, who were not used to regular and online filing of returns and other formalities.

30.2 Based on the feedback received from businesses, consumers and taxpayers from across the country, attempt has been made to incorporate suggestions and reduce problems through short-term as well as long-term solutions. After rectifying system glitches, E-way bill for inter-State movement of goods has been successfully implemented from 1-4-2018. As regards intra-State supplies, option was given to States to choose any date on or before 3-6-2018. All States have notified e-way bill rules for intra-State supplies last being NCT of Delhi where it was introduced w.e.f. 16-6-2018. A total of 37.12 crore e-way bills for inter-State movement and 3.17 crore for intra-State movement have been generated till 31-5-2019.

30.3 NAA has initiated investigation into various complaints of anti-profiteering and has passed orders in some cases to protect consumer interest.

30.4 To expedite sanction of refund, electronic filing of refunds, along with all supporting documents/invoices, has been enabled on the common portal. Clarificatory Circulars and notifications have been issued to guide field formations of CBIC and States in this regard. The government has put in place an IT grievance redressal mechanism to address the difficulties faced by taxpayers owing to technical glitches on the GST portal.

30.5 The introduction of GST is truly a game changer for Indian economy as it has replaced multi-layered, complex indirect tax structure with a simple, transparent and technology-driven tax regime. It has integrated India into a single, common market by breaking barriers to inter-State trade and commerce. By eliminating cascading of taxes and reducing transaction costs, it will enhance ease of doing business in the country and provide an impetus to —Make in India” campaign. GST will result in “ONE NATION, ONE TAX, ONE MARKET”.

Chapter 2

Constitutional Amendment

Synopsis

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The Constitution (115th Amendment) Bill, 2011, in relation to the introduction of GST, was introduced in the Lok Sabha on 11th March, 2011. The Bill was referred to the Standing Committee on Finance on 29th March, 2011. The Standing Committee submitted its report on the Bill in August, 2013. However, the Bill, which was pending in the Lok Sabha, lapsed with the dissolution of the 15th Lok Sabha.

The Constitution (122nd Amendment) Bill, 2014 was introduced in the 16th Lok Sabha on 19th December, 2014. The Constitution Amendment Bill was passed by the Lok Sabha in May, 2015. The Bill was referred to the Select Committee of Rajya Sabha on 12th May, 2015. The Select Committee submitted its Report on the Bill on 22nd July, 2015. The Bill with certain amendments was finally passed in the Rajya Sabha and thereafter by Lok Sabha in August, 2016. Further the Bill was ratified by required number of States and received assent of the President on 8th September, 2016 and has since been enacted as Constitution (101st Amendment) Act, 2016, w.e.f. 16th September, 2016.

**CONSTITUTION (ONE HUNDRED AND FIRST AMENDMENT)
ACT, 2016**

8th September, 2016

1. Short title and commencement

(1) This Act may be called the Constitution (One Hundred and First Amendment) Act, 2016.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act and any reference in any such provision to be commencement of this Act shall be construed as a reference to the commencement of that provision.

2. Insertion of new Article 246A

After article 246 of the Constitution, the following article shall be inserted, namely:—

“246A. Special provision with respect to Goods and Services Tax.—(1) Notwithstanding anything contained in articles 246 and 254, parliament, and, subject to clause (2), the Legislature of every State, have power to make laws with respect to goods and services tax imposed by the Union or by such State.

(2) Parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.

Explanation.—The provisions of this article, shall, in respect of goods and services tax referred to in clause (5) of article 279A, take effect from the date recommended by the Goods and Services Tax Council.”.

3. Amendment of article 248

In article 248 of the Constitution, in clause (1), for the word “Parliament”, the words, figures and letter “subject to article 246A, Parliament” shall be substituted.

4. Amendment of article 249

In article 249 of the Constitution, in clause (1) after words “with respect to”, the words, figures and letter “goods and services tax provided under article 246A or “shall be inserted.

5. Amendment of article 250

In article 250 of the Constitution, in clause (1), after the words “respect to”, the words, figures and letter “goods and services tax provided under article 246A or” shall be inserted.

6. Amendment of article 268

In article 268 of the Constitution, in clause (1), the words “and such duties of excise on medicinal and toilet preparations” shall be omitted.

7. Omission of article 268A

In article 268A of the Constitution, as inserted by section 2 of the Constitution (Eighty-eighth Amendment) Act, 2003 shall be omitted.

8. Amendment of article 269

In article 269 of Constitution, in clause (1), after the words “consignment of goods”, the words, figures and letter “except as provided in article 269A” shall be inserted.

9. Insertion of new of article 269A

After article 269 of the constitution, the following article shall be inserted, namely:—

“269A. Levy and collection Goods and services tax in course of inter-State trade or commerce.—(1) Goods and Services tax on supplies in the course of inter-State trade or commerce shall be levied and collected by the Government of India and such tax shall be apportioned between the Union and the States in the manner as may be provided by Parliament by law on the recommendations of the Goods and Services Tax Council.

Explanation.—For the purpose of this clause, supply of goods, or of services, or both in the course of import into the territory of India shall be deemed to be supply of goods, or of services, or both in the course of inter-State trade or commerce.

(2) The amount apportioned to a State under clause (1) shall not form part of the Consolidated Fund of India.

(3) Where an amount collected as tax levied under clause (1) has been used for payment of the tax levied by a State under article 246A, such amount shall not form part of the consolidated Fund of India.

(4) Where an amount collected as tax levied by a State under article 246A has been used for payment of tax levied under clause (1), such amount shall not form part of the Consolidated Fund of the State.

(5) Parliament may, by law, formulate the principles for determining the place of supply, and when a supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.”

10. Amendment of article 270

In article 270 of Constitution,—

(i) in clause (1), for the words, figures and letter “article 268, 268A and 269”, the words, figures and letter “articles 268, 269 and 269A” shall be substituted;

(ii) after clause (1), the following clauses shall be inserted namely:—

“(1A) The tax collected by the Union under clause (1) of article 246A shall also be distributed between Union and States in the manner provided in clause (2).

(1B) The tax levied and collected by the Union under clause (2) of article 246A and article 269A, which has been used for payment of the tax levied by the Union under clause (1) of article 246A, and the amount apportioned to the Union under clause (1) of article 269A, shall also be distributed between the Union and the States in the manner provided in clause (2)."

11. Amendment of article 271

In Article 271 of the Constitution, after the words "in those articles", the words, figures and letter "except the goods and services tax under Article 246A", shall be inserted.

12. Insertion of new article 279A

After article 279 of the Constitution, the following article shall be inserted, namely:—

"279A. Goods and Services Tax Council.—(1) The president shall, within sixty days from the date of commencement of the Constitution (One Hundred and First Amendment) Act, 2016, by order, constitute a Council to be called the Goods and Services Tax Council.

(2) The Goods and Services Tax Council shall consist of the following members, namely:—

- (a) the Union Finance Minister Chairperson;
- (b) the Union Minister of State in charge of Revenue or Finance Member;
- (c) the Minister in charge of Finance or Taxation or any other Minister nominated by each State Government Members.

(3) The Members of the Goods and Services Tax Council referred to in sub-clause (c) of clause (2) shall, as soon as may be choose one amongst themselves to be the Vice-Chairperson of Council for such period as they may decide.

(4) The Goods and Services Tax Council shall make recommendations to the Union and the States on—

- (a) the taxes, cesses and surcharges levied by the Union, the States and the local bodies which may be subsumed in the goods and services tax;
- (b) the goods and services that may be subjected to, or exempted from the goods and services tax;
- (c) model Goods and Services Tax Laws, principles of levy, apportionment of Goods and Services Tax levied on supplies in the course of inter-State trade or commerce under article 269A and the principles that govern the place of supply;
- (d) the threshold limit of turnover below which goods and services may be exempted from goods and services tax;
- (e) the rates including floor rates with bands of goods and Services tax;

- (f) any special rate or rates for a specified period, to raise additional resources during any natural calamity or disaster;
- (g) special provision with respect to the States of Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand; and
- (h) any other matter relating to the goods and services tax, as the Council may decide.

(5) The Goods and Services Tax Council shall recommend the date on which the Goods and Services Tax be levied on petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel.

(6) While discharging the functions conferred by this article, the Goods and Services Tax Council shall be guided by the need for a harmonized structure of goods and services tax and for the development of a harmonized national market for goods and services.

(7) One-half of the total number of Members of the Goods and Services Tax Council shall constitute the quorum at its meetings.

(8) The Goods and Services Tax Council shall determine the procedure in the performance of its functions.

(9) Every decision of the Goods and Services Tax Council shall be taken at a meeting, by a majority of not less than three-fourths of the weighted votes of the members present and voting, in accordance with the following principles, namely:—

- (a) the vote of the Central Government shall have a weightage of one third of the total votes cast, and
- (b) the votes of all the State Governments taken together shall have a weightage of two-thirds of the total votes cast, in that meeting.

(10) No act or proceedings of the Goods and Services Tax Council shall be invalid merely by reason of—

- (a) any vacancy in, or any defect in, the constitution of the Council; or
- (b) any defect in the appointment of a person as a Member of the Council; or
- (c) any procedural irregularity of the Council not affecting the merits of the case.

(11) The Goods and Services Tax Council shall establish a mechanism to adjudicate any dispute—

- (a) between the Government of India and one or more States; or
- (b) between the Government of India and any State or States on one side and one or more other States on the other side; or
- (c) between two or more States, arising out of the recommendations of the Council or implementation thereof.”

13. Amendment of article 286

In article 286 of the Constitution,—

(i) in clause (1),—

(A) for the words “the sale or purchase of goods where such sale or purchase takes place”, the words “the supply of goods or of services or both, where such supply takes place” shall be substituted.

(B) in sub-clause (b), for the word “goods”, at both the places where it occurs, the words “goods or services or both” shall be substituted;

(ii) in clause (2), for the words “sale or purchase of goods takes place”, the words “supply of goods or of services or both” shall be substituted;

(iii) in clause (3), shall be omitted.

14. Amendment of article 366

In article 366 of the Constitution,—

(i) after clause (12) the following clause shall be inserted, namely:—

(12A) “goods and services Tax” means any tax on supply of goods, or services or both except taxes on the supply of the alcoholic liquor for human consumption;

(ii) after clause (26), the following clauses shall be inserted namely:—

‘(26A) “Services” means anything other than goods and (26B) “State” with reference to Articles 246A, 268, 269, 269A and Article 279A includes a Union territory with Legislature.

15. Amendment of article 368

In of Article 368 of Constitution, in clause (2), in the proviso, in clause (a), for the words and figures “article 162 or article 241”, the words, figures and letter “Article 162, Article 241 or Article 279A” shall be substituted.

16. Amendment of Sixth Schedule

In the Sixth Schedule to the Constitution, in paragraph 8, in sub-paragraph (3),—

(i) in clause (c), the word “and” occurring at the end shall be omitted;

(ii) in clause (d), the word “and” shall be inserted at the end;

(iii) after clause (d), the following clause shall be inserted, namely:—

“(e) taxes on entertainment and amusements”.

17. Amendment of Seventh Schedule

In the Seventh Schedule to the Constitution,—

(a) in List I- Union List,—

(i) for entry 84, the following entry shall be substituted, namely:—

“84. Duties of excise on the following goods manufactured or produced in India, namely:—

(a) petroleum crude;

(b) high speed diesel;

(c) motor spirit (commonly known as petrol);

- (d) natural gas;
- (e) aviation turbine fuel; and
- (f) tobacco and tobacco products.”;
- (ii) entries 92 and 92C shall be omitted;
- (b) in List II-State List,—
 - (i) entry 52 shall be omitted;
 - (ii) for entry 54, the following entry shall be substituted, namely—
“54. Taxes on the sale of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption, but not including sale in the course of inter-State trade or commerce or sale in the course of international trade or commerce of such goods.”,
 - (iii) entry 55 shall be omitted;
 - (iv) for entry 62, the following entry shall be substituted, namely:—
“62. Taxes on entertainments and amusements to the extent levied and collected by a Panchayat or a Municipality or a Regional Council or a District Council.”.

18. Compensation to States for loss of revenue on account of introduction of goods and service tax

Parliament shall, by law, on the recommendation of the Goods and Services Tax Council, provide for compensation to the States for loss of revenue arising on account of implementation of the goods and services tax for a period of five years.

19. Transitional provision

Notwithstanding anything in this Act, any provision of any law relating to tax on goods or services or on both in force in any State immediately before the commencement of this Act, which is inconsistent with the provisions of the constitution as amended by this Act shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until expiration of one year from such commencement, whichever is earlier.

20. Power of President to remove difficulties

(1) If any difficulty arises in giving effect to the provisions of the Constitution as amended by this Act (including any difficulty in relation to the transition from the provisions of the Constitution as they stood immediately before the date of assent of the president to this Act to the provisions of the Constitution as amended by this Act), the president may, by order, make such provisions, including any adaption or modification of any provision of the Constitution as amended by this Act or law, as appear to the President to be necessary or expedient for the purpose of removing the difficulty:

Provided that no such order shall be made after the expiry of three years from the date of such assent.

(2) Every order made under sub-section (1) shall, as soon as may be after it is made, be laid before each House of Parliament.

Chapter 3

Levy and Collection of Tax

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The levy and collection of tax is based on the taxable event in any tax law, in the erstwhile tax laws there are different taxable events for different types of taxes, such as for Excise duty it was manufacture, for Service Tax it was provision of service and for VAT/CST it was sale.

1. Taxable event under GST

The earlier concept of taxable event, “manufacture”, has been replaced with concept of taxable event “supply” and the term manufacture has no relevant under the GST regime. The taxable event under GST is the “supply of goods or services” or both made for consideration in the course or furtherance of business. The taxable events under the earlier indirect tax laws, such as manufacture, sale, or provision of services stand subsumed in the present taxable event known as ‘supply’. Therefore, the concept supply has occupied key place and the vital event in determining the taxability of all transaction whether commercial or otherwise under the GST regime.

2. Meaning of GST

The Constitution defines “Goods and Services Tax” as “any tax on supply of goods or services or both except tax on supply of alcoholic liquor for human consumption [Article 366(12A) of the Constitutional (101st Amendment) Act, 2016]”.

3. Meaning of Goods

Section 2(52) of the CGST Act, defines “goods” as every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply.

4. Meaning of Services

Section 2(102) of the CGST Act, defines “services” as anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

5. Meaning and Scope of Supply

Section 7 of the CGST Act, has been defined the meaning and scope of supply, the expression ‘supply’ in sub-section (1) includes the following: - (**All supplies made for consideration in course of business**)

- (a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;
- (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. (Notified *vide* Notification No. 39/2021-C.T., dated 21.12.2021- w.e.f. 01.01.2022)

- (b) import of services for a consideration whether or not in the course or furtherance of business;
- (c) the activities specified in Schedule I, made or agreed to be made without a consideration;
- (d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II. (Omitted)

5.1 Activities or transaction to be treated as supply of goods or supply of services

(1A) where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.

5.2 Transaction that will be taxable as ‘supply’ even if no consideration

A supply specified in Schedule I, made or agreed to be made without a consideration is ‘supply’ specified the certain activities are to be treated as supply such as:

- (i) Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.
- (ii) Supply of goods or services or both between related persons or between distinct persons as specified in Section 25, when made in the course or furtherance of business. Gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.
- (iii) Supply of goods (a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or (b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.
- (iv) Import of services by a person from a related person or from any of his other establishments outside India, in the course or furtherance of business. [import of services by entities which are not registered under GST (say, they are only making exempted supplies) but are otherwise engaged in business activities shall be chargeable to tax when such services received from a related person or from any of their establishments outside India].

5.3 Activities or Transactions to be treated neither as supply of goods or supply of services

Further, the CGST Act, of Schedule II specified the certain activities or transactions are to be treated as supply of goods or supply of Services such as: (This provision has been excluded from Section 7 of the CGST Act, as per CGST (Amendment) Act, 2018)

- (i) Any transfer of the title in goods is a supply of goods, any transfer of right in goods is a supply of services, any transfer of title in goods under an agreement is a supply of goods.
- (ii) Any leasing out land is a supply of services, any letting out of building is a supply of services.
- (iii) Any treatment or process which is applied to another person's goods is a supply of services.
- (iv) Any transfer of goods forming part of the business assets, such transfer is a supply of goods, any transfer by the direction of a person carrying on a business goods held used for the business is a supply of services, any person ceases to be a taxable person unless assets transferred to another taxable person shall be deemed to be supplied by him.
- (v) Renting of immovable property, construction of a complex, building, civil structure sale to buyer and consideration has been received, temporary transfer or enjoyment of intellectual property right, any implementation of information technology software, obligation to refrain from an act and transfer of right to use any goods for any purchase for cash or deferred payment shall be treated as supply of services.
- (vi) Composite supply namely works contract as defined under Section 2(119) of the CGST Act of Section 2, supply by way service or supply of

goods, being food or any other article for human consumption such supply against cash or deferred payment shall be treated as a supply of services.

- (vii) Supply of goods by any unincorporated association for cash or deferred payment shall be treated as supply of goods (Omitted). - vide Notification No.39/2021-Central Tax., dated 21.12.2021

Sub-section (2) *Section 7 of the CGST Act, 2017*, provides that activities neither to be treated as supply of goods nor a supply of services such as:

- (a) activities as specified in *Schedule III* of the CGST Act, 2017
- (b) Such activities or transactions undertaken by the Central Government, a State Government or any local authority, as may be notified by the Government on the recommendation of the council.

5.4 Activities or transactions which shall be treated neither as supply of goods nor services

The CGST Act, 2017 *Schedule III* specifies activities or transactions which shall be treated neither as supply of goods nor services as follows:

1. Services by an *employee to the employer* in the course of or in relation to his employment.
2. Services by any *Court or Tribunal* established under any law for the time being in force.
3. (a) The functions performed by the *Members of Parliament*, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities;
- (b) The duties performed by any person who *holds any post* in pursuance of the provisions of the *Constitution* in that capacity; or
- (c) The duties performed by any person as a *Chairperson* or a *Member or a Director* in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.
4. Sale of land and subject to clause (b) of paragraph 5 of schedule II, sale of building.
5. Services of *funeral, burial, crematorium or mortuary* including transportation of the deceased.
6. Actionable claims, other than lottery, betting and gambling.
7. Merchant trading: Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into the taxable territory i.e. in to India. (Omitted) –vide Finance Act, 2021
8. Supply of goods in course of High Seas Sale (IGST would be payable only once at the time of clearance of goods for home consumption).
9. Sale of warehoused goods (IGST would be payable only once at the time of clearance of goods for home consumption).

5.5 Transaction to be treated as no supply

As per decision of 28th meeting of GST Council, the following transaction to be treated as no supply (no tax payable) under Schedule III: (has been amended vide amendment of CGST Act, 2018)

- (a) Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India;
- (b) Supply of warehoused goods to any person before clearance for home consumption; and
- (c) Supply of goods in case of high sea sales.

5.6 Transaction that are treated as supply: Sub-section (3) Section 7 of the CGST Act, 2017

Subject to sub-section (1) and sub-section (2), the Central or a State Government may, upon recommendation of the Council, specify, by notification, the transactions that are to be treated as—

- (a) a supply of goods and not as a supply of services; or
- (b) a supply of services and not as a supply of goods.

Schedule II, Para 4 (Activities or transactions to be treated as supply of goods or supply of services)

Omitted the words “**whether or not for consideration**” with effect from July 1, 2017, so as to give clarity to the meaning of the entries (a) and (b) of said paragraph 4, while aligning the same with Section 7(1), (1A) and Schedule I (supply without consideration) of the CGST Act. Now Schedule II, Para 4 reads as below:

- “(a) where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, such transfer or disposal is a supply of goods by the person;
- (b) where, by or under the direction of a person carrying on a business, goods held or used for the purposes of the business are put to any private use or are used, or made available to any person for use, for any purpose other than a purpose of the business, the usage or making available of such goods is a supply of services;

Vide Notification No. 92/2020-C.T, dated 22-12-2020

6. Elements that Constitute of Supply under GST

In order to constitute a ‘supply’, the following elements are required to be satisfied, i.e.—

- (i) the activity involves supply of goods or services or both;
- (ii) the supply is for a consideration unless otherwise specifically provided for;
- (iii) the supply is made in the course or furtherance of business;
- (iv) the supply is made in the taxable territory;
- (v) the supply is a taxable supply; and
- (vi) the supply is made by a taxable person.

7. Taxable Supply

Section 2(108) of the CGST Act, defines ‘taxable supply’ means a supply of goods or services or both which is leviable to tax under this Act.

For a supply to attract GST, the supply must be taxable. Taxable supply has been broadly defined and means any supply of goods or services or both which, is leviable to tax under the Act. Exemptions may be provided to the specified goods or services or to a specified category of persons/entities making supply.

8. Taxable Person

A supply to attract GST should be made by a taxable person. Hence, a supply between two non-taxable persons does not constitute supply under GST. A “taxable person” is a person who is registered or liable to be registered under Section 22 or Section 24. Hence, even an unregistered person who is liable to be registered is a taxable person. Similarly, a person not liable to be registered but has taken voluntary registration and got himself registered is also a taxable person.

It should be noted that GST in India is State-centric. Hence, a person making supplies from different States needs to take separate registration in each State. Further, the person may take more than one registration within a State if the person has multiple business verticals. A person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as distinct persons for the purposes of GST. Hence, a supply between these entities constitutes supply under GST.

9. Supply in the Taxable Territory

For a supply to attract GST, the place of supply should be in India except for the State of Jammu and Kashmir. The place of supply of any goods or services is determined based on Sections 10, 11, 12 and 13 of IGST Act, 2017.

10. Inter/Intra-State Supply

The location of the supplier and the place of supply determines whether a supply is treated as an intra-State supply or an inter-State supply. Determination of the nature of supply is essential to ascertain whether Integrated tax is to be paid or Central plus State taxes are to be paid. Inter-State supply of goods means a supply of goods where the location of the supplier and place of supply are in different States or Union territories. Intra-State supply of goods means supply of goods where the location of the supplier and the place of supply are in the same State or Union territory. Imports, Supplies from and to SEZs are treated as deemed Inter-State supplies.

11. Tax liability on composite and mixed supplies

Section 8 of the CGST Act, defines the tax liability on a composite or a mixed supply shall be determined in the following manner, namely -

- (a) Composite Supply comprising two or more supplies one of which, is a principal supply, shall be treated as supply of such principal supply.
- (b) Mixed Supply comprising two or more supplies, shall be treated as supply of that particular supply which attracts the highest rate of tax.

12. Principal Supply

Section 2(90) of the CGST Act, defines ‘principal supply’ means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary.

13. Exempt supply

Section 2(47) of the CGST Act, defines ‘exempt supply’ means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under Section 11 or under Section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply.

14. Non-taxable supply

Section 2(78) of the CGST Act, defines ‘non-taxable supply’ means a supply of goods or services or both which is not taxable under this Act or under the Integrated Goods and Services Tax Act.

15. Zero-rated supply

Section 16 of the Integrated Goods and Services Tax Act, defines ‘zero-rated supply’ means any of the following supplies of goods or services or both, namely—

- (a) export of goods or services or both, or
- (b) supply of goods or services or both to a Special Economic Zone or developer of a Special Economic Zone.

16. Continuous Supply of Goods

Section 2(32) of the CGST Act, defines “continuous supply of goods” means a supply of goods which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, whether or not by means of a wire, cable, pipeline or other conduit, and for which the supplier invoices the recipient on a regular or periodic basis and includes supply of such goods as the Government may, subject to such conditions, as it may, by notification, specify;

17. Continuous Supply of Services

Section 2(33) of the CGST Act, defines “continuous supply of services” means a supply of services which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, for a period exceeding three months with periodic payment obligations and includes supply of such services as the Government may, subject to such conditions, as it may, by notification, specify;

18. Power to Levy GST

In terms of Article 246A of the Constitution, as brought by the Constitution (101'st Amendment) Act, 2016, confers concurrent power to both the parliament and State legislature to make laws with respect to GST. However clause 2 of Article 246A read with Article 269A provides exclusive power to parliament to legislate with respect to inter-state trade or commerce. Therefore, the Central and State Governments will have simultaneous powers to levy the GST on intra-State supply. However, the Parliament alone shall have exclusive power to make laws with respect to levy of Goods and Services Tax on inter-State supply.

19. Manner of Levy and Collection of Tax

Section 9 of the CGST Act, deals with provision of levy and collection of tax in the following manner:

- (1) The CGST shall be levied on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under Section 15 and at such rates, not exceeding twenty per cent, as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.
- (2) The Central tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council.
- (3) The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.
- (4) The Central tax in respect of the supply of taxable goods or services or both by a supplier, who is not registered, to a registered person shall be paid by such person on reverse charge basis as the recipient and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both. (has been differed till 30th September, 2019 vide Notification No. 22/2018-C.T., dated 6-10-2018 **has been rescinded vide Notification No. 2/2019-Central Tax (Rate)** dated 29.1.2019 [said section 9(4) has been forced w.e.f.1.2.2019]
- (5) The Government may, on the recommendations of the Council, by notification, specify categories of services the tax on intra-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services:
Provided that where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax:
Provided further that where an electronic commerce operator does not have a physical presence in the taxable territory and also he does not have a representative in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.

20. Clarification of perquisites provided by employer to the employees as per contractual agreement

- Schedule III to the CGST Act provides that “services by employee to the employer in the course of or in relation to his employment” will not be considered as supply of goods or services and hence GST is not applicable.
- Any perquisites provided by the employer to the employee in terms of contractual agreement entered into between the employer and employee will not be subjected to GST.

Vide Circular No. 172/04/2022-GST, dated 7-7-2022

21. Composition Levy Scheme

The Composition Scheme is an alternative method of levy of tax designed for small business entities whose aggregate turnover is up to prescribed threshold limit. The objective of the Government by implementing this scheme to facilitate the small business entities to comply the minimum compliance burden in GST regime. The Composition Scheme has incorporated under sub-suction (1) of Section 10 read with sub-section (2) of the same section of the Central Goods and Services Tax Act, 2017 and followed by the Composition Scheme Rules, 2017

Section 10 of the CGST Act, 2017 provides for composition levy to such a registered person. Such registered person means whose aggregate turnover in the preceding financial year did not exceed certain limit. Composition Scheme is a simple and easy scheme under GST because of taxable person who opt composition scheme is not required to maintain detailed records and filling of number of returns.

21.1 Limit under Composition levy Scheme

- (i) **Increase in turnover limit for the existing composition scheme:** The limit of annual turnover in the preceding financial year for availing composition scheme for goods shall be increased to ₹1.5 crore special category States.

A registered person whose aggregate turnover in the previous financial year did not exceed ₹1.5 *crore for all States (except ₹75 *Lakh for Northeastern State included Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Uttarakhand) may opt to pay tax under composition levy scheme. [* CGST (Amendment) of Act, 2018 and with effect from 1st April, 2019 vide Notification No. 14/2019-Central Tax, dated 7th March, 2019.]

- (ii) **Composition scheme for services:** A composition scheme shall be made available for supplies of services (or mixed suppliers) with a tax rate of 6% (3% CGST + 3% SGST) having an annual turnover in preceding financial year upto ₹50 lakhs.

This is effective from 1st April, 2019 vide Notification No. 2/2019-Central Tax (Rate) dated 7th March, 2019.

(The said scheme shall be applicable to both service providers as well as suppliers of goods and services, who are not eligible for the presently available composition scheme for goods)

21.2 Composition dealers to be allowed to supply of services

As per decisions of 28th GST Council meeting, Composition dealers to be allowed to supply services (other than restaurant services), for upto a value not exceeding 10% of turnover in the preceding financial year or ₹5 lakhs, whichever is higher. This measure will be effective from the date appropriate changes made in the GST Laws take effect.

21.3 Composition levy extended to supplies of goods under e-commerce;

Clause (d) of sub-section (2) and Clause (c) of sub-section (2A) in section 10 of the CGST Act is being amended so as to remove the restriction imposed on registered persons engaged in supplying goods through electronic commerce operators from opting to pay tax under the Composition Levy vide Section 137 of the Finance Act, 2023.

The restriction placed on registered persons engaged in supplying goods through electronic commerce operators from opting to pay tax under the Composition levy has been done away with. Now such persons can undertake registration under the composition scheme. This amendment proposed is in tune with the recommendation made in 47th GST council meeting.

The CBIC vide Notification Nos. 36/2023 and 37/2023—Central Tax dated August 04, 2023 notified special procedure to be followed by the ECO in respect of the supply of goods made by the person paying tax under Section 10 of the Act (Composition Dealer). The procedure is summarized hereunder:

1. The ECO is prohibited from allowing any inter-state supply of goods through its platform by the said person.
2. The ECO shall allow the supply of goods through it by the said person only if an enrolment number has been allotted on the common portal to the said person;
3. The ECO must collect tax at source under subsection (1) of Section 52 of the CGST Act for the supplies of goods made by the said person through its platform.

This is effective from 1.10.2023 vide Notification No.48/2023-CT dated 29.09.2023

22. Meaning of Aggregate Turnover

As per Section 2(6) of CGST Act, 2017, “aggregate turnover” means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-State supplies of persons having the same Permanent Account Number, to be computed on all India basis but excludes Central tax, State tax, Union territory tax, Integrated tax and Cess;”

Therefore, the value of following supplies shall not be taken into account while computing the threshold limit of composition levy.

- (i) Value of all taxable supplies excluding the value of inward supplies.
- (ii) Value of exempted supplies.
- (iii) Value of export goods or services or both.
- (iv) Value of inter-State supplies of persons having same PAN to be computed on all India basis.

22.1 Exclusion of elements for aggregate turnover

Further, the following elements shall not be taken into computing the annual aggregate turnover to arrived threshold limit of Composition levy.

- (i) Taxes if any charged under the head of CGST, SGST and IGST.
- (ii) Value of inward supplies on which the tax is payable on the reverse charge basis under Section 9(3) of the Act.
- (iii) Value of inward supplies.

23. Procedures for opting for Composition Scheme

The procedure/Rules of Composition Scheme has been prescribed vide Notification No. 3/2017-C.T., dated 19-7-2017, for submission of different forms and returns, formalities for observance by the registered persons opting for Composition Scheme under GST. The Key Features of Composition Rules/procedures are summarized as under:

24. Intimation for composition levy:

(1) Any person who has been granted registration on a provisional basis under clause (b) sub-rule (1) of Rule 24 and who opts to pay tax under Section 10 of the CGST Act, 2017, shall electronically file an intimation on the Common portal in **FORM GST CMP-01**, duly signed within 30 days of appointed day, but later than thirty days after the said day, or such further period as may be extended by the Commissioner in his behalf:

Provided that where the intimation filed beyond 30 days, the registered person shall not collect any tax and shall issue bill of supply for the supplies made after the said day.

(2) Any person who applies for registration but not granted under sub-rule (1) of Rule 8 may give an option to pay tax under Section 10 in part B of **FORM GST REG-01**, which shall be considered as an intimation to pay tax under the said section.

(3) Any registered person who opts to pay tax under Section 10 shall electronically file intimation in **FORM GST CMP-02**, duly signed, on the Common portal prior to the commencement of financial year and shall also furnish the statement in **FORM GST ITC-03** in accordance with the provisions of sub-rule (4) of Rule 44, within 60 days from the commencement of the relevant financial year.

(3A) Notwithstanding anything contained in sub-rules (1), (2) and (3), a person who has been granted registration on a provisional basis under rule 24 or who has been granted certificate of registration under sub-rule (1) of rule 10 may opt to pay tax under section 10 with effect from the first day of the month immediately succeeding the month in which he files an intimation in FORM GST CMP-02, on the common portal either directly or through a Facilitation Centre notified by the Commissioner, on or before the 31st day of March, 2018, and shall furnish the statement in FORM GST ITC-03 in accordance with the provisions of sub-rule (4) of rule 44 within a period of [one hundred and eighty days] 2 from the day on which such person commences to pay tax under section 10:

Provided that the said persons shall not be allowed to furnish the declaration in FORM GST TRAN-1 after the statement in FORM GST ITC-03 has been furnished.

(4) Any person who files an intimation under sub-rule (1) to pay tax under Section 10 shall furnish the details of stock, including the inward supply of goods received from unregistered persons, held by him on the day preceding the date from which he opts to pay tax under the said section and file electronically return in **FORM GST CMP-03**, on Common portal within period of 90 days from the date on which the option for composition levy is exercised or extended period by the Commissioner.

(5) Any intimation under sub-rule (1) or sub-rule (3) or sub-rule (3A) in respect of any place of business in any State or Union territory shall be deemed to be an intimation in respect of all other place business registered on the same PAN.

25. Effective date for composition levy:

(1) The option to pay tax under Section 10 shall be effective from the beginning of the financial year, where the intimation is filed under sub-rule (3) of Rule 3 and sub-rule (1) of the said rule.

(2) The intimation under sub-rule (2) of Rule 3, shall be considered only after grant of registration to the applicant and his option to pay tax under Section 10 shall be effective from the date fixed under sub-rule (2) or (3) of Rule 10.

26. Conditions and restriction for composition levy:

(1) The person exercising the option to pay tax under Section 10 shall comply with the following conditions, namely:—

- (a) he is neither a casual taxable person nor a non-resident taxable person;
- (b) the goods held in stock by him on the appointed day have not been purchased in the course of inter-State trade or commerce or imported from a place outside India or received from his branch situated outside the State or from his agent or principal outside the State, where the option is exercised under sub-rule (1) of Rule 3;
- (c) the goods held in stock by him have not been purchased from an unregistered person and where purchased, he pays the tax under sub-section (4) of Section 9;
- (d) he shall pay tax under sub-section (3) or sub-section (4) of Section 9 on inward supply of goods or services or both;
- (e) he was not engaged in the manufacturer of goods as notified under clause (e) of sub-section (2) of Section 10, during the preceding financial year;
- (f) he shall mention the words “composition taxable person, not eligible to collect tax on supplies” at the top of the bill of supply issued by him;
- (g) he shall mention the words “composition taxable person” on every notice or signboard displayed at a prominent place at his principal place of business and at every additional place or places of business.
- (h) the registered person making purchases from a registered person paying tax under composition scheme will also not be allowed to avail ITC credit; and

- (i) the registered person opting for composition scheme and paying tax under the said scheme cannot be made supply to SEZ unit or Developer of SEZ as such supplies are considered as inter-State supplies.

27. Composition Scheme is required to be intimated every year to continue this scheme

(2) The registered person paying tax under Section 10 may not file a fresh intimation every year and he may continue to pay tax under the said section subject to the provisions of the Act and these rules.

28. Conditions for availing Composition Scheme for First Supplies of goods and services or both

As per the Finance (No.2) Act, 2019 and read with *vide* Notification No. 1/2020-Central Tax, dated 01.01.2020: Section 10 “(2A) Conditions for availing Composition Scheme for First Supplies of goods and services or both, whose aggregate turnover in the preceding financial year did not exceed fifty lakh Rupees may opt to pay, an amount of tax calculated at such rate as may be prescribed, but not exceeding three per cent of the turnover in State or turnover in Union territory, If Supplies are made by a registered person,—

- (i) whose aggregate turnover in the preceding financial year was fifty lakh rupees or below;
- (ii) who is not eligible to pay tax under sub-section (1) of section 10 or sub-section (1) of section 9 of the said Act;
- (iii) who is not engaged in making any supply which is not leviable to tax under the said Act;
- (iv) who is not engaged in making any inter-State outward supplies of goods or services;
- (v) who is neither a casual taxable person nor a non-resident taxable person;
- (vi) who is not engaged in making any supply of goods or services through an electronic commerce operator who is required to collect tax at source under section 52; and
- (vii) who is not engaged in manufacturer of such goods or supplier of services as may be notified by the Government on the recommendations of the Council; and
- (viii) who is not a casual taxable person or a non-resident taxable person:

Provided where more than one registered persons are having the same Permanent Account Number, issued under the Income Tax Act, 1961(43 of 1961), the registered person shall not be eligible to opt for the scheme under this sub-section unless all such registered persons is paid to pay tax under this sub-section.”

29. Registered person under Composition scheme is not required collect tax, not entitled to avail ITC and issue bill of supply in place of Invoice

1. The registered person shall not collect any tax from the recipient on supplies made by him nor shall he be entitled to any credit of input tax.

2. The registered person shall issue, instead of tax invoice, a bill of supply as referred to in clause (c) of sub-section (3) of section 31 of the said Act with particulars as prescribed in rule 49 of Central Goods and Services Tax Rules.

3. The registered person shall mention the following words at the top of the bill of supply, namely:—‘taxable person paying tax in terms of notification No. 2/2019-Central Tax (Rate) dated 07.03.2019, not eligible to collect tax on supplies’.

4. The registered person opting to pay central tax at the rate of three percent under this notification shall be liable to pay central tax at the rate of three per cent on all outward supplies

5. The registered person opting to pay central tax at the rate of three per cent under this notification shall be liable to pay central tax on inward supplies on which he is liable to pay tax under sub-section (3) or, as the case may be, under sub-section (4) of section 9 of said Act at the applicable rates.

Explanation 1.—For the purposes of computing the aggregate turnover of a person for determining his eligibility to pay tax under this section, the expression “aggregate turnover” shall include the value of supplies made by such person from the 1st day, April of a financial year upto the date when he becomes liable for registration under this Act, but shall not include the value of exempt supply of services provided by way of extending deposits, loans or advances insofar as the consideration is represented by way of interest or discount.

Explanation 2.—For the purposes of determining the tax payable by a person under this section, the expression “turnover in a State or turnover in Union territory” shall not include the value of following supplies, namely:—

- (i) supplies from the first day of April of a financial year upto the date when such person becomes liable for registration under this Act; and
- (ii) exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.

The CBIC vide **Notification No. 30/2020-Central Tax dated April 3, 2020** made following amendments to Central Goods and Services Tax Rules, 2017 (“CGST Rules”):

Inserted following proviso to Rule 3(3) of CGST Rules w.e.f. March 31, 2020:—

“Provided that any registered person who opts to pay tax under section 10 for the financial year 2020-21 shall electronically file an intimation in FORM GST CMP-02, duly signed or verified through electronic verification code, on the common portal, either directly or through a Facilitation Centre notified by the Commissioner, on or before 30th day of June, 2020 and shall furnish the statement in FORM GST ITC-03 in accordance with the provisions of sub-rule (4) of rule 44 up to the 31st day of July, 2020.”

Rule 3(3) of the CGST Rules:

“3. Intimation for composition levy:

(3) Any registered person who opts to pay tax under section 10 shall electronically file an intimation in FORM GST CMP-02, duly signed or verified through electronic verification code, on the common portal, either directly or through a Facilitation Centre notified by the Commissioner, prior

to the commencement of the financial year for which the option to pay tax under the aforesaid section is exercised and shall furnish the statement in FORM GST ITC-03 in accordance with the provisions of sub-rule (4) of rule 44 within a period of sixty days from the commencement of the relevant financial year.”

30. Issue of Bill of supply for Composition Scheme for Services

The provisions of Section 31(3)(c) of the CGST Act, 2017 shall apply to a person paying tax under Notification No.2/2019-Central Tax (Rate) dated 07.03.2019 (Composition Scheme for Services)

Section 31(3)(c) provides for issue of bill of supply by composition taxpayers. Thus, instead of a tax invoice, a bill of supply will be issued by a person opting for composition scheme. (Order No.3/2019-Central Tax dated 8th March' 2019.

31. Validity of Composition levy

(1) The option exercised by a registered person to pay tax under Section 10 shall remain valid so long as he satisfies all the conditions mentioned in the said section and these rules.

(2) The person referred to in sub-rule (1) shall be liable to pay tax under sub-section (1) of Section 9 from the day he ceases to satisfy any of the conditions mentioned in Section 10 or the provisions of this Chapter and shall issue tax invoice for every taxable supply made thereafter and he shall also file an intimation for withdrawal from the scheme in **FORM GST CMP-04** within 7 days of occurrence of such event.

(3) The registered person who intends to withdraw from the composition scheme shall, before the date of such withdrawal, file an application in **FORM GST CMP-04**, duly signed, electronically on the Common Portal.

(4) Where the proper officer has reasons to believe that the registered person was not eligible to pay tax under Section 10 or has contravened the provisions of the Act or the provisions of this Chapter, he may issue a notice to such person in **FORM GST CMP-05** to show cause within 15 days of the receipt of such notice as to why option to pay tax under Section 10 shall not be denied.

(5) Upon receipt of reply to the show cause notice issued under sub-rule (4) from the registered person in **FORM GST CMP-06**, the proper officer shall issue an order in **FORM GST CMP-07** within 30 days of receipt of such reply, either accepting the reply, or denying the option to pay tax under Section 10 from the date of the option or from the date of the event concerning such contravention, as the case may be.

(6) Every person who has furnished an intimation under sub-rule (2) or filed an application for withdrawal under sub-rule (3) or a person in respect of whom an order of withdrawal of option has been passed in **FORM GST CMP-07** under sub-rule (5), may electronically furnish at the Common portal, a statement in **FORM GST ITC-01** containing details of the stock of inputs and inputs contained in semi-finished or finished goods held in stock by him on the date on which the option is withdrawn or denied, within 30 days, from the date from

which the option is withdrawn or from the date of order passed in **FORM GST CMP-07**, as the case may be.

(7) Any intimation for withdrawal under sub-rule (2) or (3) or denial of the option to pay tax under Section 10 in accordance with sub-rule (5) in respect of any place of business in any State or Union territory, shall be deemed to be an intimation in respect of all other places of business registered on the same PAN.

32. Rate of tax for the Composition levy

The category of registered persons, eligible for composition levy under Section 10 and the provisions, specified in the second column of the table below shall pay tax under Section 10 at the rate specified in the last column of the table:—

| Sl. No. | Category of registered person | Rate of tax |
|---------|---|----------------------------------|
| 1. | Manufacturers, other than manufacturers of such goods as may be notified by the Government. | 1% (.5% CGST + .5% SGST/UTGST) |
| 2. | Supplies making supplies referred to in clause (b) of paragraph 6 of schedule II, i.e. Restaurant Service. | 5% (2.5% CGST + 2.5% SGST/UTGST) |
| 3. | Any other supplier eligible for composition levy under Section 10 and the provisions of this Chapter | 1% (.5% CGST + .5% SGST/UTGST) |
| 4.* | First supplies of goods or services or both up to an aggregate turnover of fifty lakh rupees made on or after the 1 st day of April in any financial year by registered person | 6% (3% CGST + 3% SGST/UTGST) |

(The above Rates of tax for the composition are applicable vide Notification No. 8/2017-C.T., dated 27-6-2017 as amended by 3/2018-C.T., dated 23-1-2018)

* Notification No.2/2019-Central Tax (Rate) dated 7th March '2019.

33. New Rates for Composition Levy

CBIC further amends the Rate of Tax to be paid by Composition Taxpayer w.e.f. 1st April'2020.

The CBIC vide Notification No. 50/2020 Central Tax Dated June 24, 2020, makes further amendments in the Central Goods and Services Tax Rules, 2017. In the Central Goods and Services Tax Rules, 2017, in rule 7 i.e. Rate of Tax of the Composition Levy, for the Table, the following Table shall be substituted, namely:-

| Sl. No. | Section under which composition levy is opted | Category of registered persons | Rate of tax |
|--------------------|--|--|--|
| 1 | 1A | 2 | 3 |
| 1 | Sub-sections (1) and (2) of section 10 | Manufacturers, other than manufacturers of such goods as may be notified by the Government | Half percent (0.5%) of the Turnover in the State or Union Territory |
| 2 | Sub-sections (1) and (2) of section 10 | Suppliers making supplies referred to in clause (b) of paragraph 6 of Schedule II i.e. <i>supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration.</i> | Two and a half percent (2.5%) of the Turnover in the State or Union Territory |
| 3 | Sub-sections (1) and (2) of section 10 | Any other supplier eligible for composition levy under sub-sections (1) and (2) of section 10 | Half percent (0.5%) of the Turnover of taxable supplies of goods and services in the State or Union Territory |
| 4 | Sub-section (2A) of section 10 | Registered persons not eligible under the composition levy under subsections (1) and (2), but eligible to opt to pay tax under sub-section (2A), of section 10 | Three percent (3%) of the Turnover of taxable supplies of goods and services in the State or Union Territory.” |

Note: This Notification shall come into force with effect from April 01, 2020.

34. Filing of return under Composition Scheme

It is prescribed at Rule 62 of the CGST Rules, 2017, every registered person opting for composition scheme and paying tax under Section 10 shall furnish the quarterly return in **FORM GSTR-4** electronically through the common portal, the return has to be filed by 18th of month succeeding the last month of quarter to which return pertains and every registered person furnishing return under composition scheme shall discharge his liability towards tax, interest, penalty, fees or any other amount payable by debiting the electronic cash ledger as maintained by him in the Common GSTN portal.

35. Annual returns

Sub-rule (1) of Rule 80 of the CGST Rules, 2017, every registered person paying tax under Section 10 shall furnish the annual return in **FORM GSTR-9A**, electronically through the Common GSTN portal.

36. Power to grant exemption from tax

Section 11 of the CGST Act, empowers the Central Government to exempt goods and services on the whole or part of the tax in the following manner.

- (1) If the Central Government have satisfied that it is necessary in the public interest, on the recommendations of the Council, by notification, exempt generally, either absolutely or subject to such conditions as may be specified therein, goods or services or both of any specified description from the whole or any part of the tax leviable thereon with effect from such date as may be specified in such notification.
- (2) If the Government have satisfied that it is necessary in the public interest, it may, on the recommendations of the Council, by special order in each case, under circumstances of an exceptional nature to be stated in such order, exempt from payment of tax any goods or services or both on which tax is leviable.
- (3) The Government may, if it considers necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification so issued or order issued as above manner, insert an explanation in such notification or order, as the case may be, by notification at any time within one year of issue of the notification or order and every such explanation shall have effect as if it had always been the part of the first such notification or order.

37. Exemption from payment of tax on advance payment

In order to mitigate the inconvenience of the small manufacturer and dealers to pay tax on advance payment, the Government has relaxed that taxpayers having annual aggregate turnover up to ₹1.5 crores shall not be required to pay GST at the time of receipt of advances on account of supply of goods. The GST on such supplies shall be payable only when the supply of goods is made. Notification No. 66/2017-CT, dated 15-11-2017.

38. Scope of mixed supply and composite supply

“Supply” is the taxable event under GST; the GST system is based on the supply of goods and services to levy tax. The nature of supply, time of supply

and place of supply of goods and services determines the tax liability under GST. Therefore, the GST law maker has incorporated the concept of “Mixed supply” and “Composite supply” under GST to eliminate confusion to levy of tax under GST. The concept of “composite supply” under GST is similar to the concept of “bundled service” was under erstwhile Service Tax Law. The concept of mixed supply is completely new provision under GST.

39. Concept of “Bundled service” in pre-GST era

The concept of Bundled service was brought as Rule of interpretation for charging Service Tax in the Union Budget-2012. There are two kinds of bundled service explained as under:

A. Naturally bundled:-

- > Meals and air/rail travel: air travel
- > Breakfast and hotel accommodation: hotel accommodation
- > Boarding school: education.

B. Unnatural bundles:-

- > Unnaturally segregated: Dry cleaning billed as electricity, chemicals, ironing.
- > Unnaturally joined: Construction and club membership.

40. Tax liability on ‘composite’ and ‘mixed’ supplies

Section 8 of the CGST Act, defines the tax liability on a composite or a mixed supply shall be determined in the following manner, namely—

- (a) Composite Supply comprising two or more supplies one of which, is a principal supply, shall be treated as supply of such principal supply.
- (b) Mixed Supply comprising two or more supplies, shall be treated as supply of that particular supply which attracts the highest rate of tax.

41. Determination of a Composite supply and rate of tax

A supply of goods and services will be treated as composite supply when the supply is a combination of two or more goods or services, it is a natural bundle i.e. goods or services are usually provided together in the normal course of business. They cannot be separated. The tax rate of the principal supply will apply on the entire supply.

Illustration

A star hotel for accommodation and along with accommodation provides, entertainment TV channels, facility to use swimming pool, reading news papers, magazines, Telephone connectivity, laundry/dry cleaning of clothes. This is a natural bundling of supply of services in the ordinary course of business. The supply service of hotel accommodation gives the bundle the essential character and would, therefore, be treated as supply of service of providing hotel accommodation. Thus, the principal supply of services is Hotel accommodation.

42. Determination of a mixed supply and rate of tax

Mixed supply means a combination of two or more goods or services made together for a single price. Each of these items can be supplied separately and is not dependent on any other item. The Rate of tax will have to be charged of the item which is highest rate of tax.

Illustration

A Diwali gift packet consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drinks and fruit juices supplied for a single price is a mixed supply. All are also sold separately. Since aerated drinks have the highest GST rate of 28%. Thereby, aerated drinks will be treated as principal and 28% will apply on the entire gift packet.

If a person buys all the items namely, canned foods sweets, chocolates, cakes, dry fruits, aerated drinks and fruit juices separately and it cannot be considered as Diwali gift packet. Then it is not considered as a mixed supply. All items will be taxed separately.

43. Time of supply in case of composite supply

If the principal supply is a service for example, catering on board and transport by air is a composite supply offered by a majority of airlines. Then composite supply will be treated as a supply of services. The provisions relating to time of supply of services will apply.

Similarly, in the case of purchasing goods and transporting the goods, the supply of goods is the principal supply. The composite supply will qualify as supply of goods and the provisions relating to time of supply of goods will apply.

A works contract is consisting of supply of service and supply of goods. For example, construction of a new building where a combination of materials like bricks, sand, cement along with services of labourers, engineers, carpenters, architects etc., for making a building (goods). It is a unique example of both supply of goods and supply of services. But the GST law maker has considered works contract as a supply of service with specific rates to overcome the litigation under earlier tax law.

44. Time of supply in case of mixed supply

If the highest tax rate belongs to a service then the mixed supply will be treated as the supply of services. The provision relating to time of supply of services would be applicable.

Similarly, if the highest tax rate belongs to goods then the mixed supply will be treated as supply of goods. The provisions relating to time of supply of goods would be applicable.

45. Important Notifications

With effect from 1st day of July, 2017 vide Notification No. 14/2017-Central Tax (Rate), dated 28-6-2017, as amended Notification No.16/2018-Central Tax (Rate), dated 26-07-2018, the following shall be treated as neither as a supply of goods nor a supply of service, namely:—

“Services by way of any activity in relation to a function entrusted to a Panchayat under article 243G of the constitution or to a Municipality under article 243W of the Constitution”

Further, vide Notification No.25/2019-Central Tax (Rate), dated 30-9-2019 prescribed that the following activities or transactions undertaken by the State Governments in which they are engaged as public authorities, shall be treated neither as a supply of goods nor a supply of service, namely:

“Service by way grant of alcoholic liquor licence, against consideration in the form of licence fee or application fee or by whatever name is called.”

46. Important Circulars

C.B.I & C, Circular No. 11/11/2017-GST F. No. 354/263/2017-TRU

Clarification on taxability of printing contracts.

2. It is clarified that supply of books, pamphlets, brochures, envelopes, annual reports, leaflets, cartons, boxes etc. printed with logo, design, name, address or other contents supplied by the recipient of such printed goods, are composite supplies and the question, whether such supplies constitute supply of goods or services would be determined on the basis of what constitutes the principal supply.

3. Principal supply has been defined in Section 2(90) of the Central Goods and Services Tax Act as supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary.

4. In the case of printing of books, pamphlets, brochures, annual reports, and the like, where only content is supplied by the publisher or the person who owns the usage rights to the intangible inputs while the physical inputs including paper used for printing belong to the printer, supply of printing of the content supplied by the recipient of supply is the principal supply and therefore such supplies would constitute supply of service falling under Heading 9989 of the scheme of classification of services.

5. In case of supply of printed envelopes, letter cards, printed boxes, tissues, napkins, wall paper etc. falling under Chapter 48 or 49, printed with design, logo etc. supplied by the recipient of goods but made using physical inputs including paper belonging to the printer, predominant supply is that of goods and the supply of printing of the content supplied by the recipient of supply is ancillary to the principal supply of goods and therefore such supplies would constitute supply of goods falling under respective headings of Chapter 48 or 49 of the Customs Tariff.

C.B.I & C Clarification regarding exercise of option to pay tax under notification No. 2/2019-C.T. (Rate), dated 7-3-2019

Uniformity of the provisions of composition levy across the country:

In order to clarify the issue and to ensure uniformity in the implementation of the provisions of the law across field formations, the Board, in exercise of its powers conferred by section 168 (1) of the said Act, hereby clarifies the issues raised as below:—

- (i) a registered person who wants to opt for payment of central tax @ 3% by availing the benefit of the said notification, may do so by filing intimation in the manner specified in sub-rule 3 of rule 3 of the said rules in FORM GST CMP-02 by selecting the category of registered person as “Any other supplier eligible for composition levy” as listed at Sl. No. 5(iii) of the said form, latest by 30th April, 2019. Such person shall also

furnish a statement in FORM GST ITC03 in accordance with the provisions of sub-rule (3) of rule 3 of the said rules.

- (ii) any person who applies for registration and who wants to opt for payment of central tax @ 3% by availing the benefit of the said notification, if eligible, may do so by indicating the option at serial no. 5 and 6.1(iii) of FORM GST REG-01 at the time of filing of application for registration.
- (iii) the option of payment of tax by availing the benefit of the said notification in respect of any place of business in any State or Union territory shall be deemed to be applicable in respect of all other places of business registered on the same Permanent Account Number.
- (iv) the option to pay tax by availing the benefit of the said notification would be effective from the beginning of the financial year or from the date of registration in cases where new registration has been obtained during the financial year.

3. It may be noted that the provisions contained in Chapter II of the said Rules shall *mutatis mutandis* apply to persons paying tax by availing the benefit of the said notification, except to the extent specified in para as above.

Composition taxpayer Barred from filing in details in Part-A of Form GST EWB-01, if they have not submitted FORM CMP-08 for two consecutive quarters.

[C.B.I & C. Circular No.97/16/2019-GST, dated 5-4-2019]

C.B.I & C, vide Notification No. 31/2019-Central Tax, dated 28-06-2019 has clarified restriction on furnishing information in Part- A of e-way bill : In clause (a) earlier only composition taxpayer registered under section 10 of the CGST Act were barred from filing in details in Part-A of Form GST EWB-01, if they have not submitted FORM CMP-08 for two consecutive quarters. Now this provision has been made applicable for such service providers as well, who are availing the benefit of Notification No.2/2019-Central Tax dated 07-03-2019 at the rate of 6% would also not be allowed to furnish information in Part A of e-way bill (Effective from 21'st August'2019.)

No GST on service of display of Name plates of the Donors in the premises charitable Organisation.

Levy of GST on the Services of display of Name or Placing of Name plates of the Donor in the premises of Charitable Organisation receiving Donation or Gifts from Individual Donors – Where all the three conditions namely the gift or donation is made to a charitable organization, the payment has the character of gift or donation and the purpose is philanthropic (i.e. it leads to no commercial gain) and not advertisement, are satisfied, GST is not leviable vide Circular No.116/35/2019-GST, dated 11-10-2019.

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| Payment of GST on Director's Remuneration under RCM- Board Clarification |
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It is clarified that the part of Director's remuneration which are declared as 'salaries' in the books of account of the company and subject to TDS deduction under section 192 of the IT Act, are not taxable being consideration for services by an employee to the employer in the course of or in relation to his employment in terms of Schedule III of the CGST Act, 2017.

It is further clarified that with regard to seating fees for professional or technical services shall be treated as consideration for providing services shall be treated as consideration which are outside the scope of Schedule III of the CGST Act and is therefore taxable, but in terms of Notification No. 13/2017-Central Tax (Rate), dated 28-6-2017, the recipient company is liable to discharge the applicable GST on reverse charge basis- C.B.I&C, Circular No. 140/10/2020-GST, dated 10.6.2020.

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| GST on service supplied by restaurants through e-commerce operators – Board Clarification |
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C.B.I&C, Circular No. 167/23/2021-GST, dated the 17th December, 2021

The GST Council in its 45th meeting held on 17th September, 2021 recommended to notify "Restaurant Service" under section 9(5) of the CGST Act, 2017. Accordingly, the tax on supplies of restaurant service supplied through e-commerce operators shall be paid by the e-commerce operator. In this regard notification No. 17/2021, dated 18.11.2021 has been issued.

2. Certain representations have been received requesting for clarification regarding modalities of compliance to the GST laws in respect of supply of restaurant service through e-commerce operators (ECO). Clarifications are as follows:

| Sl. No. | Issue | Clarification |
|---------|---|--|
| 1 | Would ECOs have to still collect TCS in compliance with section 52 of the CGST Act, 2017? | <p>As 'restaurant service' has been notified under section 9(5) of the CGST Act, 2017, the ECO shall be liable to pay GST on restaurant services provided, with effect from the 1st January, 2022, through ECO. Accordingly, the ECOs will no longer be required to collect TCS and file GSTR 8 in respect of restaurant services on which it pays tax in terms of section 9(5).</p> <p>On other goods or services supplied through ECO, which are not notified u/s 9(5), ECOs will continue to pay TCS in terms of section 52 of CGST Act, 2017 in the same manner at present.</p> |

| Sl. No. | Issue | Clarification |
|------------|---|--|
| 2 | Would ECOs have to mandatorily take a separate registration with regard to supply of restaurant service [notified under 9(5)] through them even though they are registered to pay GST on services on their own account? | As ECOs are already registered in accordance with rule 8(in Form GST-REG 01) of the CGST Rules, 2017 (as a supplier of their own goods or services), there would be no mandatory requirement of taking separate registration by ECOs for payment of tax on restaurant service under section 9(5) of the CGST Act, 2017. |
| 3 | Would the ECOs be liable to pay tax on supply of restaurant service made by unregistered business entities? | Yes. ECOs will be liable to pay GST on any restaurant service supplied through them including by an unregistered person. |
| 4 | What would be the aggregate turnover of person supplying ‘restaurant service’ through ECOs? | It is clarified that the aggregate turnover of person supplying restaurant service through ECOs shall be computed as defined in section 2(6) of the CGST Act, 2017 and shall include the aggregate value of supplies made by the restaurant through ECOs. Accordingly, for threshold consideration or any other purpose in the Act, the person providing restaurant service through ECO shall account such services in his aggregate turnover. |
| 5 | Can the supplies of restaurant service made through ECOs be recorded as inward supply of ECOs (liable to reverse charge) in GSTR 3B? | No. ECOs are not the recipient of restaurant service supplied through them. Since these are not input services to ECO, these are not to be reported as inward supply (liable to reverse charge). |
| 6 | Would ECOs be liable to reverse proportional input tax credit on his input goods and services for the reason that input tax credit is not admissible on ‘restaurant service’? | ECOs provide their own services as an electronic platform and an intermediary for which it would acquire inputs/input service on which ECOs avail input tax credit (ITC). The ECO charges commission/fee etc. for the services it provides. The ITC is utilised by ECO for payment of GST on services provided by ECO on its own account (say, to a restaurant). The situation in |

| Sl. No. | Issue | Clarification |
|------------|---|--|
| | | <p>this regard remains unchanged even after ECO is made liable to pay tax on restaurant service. ECO would be eligible to ITC as before. Accordingly, it is clarified that ECO shall not be required to reverse ITC on account of restaurant services on which it pays GST in terms of section 9(5) of the Act.</p> <p>It may also be noted that on restaurant service, ECO shall pay the entire GST liability in cash (No ITC could be utilised for payment of GST on restaurant service supplied through ECO)</p> |
| 7 | Can ECO utilize its Input Tax Credit to pay tax with regard to ‘restaurant service’ supplied through the ECO? | No. As stated above, the liability of payment of tax by ECO as per section 9(5) shall be discharged in cash. |
| 8 | Would supply of goods or services other than ‘restaurant service’ through ECOs be taxed at 5% without ITC? | <p>ECO is required to pay GST on services notified under section 9(5), besides the services/other supplies made on his own account.</p> <p>On any supply that is not notified under section 9(5), that is supplied by a person through ECO, the liability to pay GST continues on such supplier and ECO shall continue to pay TCS on such supplies.</p> <p>Thus, present dispensation continues for ECO, on supplies other than restaurant services. On such supplies (other than restaurant services made through ECO) GST will continue to be billed, collected and deposited in the same manner as is being done at present. ECO will deposit TCS on such supplies.</p> |
| 9 | Would ‘restaurant service’ and goods or services other than restaurant service sold by a restaurant to a customer | Considering that liability to pay GST on supplies other than ‘restaurant service’ through the ECO, and other compliances under the Act, including |

| Sl. No. | Issue | Clarification |
|--------------------|---|---|
| | under the same order be billed differently? Who shall be liable for raising invoices in such cases? | issuance of invoice to customer, continues to lie with the respective suppliers (and ECOs being liable only to collect tax at source (TCS) on such supplies), it is advisable that ECO raises separate bill on restaurant service in such cases where ECO provides other supplies to a customer under the same order. |
| 10 | Who will issue invoice in respect of restaurant service supplied through ECO – whether by the restaurant or by the ECO? | The invoice in respect of restaurant service supplied through ECO under section 9(5) will be issued by ECO. |
| 11 | Clarification may be issued as regard reporting of restaurant services, value and tax liability etc in the GST return. | A number of other services are already notified under section 9(5). In respect of such services, ECO operators are presently paying GST by furnishing details in GSTR 3B. The ECO may, on services notified under section 9 (5) of the CGST Act, 2017, including on restaurant service provided through ECO, may continue to pay GST by furnishing the details in GSTR 3B, reporting them as outward taxable supplies for the time being. Besides, ECO may also, for the time being, furnish the details of such supplies of restaurant services under section 9(5) in Table 7A(1) or Table 4A of GSTR-1, as the case maybe, for accounting purpose. Registered persons supplying restaurant services through ECOs under section 9(5) will report such supplies of restaurant services made through ECOs in Table of GSTR-1 and Table 3.1 (c) of GSTR-3B, for the time being. |

47. No supply no tax liability

GST on Issue of Tax Invoice without underlying supply of goods or services- Board Clarification

In case of no supply in respect of tax invoice in terms of Section 7 of the CGT Act, no tax liability arises on issuance of such tax invoice; vide C.B.I. & C, Circular No. 171/03/2022-GST, dated 6-7-2022.

48. Case Laws/Advance Ruling

Supply of Pure Services to the Government Authority/Local Authority is exempted from the payment of GST: AAR- Gujarat.

In Re: *A.B. Enterprise* - Vide Advance Ruling No. GUJ/GAAR/R/2020/18 dated 19.05.2020- reported in [2020 (38) G.S.T.L. 484 (A.A.R. - GST - Guj.)]

The applicant is engaged in the business of providing manpower services to Government as well as Non-Government entities and has been providing such services for the past several years; that the aforesaid supply of services includes manpower supply for housekeeping, cleaning, security, data entry operators etc. at various positions in such Government departments; that the firm has been awarded contract from various Government departments. The applicant has been awarded by Gujarat State Nagarik Purvatha Nigam Limited, for providing personnel for computer data operator and watchmen at its godowns.

The contention of the applicant that in view that exemption mentioned in Notification No.12/2017-Central Tax (Rate) shall be available to the services provided by the applicant on the awarded work order and GST shall be leviable at NIL rate of tax on supply of pure service made to State Government, Governmental Authority, Governmental Entity and Local Authority.

RULING

The applicant is eligible to claim exemption benefit under Sr. No. 3 of Notification No. 12/2017-Central Tax (Rate), dated 28.06.2017 for pure services (supply of manpower, security service) provided to Central Government, State Government, Local Authorities, Governmental Authorities, Government Entities as detailed above for the reasons discussed hereinabove **subject to the condition** that the services provided to these entities mentioned above are **services provided by way of any activity in relation to any function entrusted to a Panchayat under Article 243G of the Constitution of India or in relation to any function entrusted to a Municipality under Article 243W of the Constitution of India.**

Medicines, implants, etc., used in medical treatment is a ‘Composite Supply’ of healthcare services; hence no GST is payable: AAR-Tamilnadu.

In Re: *Royal Care Speciality Hospital Ltd.*, reported in [2019 (30) G.S.T.L. 481 (AAR-GST)].

The applicant is a multi-speciality hospital providing health care services. It has sought an Advance Ruling to determine whether the medicines, consumables, implants, etc., used in the course of providing health care services to patients

admitted in hospital would be considered as ‘composite supply’ of health care services and exempt from GST?

The Authority for Advance Rulings observed that the applicant provides medicines, consumables, implants, etc., to inpatients in the course of treatment for which a single bill is raised. On usage of medicines, consumable and implants, as prescribed by doctors and administered during stay of the patients, the treatment shall be complete. ‘Composite supply’ means two or more taxable supplies of goods or services or both which are naturally bundled and supplied in conjunction with each other in the course of business. Health care services provided by clinical establishments are exempt from GST. Therefore, the supply of medicines, implants and consumables used in providing health care services to patients are ‘composite supply’ of health care services which are exempt from GST.

No GST on reimbursement of expenses incurred by employees on behalf of Company: AAR-Karnataka.

In Re: *Alcon Consulting Engineers (India) (P.) Ltd.*, reported in [2019 (30) G.S.T.L. 678 (AAR-GST)].

The applicant is providing consultancy services for construction projects. While providing such services some of the expenses are incurred by their employees on behalf of the applicant. It has sought an Advance Ruling to determine whether expenses incurred by staff on behalf of applicant and then reimbursed periodically are liable to GST?

The Authority for Advance Rulings observed that the amount paid by employees to the supplier of service is a ‘consideration’ as if it is paid by the applicant itself for services received by it. This amount reimbursed by the applicant to the employee later on would not amount to consideration for the supplies received by it because the service of employee to its employer, in the course of employment, is neither a supply of goods nor supply of services and, hence, the same is not liable to GST. The Authority for Advance Ruling held that the amount paid to employees by the applicant as reimbursement of expenses incurred by them in the course of employment are not liable to GST.

No GST on e-commerce operator for manpower services rendered by drivers through its platform: AAR-Karnataka.

In Re: *Humble Mobile Solutions (P.) Ltd.*, reported in [2019 (31) G.S.T.L. 653 (AAR-GST)].

The applicant operates electronic platform service called ‘Drive U’ which provides drivers on demand to customers who wish to obtain the services of a driver. The applicant has sought an Advance Ruling to determine whether it is liable to pay GST for services rendered by drivers through e-commerce platform operated by it.

The Authority for Advance Rulings observed that drivers are only listed on applicant’s portal and are providing services on principal-to-principal basis for which consideration is either received directly from customers or indirectly through applicant. In this case, drivers are not rendering the services in their

vehicles but are driving the vehicles belonging to the customers and, hence, are providing manpower services ‘driving a motor vehicle’. The authority for advance Rulings held that the applicant is not liable to pay GST for supply of services by drivers through e-commerce platform operated by it.

Sinking or corpus fund collected by RWA from members is not liable to GST: AAR-Karnataka.

In Re: *Prestige South Ridge Apartment Owners Association*, reported in [2019 (30) G.S.T.L. 107 (AAR-GST)].

The applicant is an association of apartment owner’s. It has filed an application for an Advance Ruling to determine applicability of GST on corpus /sinking fund collected from members. The Authority for Advance Rulings observed that the applicant is collecting amount towards corpus/sinking fund for future supply of services to its members. Such fund is mandatory under the Bye-Laws of the Resident Welfare Associations and is in the nature of deposit towards unforeseen or planned events for the future.

As per the meaning of ‘consideration’ under GST, the deposit given in respect of a future supply shall not be considered as payment made for such supply until the supplier applies such deposit as consideration. Therefore, the amount collected towards corpus/Sinking fund does not form part of consideration towards supply of services at the time of collection and, hence, not liable to GST, as it amounts to deposits received towards future supply of services to members.

GST on lottery neither discriminatory nor violative of Constitution-Supreme Court

[*Skill Lotto Solutions (P.) Ltd. v Union of India* [2020 (43) G.S.T.L. 289 (SC)]

The petitioner, an authorized agent, for sale and distribution of lotteries organized by the State of Punjab, filed the writ petition impugning the definition of goods under Section 2(52) of Central Goods and Services Tax Act, 2017 ('CGST Act') and consequential notification to the extent it levies tax on lotteries.

The Supreme Court observed that inclusion of actionable claim in the definition of ‘goods’ as given in Section 2(52) of Central Goods and Services Tax Act, 2017 is not contrary to the legal meaning of goods.

The Hon’ble Supreme Court held that the levy of Goods and Services Tax (GST) on the lottery is neither discriminatory nor violative of Articles 14, 19(1)(g), 301 and 304 of the Constitution of India.

GST not liable on services provided by Court Receiver: Bombay High Court in the case of [*Bai Mamubai Trust v Suchitra* [2019 (31) G.S.T.L.193 (Bom.)]

The issue was raised before the High Court of Bombay to determine the applicability of GST on services or assistance rendered by the Court Receiver appointed by the Court under Order XL of Code of Civil Procedure (CPC).

The Honourable Court observed that as per Schedule –III of the CGST Act, services by any court or tribunal established under any law is neither a supply of goods nor supply of services. Rules given under Order XL of the CPC states that the Court Receiver should implement orders of the court and functions under the supervision and direction of the Court. Hence, office of the Court Receiver is an establishment of the High Court through which the orders issued by the Court are given effect to. Therefore, the services of the Court Receiver are to be considered as services provided by any Court. Accordingly, the fees or charges paid to the Court Receiver are not liable to GST. The Honourable High Court held that GST cannot be levied or recovered on services provided by the Court Receiver.

Educational Support Services - Printing solution infrastructure services to State Education Board - Exemption admissibility: AAR-Karnataka.

In Re: *Datacon Technologies*, reported in 2020 (41) G.S.T.L. 380 (A.A.R. - GST - Kar.),

The applicant are a leading service provider in respect of Print solutions and IT & infrastructure services. They are based out of Bangalore, Karnataka State & provide services all over the country. They also provide services in respect of examination matters of various Boards and Universities in conduct of examination in form of scanning of OMR Flying slip, OMR Marks Foil, OMR attendance sheet, OMR absentee sheet and finalisation of data.

In view of the above, the applicant sought Advance Ruling in respect of the question that whether the services performed by them are exempted by virtue of item (b) of Sr. No. 66 of Notification No. 12/2017-C.T. (Rate), dated 28-6-2017

Ruling: The activity of the applicant, is covered under “Other Educational Support Services”, under SAC 9992 99, and is related to conduct of examination and hence is exempted, in terms of Sl. No. 66 of Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017.

Goods Transport Agency service - Hiring of vehicles by one GTA to another GTA – Taxability- AAR- Karnataka.

In Re: *Saravana Perumal* reported in 2020 (33) G.S.T.L. 39 (A.A.R. - GST - Kar.)

The applicant is an individual and is not registered under the Goods and Services [Tax] Act, 2017. The applicant has sought advance ruling in respect of the following question.

- (a) The applicant states that he wants to be a registered Goods Transport Agency as per Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017 and he wants to give vehicles on hire basis to another Goods Transport Agency.
- (b) The applicant states that a communication/flier has been issued by the Central Board of Indirect Taxes and Customs (C.B.I. & C.) on Goods Transport Agency (GTA) and the said flier states that the following services are exempt from GST, in terms of Entry Number 18 of Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017.

RULING

The registered person can be a Goods Transport Agency and also a supplier of goods vehicles to another GTA on hire basis at the same time subject to the appropriate tax treatments as notified in Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017, Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017 and Notification No. 13/2017-Central Tax (Rate), dated 28-6-2017, as amended from time to time.

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| No GST on supply of goods from place in non-taxable territory to another place in non-taxable territory without entering into India: AAR |
|---|

Authority for Advance Rulings, *Karnataka Guitar Head Publishing LLP, In re* [2021] 130 taxmann.com 242 (AAR - Karnataka)

The applicant was engaged in business of selling guitar head books in United States of America, United Kingdom and Canada through website. It sought advance ruling in respect of issue as to whether GST would be payable on Guitar Head Books purchased through Amazon located outside India to customers outside India when the books would not be brought into India.

The Authority for Advance Ruling observed that Schedule III of CGST Act, 2017 specifies certain activities or transactions that shall be treated neither as a supply of goods nor a supply of services. Para 7 of this Schedule stipulates that supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India shall neither be treated as supply of goods nor supply of services.

In the instant case, the applicant was involved in supply of books, purchased from Amazon who owned the books, from a place outside India, a non-taxable territory, to another place outside India, a non-taxable territory, without the said goods entering into India. Thus the supply of books by the applicant would neither be supply of goods nor supply of services, in terms of Schedule II to section 7 of CGST Act, 2017.

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| SECTION 7 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 — SUPPLY — SCOPE OF — NO GST ON SALE OF DEVELOPED LAND: AAR Ruling |
|---|

Sale of developed land also qualifies as sale of land and is covered under paragraph 5 of Schedule III to CGST Act; GST is not payable on same as it does not qualify as supply of goods or services – *Rabia Khanum, In re* [2002] 143 taxmann.com 298 (AAR-Karnataka)

GST: Salaries paid to employees, even though seconded by foreign affiliate could not be considered *prima facie* as payment for manpower services; High Court granted stay.

The Hon'ble High Court of Delhi in the case of *Metal one corporation India Pvt Limited v Union of India* reported in (2023) 13 Centax 328 (Del) held that Stay was granted by Karnataka High Court and Punjab and Haryana High Court on same issue of remuneration paid to seconded employees – *Prima facie*, salaries paid to employees, even though seconded by foreign affiliate, in terms of employment agreements could not be considered as payment for manpower services supplied by foreign affiliate.

Chapter 4

Time of Supply

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In order to determine tax liability of CGST, SGST, UTGST and IGST and discharge tax liability, it is important to know the date when the tax liability arises i.e. the date on which the charging event has occurred. In GST law, it is known as Time of Supply. The GST law has provided separate provisions to determine the time of supply of goods and time of supply of services.

Sections 12, 13 & 14 of the CGST Act, 2017 deals with the provisions related to time of supply and by virtue of Section 20 of the IGST Act, 2017 these provisions are also applicable for the IGST Act.

1. Point of Time

Point of time when supplier receives the payment or date of receipt of payment. The phrase “the date on which supplier receives the payment” or “the date of receipt of payment” means the date on which payment is entered in his books of accounts or the date on which the payment is credited to his bank account, whichever is earlier.

2. Time of issue of invoice for supply

As per Section 31 of the CGST Act, an invoice for supply of goods needs to be issued before or at the time of removal of goods for supply to the recipient, where the supply involves movement of goods. However, in other cases, an invoice needs to be issued before or at the time of delivery of goods or while

making goods available to the recipient. Similarly an invoice for supply of services needs to be issued before or after the provision of service but not later than thirty days from the date of provision of service.

3. Time of supply of goods (Section 12 of CGST Act, 2017)

- (2) The time of supply of goods shall be the earliest of the following dates:
 - (a) Date of issue of invoice by the supplier. If the invoice is not issued, then the last date on which the supplier is legally bound to issue the invoice with respect to the supply.
 - (b) Date on which the supplier receives the payment with respect to the supply.

3.1 Time of supply when GST on goods payable on reverse charge basis. (Section 12(3) of CGST Act)

(3) The time of supply of goods when tax is to be paid on reverse charge basis shall be earliest of the following dates, namely:

- (a) Date of receipt of goods.
- (b) Date on which the payment is entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier.
- (c) Date immediately following 30 days from the date of issue of invoice/other documents are also includes as specified in other subsections of Section 31 of the CGST Act or any other legal document in lieu of invoice by the supplier

However, if it is not possible to determine the time of supply in aforesaid manner, then the time of supply is the date of entry of the transaction in the books of account of the recipient of supply.

4. Time of supply of services (Section 13 (2) of CGST Act, 2017)

The time of supply of services shall be the earliest of the following dates:

- (a) Date of issue of invoice/other documents by the supplier (If the invoice is issued within the legally prescribed period under Section 31(2) of the CGST Act) or the date of receipt of payment, whichever is earlier,
- (b) Date of provision of service (If the invoice is not issued within the legally prescribed period under Section 31(2) of the CGST Act) or the date of receipt of payment, whichever is earlier,
- (c) Date on which the recipient shows the receipt of service in his books of account, in case the aforesaid two provisions do not apply.

4.1 Time of supply of services when GST on services is payable on reverse charge basis. (Section 13 (3) of CGST Act)

Time of supply of services when tax is to be paid on reverse charge basis, the time of supply shall be the earliest of the following dates:

- (a) Date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier.

- (b) Date immediately following 60 days from the date of issue of invoice or any other legal document in lieu of invoice by the supplier

However, if it is not possible to determine the time of supply in aforesaid manner, then the time of supply is the date of entry of the transaction in the books of account of the recipient of supply.

5. Time of supply of Vouchers

Time of supply in case of supply of vouchers by a supplier, the time of supply shall be—

- (a) the date of issue of vouchers, if the supply is identifiable at that point; or
- (b) the date of redemption of voucher in all other cases.

6. Time of supply of goods or services (Residual provisions)

In case it is not possible to determine the time of supply under aforesaid provisions, the time of supply is:

- (a) Due date of filing of return, in case where periodical return has to be filed
- (b) Date of payment of tax in all other cases.

7. Change in rate of tax in respect of supply of goods or services: (Section 14 of CGST Act, 2017)

The normal time of supply rules changes if there is a change in the rate of tax in respect of supply of goods or services. In this scenario, time of supply has to be determined in the following manner:

8. Time of supply of goods or services related to an addition in the value of supply by way of interest, late fees or penalty

Time of supply related to an addition in the value of supply by way of interest, late fee or penalty for delayed payment of any consideration shall be the date on which supplier receives such addition in value. For example, a supplier receives consideration in the month of September instead of due date of July and for such delay he is eligible to receive an interest amount of ₹1000/-

8.1 Supply is completed before the Change in rate of tax

| Invoice issued before the date of change in tax rate. | Payment received before the date of change in tax rate | Time of Supply | Applicable rate of tax |
|--|---|--|-------------------------------|
| NO | NO | Earliest of the date of invoice or payment | New rate of tax |
| YES | NO | Date of issue of invoice | Old tax rate |
| NO | YES | Date of receipt of payment | Old tax rate |

8.2 Supply is completed after the Change in rate of tax

| Invoice issued before the date of change in rate of tax | Payment received before the date of change in rate of tax | Time of Supply | Applicable rate of tax |
|---|---|--|------------------------|
| YES | YES | Earliest of the date of invoice or payment | Old rate of tax |
| YES | NO | Date of receipt of payment | New rate of tax |
| NO | YES | Date of issue of invoice | New rate of tax |

9. Date of receipt of payment in case of change in rate of tax (Section 14 of CGST Act)

Normally the date of receipt of payment is the date of credit in the bank account of the recipient of payment or the date on which the payment is entered into his books of account, whichever is earlier. However, in cases of change in rate of tax, the date of receipt of payment is the date of credit in the bank account if such credit is after four working days from the date of change in rate of tax.

Chapter 5

Place of Supply

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Supply is the taxable event under GST and GST is the destination based tax. So it is vital to know the place of supply to charge tax at destination where goods or services is delivered to the consumer. Place of supply is required for determining the right tax to be charged on the invoice, whether IGST or CGST/SGST will apply. In order to know which tax is to be levied (IGST or CGST and SGST/UTGST) will depend on whether a particular transaction is an inter-State supply or intra-State supply. Hence, every transaction will have to go through the test of provisions relating to the place of supply in order to determine which tax is to be levied. The IGST act lays down certain rules which define whether a transaction is inter or intra-State. These rules are called the place of supply rules.

Accordingly, the Integrated Goods and Services Tax Act, 2016 (“IGST Act”) specified the Principles for determining the supply of goods and/or services in the course of inter-State trade or commerce, and also in the course of intra-State trade or commerce. The said provisions are contained in Section 3 to 5 of IGST Act.

1. Determination of Nature of Supply

1.1 Inter-State supply of goods and services

Section 7(1) & (3) of IGST Act, prescribed that where Supply of goods and services in the course of *inter-State trade* or commerce means any supply where the location of the supplier and the place of supply,

- (a) two different States
- (b) two different Union territories; or
- (c) a State and a Union territory.

Import of goods shall be deemed to be inter-state supply:

Section 7(2) of IGST Act, prescribed that where supply of goods imported into the territory of India, till they cross customs frontiers of India, shall be treated to be a supply of goods in the course inter-State trade or commerce.

Inter-state supply of services – Section 7(3) of IGST Act.

Supply of services in the course of inter-State trade or commerce means any supply where the location of the supplier and the place of supply are in different States or two different Union Territories or a State and Union Territory.

Import of services shall be treated to be inter-state supply-

Section 7(4) of IGST Act, prescribed that where the supply of services imported into the territory of India shall be treated to be a supply of services in the course of inter-State trade or commerce.

Supply of goods or services when place of supply is out of India will be inter-State supply-

Section 7(5) of IGST Act, prescribed that when the supply of goods or services or both;

- (a) the supplier is located in India and the place of supply is outside India;
- (b) to or by a Special Economic Zone developer or a Special Economic Zone unit; or
- (c) in the taxable territory, not being an intra-State supply and not covered elsewhere in this section,

shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce. Such supply will be ‘export of goods or services’ only if all prescribed conditions are satisfied.

1.2 Intra-State supply of goods and services

Section 8 of IGST Act, prescribes the provision where the supply of goods and services shall be treated as intra-State supply.

Intra-state supply of goods:

Section 8(1) of IGST Act, prescribes where the supply of goods in location of the supplier and the place of supply of goods are in the same State or same Union territory shall be treated as intra-State supply; exception has been provided for the following supply of goods shall not be treated as intra-State supply, such as;

- (a) supply of goods to or by a Special Economic Zone developer or a Special Economic Zone unit;
- (b) goods imported into territory of India till they cross the customs frontiers of India; or
- (c) supplies made to a tourist referred to in Section 15.

Intra-state supply of services:

Section 8(2) of IGST Act, provides supply of services where the location of the supplier and the place of supply of services are in the same State or same Union territory shall be treated as intra-State supply; exception has been provided that the services supply to or by a Special Economic Zone developer or a Special Economic Zone unit shall not be considered as intra-State supply.

1.3 Supplies in territorial waters

Section 9 of IGST Act, provides that supplies will be considered to be in Territorial Waters in India in the following situations:

- (a) where the location of the supplier is in territorial waters, the location of such supplier;
- (b) where the place of supply is in the territorial waters, the place of supply, shall for the purposes of this Act, be deemed to be in the coastal State or Union territory where the nearest point of the appropriate baseline is located.

Article 269A prescribes that Parliament may, by law formulate the principles for determining the place of supply of any goods or services. Article 269A (2) provides that Parliament may, by law, formulate the principles for determining the place of supply of any goods or services.

2. Place of Supply of Goods other than imports and exports

Section 10(1) of IGST Act, provides that the place of supply of goods, other than supply of goods imported into, or exported from India, shall be as under,—

- (a) where the supply involves movement of goods, whether by the supplier or the recipient or by any other person, the place of supply of such goods shall be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient;
- (b) where the goods are delivered by the supplier to a recipient or any other person on the direction of a third person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to the goods or otherwise, it shall be deemed that

the said third person has received the goods and the place of supply of such goods shall be the principal place of business of such person;

- (c) where the supply does not involve movement of goods, whether by the supplier or the recipient, the place of supply shall be the location of such goods at the time of the delivery to the recipient;
- (d) where the goods are assembled or installed at site, the place of supply shall be the place of such installation or assembly;
- (e) where the goods are supplied on board a conveyance, including a vessel, an aircraft, a train or a motor vehicle, the place of supply shall be the location at which such goods are taken on board.

Residual provision:

Section 10(2) of IGST Act, prescribes that where the place of supply of goods cannot be determined, the place of supply shall be determined by the recommendations of the GST Council.

3. Place of supply of goods imports and exports

Section 11 of IGST Act, provides for the place of supply of goods, -

- (a) imported into India shall be the location of the importer;
- (b) exported from India shall be the location outside India.

4. Place of Supply of Services

Generally, the place of supply of services is the location of the service recipient; there are two situations in cases where the location of supplier and recipient is in India and another case where the location of supplier or location of recipient is outside India.

5. Place of supply of services where location of supplier and recipient is in India - Section 12 of IGST Act, 2017

Section 12(1) of IGST Act, provides to determine the place of supply of services where the location of supplier of services and the location of the recipient of services is in India.

Section 12(2) of IGST Act, the place of supply of services made to a registered person shall be the location of such person. In cases where the services are provided to an unregistered person shall be,—

- (a) the location of the recipient where the address on record exists;
- (b) the location of the supplier of services in other cases.

6. The place of supply of services in cases directly relating to immovable property or lodging in boat or vessel

Section 12(3) of IGST Act, provides the place of supply of services shall be location at which such services is located or intended to be located, in case of the following services:

- (a) Services related to immovable property including coordination of construction work; or

- (b) Services by way of lodging accommodation by a hotel, guest house, house boat etc.; or
- (c) Services by way of accommodation for organizing any marriage, social, cultural or business function; and
- (d) any services ancillary to the services cited above.

7. Performance based services i.e. Restaurant, beauty treatment, health services

Section 12(4) of IGST Act, the place of supply of restaurant and catering services, personal grooming, fitness, beauty treatment, health service including cosmetic and plastic surgery shall be the location where the services are actually performed.

8. Training and performance appraisal service

Section 12(5) of IGST Act, the place of supply of services in relation to training and performance appraisal to,—

- (a) a registered person, shall be the location of such person;
- (b) a person other than a registered person, shall be the location where the services are actually performed.

9. Admission to events

Section 12(6) of IGST Act, the place of supply of services provided by way of admission to a cultural, artistic, sporting, scientific, educational, entertainment event or amusement park or any other place and services ancillary thereto, shall be the place where the event is actually held or where the park or such other place is located.

10. Other event based services

Section 12(7) of IGST Act, the place of supply of services provided by way of,—

- (a) organisation of a cultural, artistic, sporting, scientific, educational or entertainment event including supply of services in relation to a conference, fair, exhibition, celebration or similar events; or
- (b) services ancillary to organisation of any of the events or services referred to in clause (a), or assigning of sponsorship to such events,—
 - (i) to a registered person, shall be the location of such person;
 - (ii) to a person other than a registered person, shall be the place where the event is actually held and if the event is held outside India, the place of supply shall be the location of the recipient.

11. Transportation of goods services

Section 12(8) of IGST Act, the place of supply of services by way of transportation of goods, including by mail or courier to,—

- (a) a registered person, shall be the location of such person;

- (b) a person other than a registered person, shall be the location at which such goods are handed over for their transportation.

Section 161 of the Finance Act, 2023 – Section 12(8) of the IGST Act:
Place of Supply in relation of Transportation of Goods This change has omitted the proviso to Section 12(8) of the IGST Act, which covers the place of supply (POS) for the transportation of goods irrespective of the destination of goods, where the supplier and recipient of service are located in India. The POS shall be the location of recipient of service if the recipient is a registered person. [Notification 13/2023 - Integrated Tax (Rate) dated September 26, 2023]

12. Passenger transportation service

Section 12(9) of IGST Act, the place of supply of passenger transportation service to,—

- (a) a registered person, shall be the location of such person;
- (b) a person other than a registered person, shall be the place where the passenger embarks on the conveyance for a continuous journey:

13. Service on board a conveyance

Section 12(10) of IGST Act, the place of supply of services on board a conveyance, including a vessel, an aircraft, a train or a motor vehicle, shall be the location of the first scheduled point of departure of that conveyance for the journey.

14. Telecommunication service, data transfer, broadcasting, cable and DHTS

Section 12(11) of IGST Act, the place of supply of telecommunication services including data transfer, broadcasting, cable and direct to home television services to any person shall,—

- (a) in case of services by way of fixed telecommunication line, leased circuits, internet leased circuit, cable or dish antenna, be the location where the telecommunication line, leased circuit or cable connection or dish antenna is installed for receipt of services;
- (b) in case of mobile connection for telecommunication and internet services provided on post paid basis, be the location of billing address of the recipient of services on the record of the supplier of services;
- (c) in cases where mobile connection for telecommunication, internet service and direct to home television services are provided on pre payment basis through a voucher or any other means,—
 - (i) through a selling agent or a re seller or a distributor of subscriber identity module card or re charge voucher, be the address of the selling agent or re seller or distributor as per the record of the supplier at the time of supply; or
 - (ii) by any person to the final subscriber, be the location where such prepayment is received or such vouchers are sold; and

- (iii) in other cases, be the address of the recipient as per the records of the supplier of services and where such address is not available, the place of supply shall be location of the supplier of services:

Provided that where the address of the recipient as per the records of the supplier of services is not available, the place of supply shall be location of the supplier of services:

Provided further that if such pre-paid service is availed or the recharge is made through internet banking or other electronic mode of payment, the location of the recipient of services on the record of the supplier of services shall be the place of supply of such services.

15. Banking and other financial services

Section 12(12) of IGST Act, the place of supply of banking and other financial services, including stock broking services to any person shall be the location of the recipient of services on the records of the supplier of services:

Provided that if the location of recipient of services is not on the records of the supplier, the place of supply shall be the location of the supplier of services.

16. Insurance service

Section 12(13) of IGST Act, the place of supply of insurance services shall,

- (a) to a registered person, be the location of such person;
- (b) to a person other than a registered person, be the location of the recipient of services on the records of the supplier of services.

17. Advertisement services to Government

Section 12(14) of IGST Act, the place of supply of advertisement services to the Central Government, a State Government, a statutory body or a local authority meant for the States or Union territories identified in the contract or agreement shall be taken as being in each of such States or Union territories and the value of such supplies specific to each State or Union territory shall be in proportion to the amount attributable to services provided by way of dissemination in the respective States or Union territories as may be determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis shall be decided by the GST Council.

18. Place of supply of services where location of supplier and recipient is outside India – (Section 13 of IGST Act, 2017)

(1) The provisions of this section shall apply to determine the place of supply of services where the location of the supplier of services or the location of the recipient of services is outside India.

(2) The place of supply of services except the services specified in sub-sections (3) to (13) shall be the location of the recipient of services:

Provided that where the location of the recipient of services is not available in the ordinary course of business, the place of supply shall be the location of the supplier of services.

(3) The place of supply of the following services shall be the location where the services are actually performed, namely:—

- (a) services supplied in respect of goods which are required to be made physically available by the recipient of services to the supplier of services, or to a person acting on behalf of the supplier of services in order to provide the services:

Provided that when such services are provided from a remote location by way of electronic means, the place of supply shall be the location where goods are situated at the time of supply of services:

Provided further that nothing contained in this clause shall apply in the case of services supplied in respect of goods which are temporarily imported into India for repairs and are exported after repairs without being put to any other use in India, than that which is required for such repairs;

- (b) services supplied to an individual, represented either as the recipient of services or a person acting on behalf of the recipient, which require the physical presence of the recipient or the person acting on his behalf, with the supplier for the supply of services.

(4) The place of supply of services supplied directly in relation to an immovable property, including services supplied in this regard by experts and estate agents, supply of campsite, by whatever name called, grant of rights to use immovable property, services for carrying out or coordination of construction work, including that of architects or interior decorators, shall be the place where the immovable property is located or intended to be located.

(5) The place of supply of services supplied by way of admission to, or organisation of a cultural, artistic, sporting, scientific, educational or entertainment event, or a celebration, conference, fair, exhibition or similar events, and of services ancillary to such admission or organisation, shall be the place where the event is actually held.

(6) Where any services are supplied at more than one location, including a location in the taxable territory, its place of supply shall be the location in the taxable territory.

(7) Where the services are supplied in more than one State or Union territory, the place of supply of such services shall be taken as being in each of the respective States or Union territories and the value of such supplies specific to each State or Union territory shall be in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.

(8) The place of supply of the following services shall be the location of the supplier of services, namely:—

- (a) services supplied by a banking company, or a financial institution, or a non-banking financial company, to account holders;

(b) intermediary services;

(c) services consisting of hiring of means of transport, including yachts but excluding aircrafts and vessels, up to a period of one month.

(9) The place of supply of services of transportation of goods, other than by way of mail or courier, shall be the place of destination of such goods.

(10) The place of supply in respect of passenger transportation services shall be the place where the passenger embarks on the conveyance for a continuous journey.

(11) The place of supply of services provided on board a conveyance during the course of a passenger transport operation, including services intended to be wholly or substantially consumed while on board, shall be the first scheduled point of departure of that conveyance for the journey.

(12) The place of supply of online information and database access or retrieval services shall be the location of the recipient of services.

It is further clarified the person receiving such services shall be deemed to be located in the taxable territory, if any two of the following non contradictory conditions are satisfied, namely:—

(a) the location of address presented by the recipient of services through internet is in the taxable territory;

(b) the credit card or debit card or store value card or charge card or smart card or any other card by which the recipient of services settles payment has been issued in the taxable territory;

(c) the billing address of the recipient of services is in the taxable territory;

(d) the internet protocol address of the device used by the recipient of services is in the taxable territory;

(e) the bank of the recipient of services in which the account used for payment is maintained is in the taxable territory;

(f) the country code of the subscriber identity module card used by the recipient of services is of taxable territory;

(g) the location of the fixed land line through which the service is received by the recipient is in the taxable territory.

(13) In order to prevent double taxation or non-taxation of the supply of a service, or for the uniform application of rules, the Government shall have the power to notify any description of services or circumstances in which the place of supply shall be the place of effective use and enjoyment of a service.

(14) (1) On supply of online information and database access or retrieval services by any person located in a non-taxable territory and received by a non-taxable online recipient, the supplier of services located in a non-taxable territory shall be the person liable for paying integrated tax on such supply of services:

Provided that in the case of supply of online information and database access or retrieval services by any person located in a non-taxable territory and received

by a non-taxable online recipient, an intermediary located in the non-taxable territory, who arranges or facilitates the supply of such services, shall be deemed to be the recipient of such services from the supplier of services in non-taxable territory and supplying such services to the non-taxable online recipient except when such intermediary satisfies the following conditions, namely:

- (a) the invoice or customer's bill or receipt issued or made available by such intermediary taking part in the supply clearly identifies the service in question and its supplier in non-taxable territory;
- (b) the intermediary involved in the supply does not authorise the charge to the customer or take part in its charge which is that the intermediary neither collects or processes payment in any manner nor is responsible for the payment between the non-taxable online recipient and the supplier of such services;
- (c) the intermediary involved in the supply does not authorise delivery; and
- (d) the general terms and conditions of the supply are not set by the intermediary involved in the supply but by the supplier of services.

The supplier of online information and database access or retrieval services for payment of integrated tax, take a single registration under the Simplified Registration Scheme to be notified by the Government:

Provided that any person located in the taxable territory representing such supplier for any purpose in the taxable territory shall get registered and pay integrated tax on behalf of the supplier:

Provided further that if such supplier does not have a physical presence or does not have a representative for any purpose in the taxable territory, he may appoint a person in the taxable territory for the purpose of paying integrated tax and such person shall be liable for payment of such tax.

As per decision of 28th meeting of the GST Council, Place of supply in case of job work of any treatment or process done on goods temporarily imported into India and then exported without putting them to any other use in India, to be outside India.

Section 162 of the Finance Act, 2023 - Section 13(9) of the IGST Act:

Under Section 13(9) of the IGST Act, 2017, which provides the place of supply of services in case of transportation of goods, other than by way of mail or courier would be covered under the default provision of Section 13(2) of IGST Act and would be the location of the recipient of services, in cases where either the supplier of services or recipient of services is located outside India. As a result, Services to recipients outside India would qualify as exports, and Services from suppliers outside India would qualify as import of service irrespective of the destination of goods. [Notification 11/2023-Integrated Tax (Rate) dated September 26, 2023]

The CBIC has clarified that the place of supply of services of transportation of goods, other than through mail and courier, in cases where location of supplier of services or location of recipient of services is outside India, will be determined by the default rule under section 13(2).

**SECTION 13 OF THE INTEGRATED GOODS AND SERVICES TAX ACT,
2017-PLACE OF SUPPLY OF SERVICES WHERE LOCATION OF
SUPPLIER OR LOCATION OF RECIPIENT IS OUTSIDE INDIA -
CLARIFICATION REGARDING DETERMINATION OF PLACE OF
SUPPLY IN VARIOUS CASES**

*Circular No. 203/15/2023-GST [F. No. 20/06/22/2023-GST-CBEC],
dated 27-10-2023*

Representations have been received from the trade and field formations seeking clarification on certain issues with respect to determination of place of supply in case of—

- (i) supply of service of transportation of goods, including through mail and courier;
- (ii) supply of services in respect of advertising sector; and
- (iii) supply of the "co-location services".

2. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168(1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby clarifies the issues as under:

| Sl.No | Issue | Clarification |
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| A. Place of supply in case of supply of service of transpiration of goods, including trough mail and courier | | |
| 1. | Sub-section (9) of section 13 of Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as "IGST Act") has been omitted vide section 162 of Finance Act, 2023 which will come into effect from 01.10.2023. After the said amendment, doubts have been raised as to whether the place of supply in case of service of transportation of goods, including through mail and courier, in cases where location of supplier of services or location of recipient of services is outside India, will be determined as per sub- | 1.1 Place of supply of services where location of supplier or location of recipient is outside India is determined as per section 13 of the IGST Act. Sub- section (9) of section 13 of IGST Act provided that where one of the supplier of the services or the recipient of services is located outside India, the place of supply of services of transportation of goods, other than by way of mail or courier, shall be the place of destination of such goods. The said sub-section has been omitted vide section 162 of Finance Act, 2023 which will come into effect from 01.10.2023. It is hereby clarified that after the said |

| Sl.No | Issue | Clarification |
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| | section (2) of section 13 of IGST Act or will be determined as per sub-section (3) of section 13 of IGST Act. | <p>amendment comes into effect, the place of supply of services of transportation of goods, other than through mail and courier, in cases where location of supplier of services or location of recipient of services is outside India, will be determined by the default rule under section 13(2) of IGST Act and not as performance based services under sub-section (3) of section 13 of IGST Act. Accordingly, in cases where location of recipient of services is available, the place of supply of such services shall be the location of recipient of services and in cases where location of recipient of services is not available in the ordinary course of business, the place of supply shall be the location of supplier of services.</p> <p>1.2 Further, it is also mentioned that the place of supply in case of service of transportation of goods by mail or courier was not covered under the provisions of sub-section (9) of section 13 before the said sub-section was amended/ omitted. Therefore, on the same principles as mentioned above, the place of supply in case of service of transportation of goods by mail or courier will continue to be determined by the default rule under section 13(2) of IGST Act <i>i.e.</i> in cases where location of recipient of services is available, the place of supply of such services shall be the location of recipient of services and in cases where location of recipient of services is not available in the ordinary course of business, the place of supply shall be the location of supplier of services.</p> |

| Sl.No | Issue | Clarification |
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| B. Place of supply in case of supply of services in respect of advertising sector | | |
| 2. | <p>Advertising companies are often involved in procuring space on hoardings/bill boards erected and mounted on buildings/land, in different States, from various suppliers ("vendors") for providing advertisement services to its corporate clients. There may be variety of arrangements between the advertising company and its vendors as below:</p> <p>(i) There may be a case wherein there is supply (sale) of space or supply (sale) of rights to use the space on the hoarding/ structure (immovable property) belonging to vendor to the client/ advertising company for display of their advertisement on the said hoarding/ structure. What will be the place of supply of services provided by the vendor to the advertising company in such case?</p> <p>(ii) There may be another case where the advertising company wants to display its advertisement on hoardings/ bill boards at a specific location availing the services of a vendor. The responsibility of arranging the hoardings/ bill boards lies with the vendor who may himself own such structure or may be taking it on rent or rights to use basis from another person. The vendor is responsible for display of the advertisement of the advertising company at the said location. During this entire time of display of the advertisement, the vendor is in possession of the</p> | <p>2.1 It is clarified that the place of supply in the case supply of services in respect of advertising sector, in the cases referred in (i) and (ii), shall be determined as below:</p> <p>2.2 Place of supply in Case (i): The hoarding/structure erected on the land should be considered as immovable structure or fixture as it has been embedded in earth. Further, place of supply of any service provided by way of supply (sale) of space on an immovable property or grant of rights to use an immovable property shall be governed by the provisions of section 12(3)(a) of IGST Act. As per section 12(3)(a) of IGST Act, the place of supply of services directly in relation to an immovable property, including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any service provided by way of grant of rights to use immovable property or for carrying out or coordination of construction work shall be the location at which the immovable property is located. Therefore, the place of supply of service provided by way of supply of sale of space on hoarding/ structure for advertising or for grant of rights to use the hoarding/ structure for advertising in this case would be the location where such hoarding/ structure is located.</p> <p>2.3 Place of supply in Case (ii): In this case, as the service is being provided by the vendor to the advertising company and there is no supply (sale) of space/ supply (sale) of</p> |

| Sl.No | Issue | Clarification |
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| | hoarding/structure at the said location on which advertisement is displayed and the advertising company is not occupying the space or the structure. In this case, what will be the place of supply of such services provided by the vendor to the advertising company? | rights to use the space on hoarding/structure (immovable property) by the vendor to the advertising company for display of their advertisement on the said display board/structure, the said service does not amount to sale of advertising space or supply by way of grant of rights to use immovable property. Accordingly, the place of supply of the same shall not be covered under section 12(3)(a) of IGST Act. Vendor is in fact providing advertisement services by providing visibility to an advertising company's advertisement for a specific period of time on his structure possessed /taken on rent by him at the specified location. Therefore, such services provided by the Vendor to advertising company are purely in the nature of advertisement services in respect of which Place of Supply shall be determined in terms of Section 12(2) of IGST Act. |

C. Place of supply in case of supply of the "co-location services"

| | | |
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| 3. | Co-location is a data center facility in which a business/company can rent space for its own servers and other computing hardware along with various other bundled services related to Hosting and information technology (IT) infrastructure. A business/company who avails the co-location services primarily seek security and upkeep of its server/s, storage and network hardware; operating systems, system software and may require to interact with the system through a web-based interface for the hosting | 3.1 It is clarified that the Co-location services are in the nature of "Hosting and information technology (IT) infrastructure provisioning services" (S.No. 3 of Explanatory notes of SAC- 998315). Such services do not appear to be limited to the passive activity of making immovable property available to a customer as the arrangement of the supply of colocation services not only involves providing of a physical space for server/network hardware along with air conditioning, security service, fire protection system and power supply but it also involves the supply of various services by the supplier related |
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| Sl.No | Issue | Clarification |
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| | <p>of its websites or other applications and operation of the servers. In this respect, various doubts have been raised as to</p> <p>(i) whether supply of colocation services are renting of immovable property service (as it involves renting of space for keeping/storing company's hardware/servers) and hence the place of supply of such services is to be determined in terms of provision of clause (a) of sub-section (3) of Section 12 of the IGST Act which is the location where the immovable property is located; or</p> <p>(ii) whether the place of supply of such services is to be determined by the default place of supply provision under sub-section (2) of section 12 of the IGST Act as the supply of service is Hosting and Information Technology (IT) Infrastructure Provisioning services involving providing services of hosting the servers and related hardware, security of the said hardware, air conditioning, uninterrupted power supply, fire protection system, network connectivity, backup facility, firewall services, 24 hrs monitor-</p> | <p>to hosting and information technology infrastructure services like network connectivity, backup facility, firewall services, and monitoring and surveillance service for ensuring continuous operations of the servers and related hardware, etc. which are essential for the recipient business/company to interact with the system through a web based interface relating to the hosting and operation of the servers.</p> <p>3.2 In such cases, supply of colocation services cannot be considered as the services of supply of renting of immovable property. Therefore, the place of supply of the colocation services shall not be determined by the provisions of clause (a) of sub-section (3) of Section 12 of the IGST Act but the same shall be determined by the default place of supply provision under sub-section (2) of Section 12 of the IGST Act <i>i.e.</i> location of recipient of co-location service.</p> <p>3.3 However, in cases where the agreement between the supplier and the recipient is restricted to providing physical space on rent along with basic infrastructure, without components of Hosting and Information Technology (IT) Infrastructure Provisioning services and the further responsibility of upkeep, running, monitoring and surveillance, etc. of the servers and related hardware is of recipient of services only, then the said supply of services shall be considered as the supply of the service of renting of immovable property. Accordingly, the place of supply of these services shall be determined by the provisions of clause (a) of sub-</p> |

| Sl.No | Issue | Clarification |
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| | ing and surveillance service for ensuring continuous operations of the servers and related hardware, etc. | section (3) of Section 12 of the IGST Act which is the location where the immovable property is located. |

19. Advance Rulings

Construction of Residential Flats - Share of Land owner – Taxability-AAR-Karnataka.

In Re: *B.R. Sridhar*, reported in 2021 (44) G.S.T.L. 211 (A.A.R. - GST - Kar.)

The Applicant, being the owner of an immovable property has entered into a Joint Development Agreement dated 19-5-2016 with M/s. Suprabhat Constructions, a partnership firm, authorizing them to construct residential flats by incurring the necessary cost together with certain common amenities and upon the development of the said property, the applicant gets 40% share of undivided right, title and interest in the land proportionate to super built up area and 40% of car parking spaces. In view of this, the applicant has sought Advance Ruling in respect of the following question.

Whether the total amounts received by the Owner towards the advances or sale consideration of the flats fallen to his share of 40% in terms of the Joint Development Agreement dated 19-5-2016 and the subsequent Area Sharing Agreement dated 3-1-2018, are not amenable for payment of GST, since Applicant has sold or agreed to sell or gifted, the flats after obtaining Occupancy Certificate dated 26-8-2019 and that Applicant has not received any part of the sale consideration prior to the said date of Occupancy Certificate, thus falling under Entry No. 5 of Schedule III of CGST Act read with Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017 and the corresponding provisions of SGST Act.

RULING

The amounts received by the applicant, either by himself or through his agents, towards sale of their share of flats are not eligible to GST, if and only if the entire consideration related to such sale of flats is received after the issuance of Completion Certificate dated 26-8-2019, as the said activities are treated neither supply of goods nor supply of service in terms of Schedule-III of the CGST Act, 2017 subject to Clause 5(b) of the Schedule-II of the CGST Act, 2017.

* * *

Group Housing Society - Maintenance from Common fund - Supply of Service-Taxability. AAR-Karnataka.

In Re: *Gnanaganga Gruha Nirmana Sahakara Sangha Niyamitha*, reported in 2020 (41) G.S.T.L. 279 (A.A.R. - GST - Kar.)

Applicant, being a registered House Building Co-operative Society and engaged in development and sale of sites to its members for housing, fully covered under definition of "housing society" under Notification No. 12/2017-C.T. (Rate) - Further, it is also carrying out maintenance of providing proper civil, water and electric amenities to residents till handing over entire layout to Municipality for which they collect some pre-determined amount from members. The applicant seeks advance Ruling on the following:

1. Does the society have to pay GST for collecting lump-sum amount as endowment fund, the proceeds of which would be utilized for maintenance charges in terms of the maintenance as indicated in Appendix A above, of the layout with an express condition that the amount would be returned to the Site owners upon the taking over of the layout by the local body as the Society would be utilizing only accretions to the endowment fund from year to year.
2. In the event that any or all of the items from (1) to (4) is rendered taxable whether the same is exempt under Notification No. 12/2017 Entry No. 77 respect of the value of the maintenance amount collected from the members of the society to the extent of ₹7,500/- (Rupees Seven thousand five hundred) per month.

Ruling:

The contributions collected by the applicant from the member of the housing society either annually or once in ten years, if such amount when utilized for sourcing of goods or service from the third person for the common use of its member, the amount utilised in that particular tax period, from both individual contributions and from the endowment fund, must be divided by recipients of such service in the society and if the said amount per member does not exceed Rupees Seven thousand five hundred in that tax period, such amount is exempted from tax as per Entry No. 77 of Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017 as amended by the Notification No. 2/2018, dated 25-1-2018. Suppose if that amount per member in that tax period exceeds Rupees Seven thousand five hundred, then entire amount is taxable.

The Entry No. 77 of Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017 as amended by the Notification No. 2/2018, dated 25-1-2018 is applicable to the applicant only to the extent of amount of Rupees Seven thousand five hundred per month per member collected by way of reimbursement of charges or share of contribution for sourcing of goods or services from a third person for the common use of its members.

Chapter 6

Valuation Mechanism

Synopsis

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1. Introduction

The concept of value plays an important role to discharge tax liability of goods and services in every statute, it is necessary to determine the value of goods and services when the tax is normally payable on *ad valorem* basis. The similar concept of tax payable on *ad valorem* basis has been adopted under GST. The percentage of value of the supply of goods or services is the basis to pay tax under GST. So, the Supply of goods and services is the sole factor to determine value and pay tax liability on *ad valorem* basis under GST.

2. Transaction value is basis for Valuation

The CGST Act, 2017 and CGST Rules has prescribed that the value of a supply of goods and services is based on the concept of transaction value like erstwhile Central Excise provisions. Since GST is destination based tax and to be

collected at consumption point, so at each stage of supply the value addition shall includes all taxes, fees levied other than this Act, at the time of supply charged separately by the supplier.

Section 15 of the CGST Act, 2017 and Determination of Value of Supply, CGST Rules, 2017 contain provisions related to valuation of supply of goods and services made in different circumstances and to different persons.

2.1 Value of taxable supply not include GST

(1) The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

(2) The value of supply shall include —

(a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;

(b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;

(While calculating the value of the supply made by the component manufacturer, the value of moulds and dies provided by the OEM to the component manufacturer on FOC basis shall not be added to the value of such supply because the cost of moulds/dies was not to be incurred by the component manufacturer and thus , does not merit inclusion in the value of supply in terms of Section 15(2)(b) of the CGST Act, 2017, however the amortized cost of such mould/dies, as the same will not be considered to the component manufacturer in the course or furtherance of the former's business, Clarified vide Circular No. 47/21/2018-GST, dated 8-6-2018).

(c) incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;

(d) interest or late fee or penalty for delayed payment of any consideration for any supply; and

(e) subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.

(3) The value of the supply shall not include any discount which is given—

(a) before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply; and

- (b) after the supply has been effected, if —
 - (i) such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and
 - (ii) Input Tax Credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.
- (4) Where the Value of the supply of goods or services or both cannot be determined under sub-section (1), the same shall be determined in such manner as may be prescribed.

(5) Notwithstanding anything contained in sub-section (1) or sub-section (4), the value of such supplies as may be notified by the Government on the recommendations of the Council shall be determined in such manner as may be prescribed.

3. Valuation Rules

On the basis of the CGST Act, 2017, Valuation Rules has been framed under GST. The main provisions of valuation Rules has been incorporated under the Chapter IV - Determination of Value of Supply and Rule 27 to Rule 35 of the CGST Rules, 2017.

4. Transaction Value

Under GST law, taxable value is the transaction of value i.e. price actually paid or payable, provided the supplier & the recipient are not related and price is the sole consideration. In most of the cases of regular normal trade, the invoice value will be taxable value. However, to determine value of certain specific transactions, determination of value of supply rules have been prescribed in Rule 27 to Rule 35 of the CGST Rules, 2017.

5. Compulsory Inclusions

Any taxes, fees, charges levied under any law other than GST law, expenses incurred by the recipient on behalf of the supplier, incidental expenses like commission & packing incurred by the supplier, interest or late fees or penalty for delayed payment and direct subsidies (expect government subsidies) are required to be added to the price (if not already added) to arrive at the taxable value.

6. Exclusion of discounts

Discounts like trade discount, quantity discount etc, are part of the normal trade and commerce. Therefore, pre-supply discounts i.e. discounts recorded in the invoice have been allowed to be excluded while determining the taxable value.

Discounts provided after the supply can also be excluded while determining the taxable value, provided two conditions are met, namely:

- (a) discounts is established in terms of a pre supply agreement between the supplier & the recipient and such discount is linked to relevant invoices.
- (b) Input Tax Credit attributable to the discounts is reversed by the recipient.

7. Value of supply of goods or services where the consideration is not wholly in money [Rule-27]

In some cases, where consideration for a supply is not solely in money, taxable value has to be determined as – prescribed in the rules. In such cases following values have to be taken sequentially to determine the taxable value;

- (a) open market value of such supply;
- (b) total money value of the supply i.e. monetary consideration plus money value of the non-monetary consideration;
- (c) value of supply of like kind and quality;
- (d) value of supply based on cost i.e. cost of supply plus 10% mark-up;
- (e) value of supply determined by using reasonable means consistent with principles & general provisions of GST law (Best judgment method).

Open Market Value means the full value of money excluding taxes under GST laws, payable by a person to obtain such supply at the time when supply being valued is made, provided such supply is between unrelated persons and price is the sole consideration for such supply.

8. Value of supply of goods or services or both between distinct or related persons, other than through an agent [Rule-28]

(1) A person who is under influence of another person is called a related person like members of the same family or subsidiaries of a group company etc. Under GST law various categories of related person have been prescribed and as relation may influence the price between two related person thereof special valuation rule has been framed to arrive at the taxable value of transactions between related persons. In such cases following values have to be taken sequentially to determine the taxable value:—

- (a) Open market value of such supply;
- (b) Value of supply of goods or services of like kind and quality;
- (c) Value of supply based on cost i.e. cost of supply plus 10% mark-up,
- (e) Value of supply determined by using reasonable means consistent with principles & general provisions of GST law (Best judgment method).

Provided that where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to ninety percent of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person:

Provided where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of goods or services.

"(2) Notwithstanding anything contained in sub-rule (1), the value of supply of services by a supplier to a recipient who is a related person, by way of providing corporate guarantee to any banking company or financial institution on

behalf of the said recipient, shall be deemed to be one per cent of the amount of such guarantee offered, or the actual consideration, whichever is higher.".

9. Value of supply of goods made or received through an agent [Rule-29]

The value of supply of goods between the principal and his agent shall,—

- (a) be the open market value of the goods being supplied, or at the option of the supplier, be 90% of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person, where the goods are intended for further supply by the said recipient;
- (b) where the value of a supply is not determinable under clause (a), the same shall be determined by application of Rule 30 or rule 31 in that order.

10. Value of supply of goods or services or both based on cost [30]

Where the value of a supply of goods or services or both is not determinable by any of the preceding rules, the value shall be one hundred and ten per cent of the cost of production or manufacture or cost of acquisition of such goods or cost of provision of such services.

11. Residual method for determination of value of supply of goods or services or both [31]

Where the value of supply of goods or services or both cannot be determined under Rules 27 to 30, the same shall be determined using reasonable means consistent with the principles and general provisions of Section 15 and these rules:

Provided that in case of supply of services, the supplier may opt for this rule, ignoring Rule 30.

12. Value of supply in case of lottery, betting, gambling and horse racing. (Rule 31A of CGST Rules)

(1) Notwithstanding anything contained in the provisions of this Chapter, the value in respect of supplies specified below shall be determined in the manner provided hereinafter,

(2) (a) The value of supply of lottery run by State Governments shall be deemed to be 100/112 of the face value of ticket or of the price as notified in the Official Gazette by the organising State, whichever is higher.

(b) The value of supply of lottery authorised by State Governments shall be deemed to be 100/128 of the face value of ticket or of the price as notified in the Official Gazette by the organising State, whichever is higher.

Explanation:—For the purposes of this sub-rule, the expressions-

- (a) lottery run by State Governments means a lottery not allowed to be sold in any State other than the organizing State;
- (b) lottery authorised by State Governments means a lottery which is authorised to be sold in State(s) other than the organising State also; and

- (c) Organising State has the same meaning as assigned to it in clause (f) of sub-rule (1) of rule 2 of the Lotteries (Regulation) Rules, 2010.
- (3) The value of supply of actionable claim in the form of chance to win in betting, gambling or horse racing in a race club shall be 100% of the face value of the bet or the amount paid into the totalisator.

31B. Value of supply in case of online gaming including online money gaming.—Notwithstanding anything contained in this chapter, the value of supply of online gaming, including supply of actionable claims involved in online money gaming, shall be the total amount paid or payable to or deposited with the supplier by way of money or money's worth, including virtual digital assets, by or on behalf of the player:

Provided that any amount returned or refunded by the supplier to the player for any reasons whatsoever, including player not using the amount paid or deposited with the supplier for participating in any event, shall not be deductible from the value of supply of online money gaming.

31C. Value of supply of actionable claims in case of casino.—Notwithstanding anything contained in this chapter, the value of supply of actionable claims in casino shall be the total amount paid or payable by or on behalf of the player for –

- (i) purchase of the tokens, chips, coins or tickets, by whatever name called, for use in casino; or
- (ii) participating in any event, including game, scheme, competition or any other activity or process, in the casino, in cases where the token, chips, coins or tickets, by whatever name called, are not required:

Provided that any amount returned or refunded by the casino to the player on return of token, coins, chips, or tickets, as the case may be, or otherwise, shall not be deductible from the value of the supply of actionable claims in casino.

Explanation.—For the purpose of rule 31B and rule 31C, any amount received by the player by winning any event, including game, scheme, competition or any other activity or process, which is used for playing by the said player in a further event without withdrawing, shall not be considered as the amount paid to or deposited with the supplier by or on behalf of the said player.

13. Determination of value in respect of certain supplies (Rule 32 of CGST Rules)

(1) Notwithstanding anything contained in these rules, the value in respect of supplies specified below shall, at the option of the supplier, be determined in the manner provided hereinafter.

(2) The value of supply of services in relation to purchase or sale of foreign currency, including money changing, shall be determined by the supplier of service in the following manner:—

- (a) for a currency, when exchanged from, or to, Indian Rupees, the value shall be equal to the difference in the buying rate or the selling rate, as

the case may be, and the Reserve Bank of India reference rate for that currency at that time, multiplied by the total units of currency:

Provided that in case where the Reserve Bank of India reference rate for a currency is not available, the value shall be 1% of the gross amount of Indian Rupees provided or received by the person changing the money:

Provided further that in case where neither of the currencies exchanged is Indian Rupees, the value shall be equal to 1% of the lesser of the two amounts the person changing the money would have received by converting any of the two currencies into Indian Rupee on that day at the reference rate provided by Reserve Bank of India.

Provided also that a person supplying the services may exercise option to ascertain value in terms of clause (b) for a financial year and such option shall not be withdrawn during the remaining part of that financial year.

- (b) at the option of supplier of services, the value in relation to supply of foreign currency, including money changing, shall be deemed to be
 - (i) 1% of the gross amount of currency exchanged for an amount up to ₹1 lakh, subject to a minimum amount of ₹250;
 - (ii) ₹1000 and 0.5% of the gross amount of currency exchanged for an amount exceeding ₹1 lakh and up to ₹10 lakh; and
 - (iii) ₹5000 and ₹500 and one 1/10th% of the gross amount of currency exchanged for an amount exceeding ₹10 lakh, subject to maximum amount of ₹60 thousand rupees.

(3) The value of supply of services in relation to booking of tickets for travel by air provided by an air travel agent shall be deemed to be an amount calculated @ 5% of the basic fare in the case of domestic bookings, and @ 10% of the basic fare in the case of international bookings of passage for travel by air.

(4) The value of supply of services in relation to life insurance business shall be:

- (a) the gross premium charged from a policy holder reduced by the amount allocated for investment, or savings on behalf of the policy holder, if such amount is intimated to the policy holder at the time of supply of service;
- (b) in case of single premium annuity policies other than (a), 10% of single premium charged from the policy holder; or
- (c) in all other cases, 25% of the premium charged from the policy holder in the first year and 12.5% of the premium charged from policy holder in subsequent years:

Provided that nothing contained in this sub-rule shall apply where the entire premium paid by the policy holder is only towards the risk cover in life insurance.

(5) Where a taxable supply is provided by a person dealing in buying and selling of second hand goods i.e. used goods as such or after such minor

processing which does not change the nature of the goods and where no input tax credit has been availed on purchase of such goods, the value of supply shall be the difference between the selling price and purchase price and where the value of such supply is negative it shall be ignored.

(6) The value of a token, or a voucher, or a coupon, or a stamp (other than postage stamp) which is redeemable against a supply of goods or services or both shall be equal to the money value of the goods or services or both redeemable against such token, voucher, coupon, or stamp.

(7) The value of taxable services provided by such class of service providers as may be notified by the Government on the recommendations of the Council as referred to in paragraph 2 of Schedule I of the said Act between distinct persons as referred to in Section 25, where input tax credit is available, shall be deemed to be NIL.

14. Value of supply in cases where Kerala Flood Cess is applicable (Rule 32A of CGST Rules)

The value of supply of goods or services or both on which Kerala Flood Cess is levied under clause 14 of the Kerala Finance Bill, 2019 shall be deemed to be the value determined in terms of section 15 of the Act, but shall not include the said cess.

15. Value of supply of services in case of pure agent (Rule 33 of CGST Rules)

Notwithstanding anything contained in the provisions of these rules, the expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply, if all the following conditions are satisfied, namely:—

- (i) the supplier acts as a pure agent of the recipient of the supply, when he makes payment to the third party on authorisation by such recipient;
- (ii) the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoices issued by the pure agent to the recipient of service; and
- (iii) the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.

Explanation.—For the purposes of this rule, “pure agent” means a person who—

- (a) enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;
- (b) neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply;
- (c) does not use for his own interest such goods or services so procured; and
- (d) receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.

Illustration.—Corporate services firm A is engaged to handle the legal work pertaining to the incorporation of Company B. Other than its service fees, A also recovers from B, registration fee and approval fee for the name of the company paid to the Registrar of Companies. The fees charged by the Registrar of Companies for the registration and approval of the name are compulsorily levied on B. A is merely acting as a pure agent in the payment of those fees. Therefore, A's recovery of such expenses is a disbursement and not part of the value of supply made by A to B.

16. Rate of exchange of currency, other than Indian rupees, for determination of value (Rule 34 of CGST Rules)

(1) The rate of exchange for determination of value of taxable goods or services or both shall be the applicable reference rate for that currency as determined by the Reserve Bank of India on the date of time of supply in respect of such supply in terms of Section 12 or, as the case may be, Section 13 of the Act.

(2) The rate of exchange for determination of value of taxable services shall be the applicable rate of exchange determined as per the generally accepted accounting principles for the date of time of supply of such services in terms of section 13 of the Act.]

17. Value of supply inclusive of integrated tax, Central tax, State tax, Union territory tax (Rule 35 of CGST Rules)

Where the value of supply is inclusive of integrated tax or, as the case may be, Central Tax, State Tax, Union Territory Tax, the tax amount shall be determined in the following manner, namely:—

$$\text{Tax amount} = \frac{(\text{Value inclusive of taxes} \times \text{tax rate in \% of IGST or, as the case may be, CGST, SGST or UTGST})}{(100 + \text{sum of tax rates, as applicable, in \%})}$$

For example:

If the value inclusive of tax is ₹100/- and applicable GST tax rate is 18% then,

$$\text{Tax amount} = \frac{(100 \times 18)}{(100 + 18)} = \frac{1800}{118} = ₹15.25$$

Explanation.—For the purposes of the provisions of this Chapter, the expressions—

- (a) “open market value” of a supply of goods or services or both means the full value in money, excluding the Integrated Tax, Central Tax, State Tax, Union Territory Tax and the Cess payable by a person in a transaction, where the supplier and the recipient of the supply are not related and the price is the sole consideration, to obtain such supply at the same time when the supply being valued is made;
- (b) “supply of goods or services or both of like kind and quality” means any other supply of goods or services or both made under similar

circumstances that, in respect of the characteristics, quality, quantity, functional components, materials, and the reputation of the goods or services or both first mentioned, is the same as, or closely or substantially resembles, that supply of goods or services or both.

18. Advance Ruling

NO GST on volume discount received on purchase & sale of vehicles without any GST adjustment: AAR-Karnataka

In Re: *Kwality Mobikes (P) Ltd.*, reported in [2019 (30) G.S.T.L. 668 (AAR-GST)]

The applicant is engaged in the business of supply of motor vehicles. It is eligible for volume discount for sales and purchase of such vehicles on achieving the target. It has sought an Advance Ruling to determine the applicability of GST on the volume discount received on purchase and sales of vehicles.

The Authority for Advance Rulings observed that the authorised dealer is issuing a tax invoice on supply of goods to the applicant on the basis of which applicant takes the ITC. The applicant is eligible for volume discount on purchases and sales made above the target specified for which a credit note is issued by the authorised dealer which neither adjusts price of goods already sold nor adjusts GST amount. The applicant is also not reducing ITC already claimed by it as it does not affect the price of goods sold.

As per GST provisions, discount given after the supply shall not be included in the value of supply if such discount is established in terms of an agreement before or at the time of supply and linked to relevant invoices. Further, the ITC attributable to discount on basis of document issued by supplier has to be reversed by the recipient. Since the credit note is issued as post-sale event and applicant has not reversed ITC attributable to discount received in the form of credit note, the criteria given under GST Act to exclude discount from value of supply are not fulfilled. In the given case, credit note issued by the dealer does not have any effect on the value of supply and is only a financial document for accounts adjustment for the incentive provided. Hence, there is no effect of GST. Therefore, volume discount received on purchase and sales in the form of credit notes without any adjustment of GST is not liable for GST.

* * *

Tools supplied by OEM to Component manufacturer for free not to be added to value of component: AAR-Karnataka.

In Re: *Toolcomp System (P.) Ltd.*, reported in 2019(29) G.S.T.L. 137 (AAR-GST).

The applicant is a manufacturer and seller of plastic moulds, jigs, fixtures, gauges, etc. The applicant receives tools from customers free of cost (FOC) for the manufacture of parts which are returned to the customers. In this connection the applicant has sought an Advance Ruling to determine whether tools supplied for free shall be added to the value of component being manufactured and applicability of GST on such tools.

The Authority for Advance Rulings observed that tools owned by original equipment manufacturer (OEM) are provided to component manufacturer on FOC basis and they do not constitute supply as there is no consideration involved and, hence, value of tools shall not be added to the value of components. On examining the purchase order of the applicant, it is not under any obligation to use its own tools for manufacture of components and the same are supplied to them free of cost and on returnable basis. The Authority for Advance Rulings, thus, ruled that the cost of tools supplied by OEM for free is not required to be added to value of components supplied by the applicant and, hence, not liable to GST.

Chapter 7

Input Tax Credit

Synopsis

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1. ITC scheme is the backbone of the GST regime

The term input is one of the important concepts, which is integrally connected to output. The existence of output cannot be realized without input. The Input Tax occupies an important place in any tax system. Input Tax Credit under erstwhile Cenvat provisions was backbone of the Cenvat Credit Rules. Similarly, the ITC scheme is the backbone of the GST regime; accordingly the said scheme has been incorporated under GST law. One of the main purposes of bringing GST is that it would remove cascading effect by facilitating seamless

flow of credit of tax paid on receipt of goods and services or both which are used or intended to be used in the course or furtherance of business at each stage of supply.

2. Provision of ITC

Section 16 of the CGST Act, 2017 prescribed that every registered person shall be entitled to take credit of input tax charged on any supply of goods or services or both which are used or intended to be used in the course or furtherance of his business and said amount shall be credited to the electronic credit ledger and provided certain conditions/restrictions thereon.

Thus Input Tax includes both ‘input services’ and ‘input goods’ shall be available to a registered person in terms of Section 16 of the CGST Act, 2017.

3. Input Tax Credit on RCM

A registered person paid taxes under Reverse Charge Mechanism (RCM) are entitled to avail ITC as a recipient person of supply of goods or services or both.

4. Meaning of Reverse Charge

Section 2(98) of the CGST Act, 2017 has defined “reverse charge” means the liability to pay tax by the recipient of supply goods or services or both instead of the supplier of such goods or services or both under sub-section (3) or sub-section (4) of Section 9, or under sub-section (3) or sub-section (4) of Section 5 of the IGST Act, 2017.

5. Meaning of Input Tax

Section 2(62) of the CGST Act, 2017 has defined “input tax” in relation to a registered person, means the Central Tax, State Tax, Integrated Tax or Union Territory Tax charged on any supply of goods or services or both made to him. A registered person can be availed ITC against the following supplies of goods and services:

- (1) IGST paid on imported goods and services against assessed bill of entry.
- (2) CGST and SGST paid under reverse charge in respect of the supply of taxable goods and services or both by unregistered to registered person for intra-State transaction, recipient or registered person shall raise invoice and paid the tax amount and take ITC.
- (3) IGST paid under reverse charge in respect of the supply of taxable goods and services or both by unregistered to registered person for inter-State transaction, recipient or registered person shall raise invoice and paid the tax amount and take ITC.
- (4) Tax paid on supply of goods or services or both in case of – [Section 7(3) of the IGST Act]
 - (a) two different States (IGST)
 - (b) two different Union Territories (UTGST);
 - (c) a State and a Union Territory (UTGST).

- (5) IGST paid on supply of services imported into India in the course of inter-State trade or commerce under Section 7(4) of the IGST Act.

6. Various definitions relating to ITC

6.1 Input Tax Credit

Section 2(63) of CGST Act, 2017 defined “input tax credit” means the Credit of Input Tax.

6.2 Input

Section 2(59) of the CGST Act, 2017 defines “Input” means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business.

6.3 Goods

Section 2(52) of the CGST Act, 2017 defines “goods” means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be served before supply or under a contract of supply.

6.4 Capital Goods

Section 2(19) of CGST Act, 2017 defines “Capital Goods” means goods, the value of which is capitalized in the books of account of the person claiming the Input Tax Credit and which are used or intended to be used in the course or furtherance of business.

6.5 Services

“Services” means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged [Section 2(102) of the CGST Act, 2017].

6.6 Input Service

“Input service” means any service used or intended to be used by a supplier in the course or furtherance of business. [Section 2(60) of the CGST Act, 2017].

6.7 Input Service Distributor

Section 2(61) of the CGST Act, 2017 defines “Input Service Distributor” means an office of the supplier of goods or services or both which receives tax invoices issued under Section 31 towards the receipt of input services and issue a prescribed document for the purposes of distributing the credit of Central tax, State tax, Integrated tax or Union territory tax paid on the said services to a supplier of taxable goods or services or both having the same Permanent Account Number (PAN) as that of the said office.

6.8 Agent

“Agent” means a person, including a factor, broker, commission agent, arhatia, del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another [Section 2(5) of the CGST Act, 2017].

7. Who are eligible to take Input Tax Credit?

Section 16 of the CGST Act, prescribed every registered person shall, subject to such conditions and restrictions prescribed under Section 49, be entitled to take credit of input tax charged on any supply of goods or services or both which are used or intended to be used in the course or furtherance of his business.

8. Who are not eligible to take Input Tax Credit?

A registered person working under composition scheme even when received goods or services are used in furtherance of his business.

A non-resident taxable person on receipt of goods and services except on goods imported by him.

9. Input Tax Credit not available on the following goods and services

9.1 No ITC is available on motor vehicles – section 17(5)(a)

For example ABC & CO., buys a car for their business in that case they cannot claim ITC on the same. (Input Tax Credit would now be available in respect of dumpers, work-trucks, fork-lift trucks and other special purposes motor vehicles)

There are certain exceptions available when motor vehicles are used for making taxable supplies, namely:—

- (a) further supply of such vehicles; or
- (b) transportation of passengers; or
- (c) transportation of goods; or
- (d) imparting training on driving; flying, navigating such vehicles;

9.2 (No ITC shall be available on vessels and aircrafts except when used for specified purposes under clause (aa) scope of credit is widened to also include taxable supply of imparting training on flying aircraft)

For the above provisions it can be explained that if any dealer purchase a car later sold to another customer he will charge GST on value addition and availed ITC on original purchase. Likewise, if any tour operators purchase a bus and engaged for inter-city transport passengers ITC is available. Similarly, a driving school buys a car and engaged for imparting training to learner or students in that case ITC is available to the extent of GST paid on purchase of a car by driving institute.

SCOPE OF ITC HAS BEEN WIDENED BY GST COUNCIL

9.3 As per decision of 28th meeting of the GST Council, the scope of Input Tax Credit is being widened, and it would be now made available in respect of the following: [This provision has been inserted *vide* CGST (Amendment) Act, 2018 and has been in forced w.e.f. 01.02.2019].

- (a) Most of the activities or transactions specified in Schedule III;
- (b) Motor vehicles for transaction of persons having seating capacity of more than thirteen (including driver), vessels and aircraft;

- (c) Motor vehicles for transportation of money for or by a banking company or financial institution;
- (d) Services of general insurance, repair and maintenance in respect of motor vehicles, vessels and aircraft on which credit is available; and
- (e) Goods or services which are obligatory for an employer to provide to its employees, under any law for the time being in force (in respect of food and beverages, health services, renting or hiring of motor vehicles, vessels and aircraft, travel benefits to employees etc.).

**NO ITC ON FOOD AND BEVERAGES, OUTDOOR CATERING,
BEAUTY TREATMENT, HEALTH CARE AND PLASTIC SURGERY-**
Section 17(5)(b)(ii)

9.4 No ITC would be available to the person who has made payment of tax for the following supplies except where same category of goods or services is used for making outward supply or an element of mixed or composite supply, namely:—

- (i) Food and beverages services,
- (ii) Outdoor catering services,
- (iii) Beauty treatment services,
- (iv) Health services,
- (v) Cosmetic and plastic surgery,

Therefore, ITC will be available if the category of inward and outward supply is same or the component belongs to a mixed or composite supply under GST.

Example: Suresh & Co. arranges for an office staffs get together and Suresh & Co. will not be able to claim ITC on the food & beverages provided in the party.

9.5 Membership of a club, health and fitness centre

**No ITC will be allowed on any membership fees for gyms, clubs etc. -
section 17(5)(b)(ii).**

Example: A Managing Director of ABC Company has taken membership of a club and the company pays the membership fees with GST. But ITC will not be available to the company or to ABC Company.

NO ITC ON CAB SERVICES, LIC AND HEALTH CARE SERVICES

9.6 The following supplies except when notified by the Government as obligatory to provide such service by employer to employee or where same category of goods or services is used for making outward supply or an element of mixed or composite supply, namely:—

- (a) Rent-a-cab services,
- (b) Life insurance services,
- (c) Health insurance services.

However, any services which are made obligatory for an employer to provide its employee by the Central Government under any current law in force. Then ITC will be available to the said company.

Example: Most of the software company providing services of cab to pick up and drop in their residence to the female staffs in night shifts as per regulation of the Government, then said company hires rent-a-cab to provide transportation for its female staff on night shifts. Then ITC will be available to the said company on GST paid to rent a-cab-service.

NO ITC ON TRAVEL BENEFITS EXTENDED TO EMPLOYEE-section 17(5)(b)(iii)

9.7 Travel benefits extended to employees on vacation such as leave or home travel concession.

However, ITC will be allowed for travel for business purposes only if any employee travel to any company's official work then whatever ITC paid against travel bill ITC will be available.

NO ITC ON WORKS CONTRACT SERVICES –Section 17(5)(c)

9.8 Works contract services when supplied for construction (including reconstruction, renovation, additions or alterations or repairs) of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service.

For example: ABC Contractors are constructing an immovable property. They cannot claim any ITC on the works contract. If the said property constructed on behalf of XYZ company and used in the course or furtherance of business then ITC will be available but ITC will not be available for construction on own account.

NO ITC WOULD BE AVAILABLE ON CONSTRUCTION OF IMMOVABLE PROPERTY-Section 17(5)(d)

9.9 Goods or services or both received by a taxable person for construction (including, re construction, renovation, additions or alterations or repairs) of an immovable property (other than plant or machinery) even if used for furtherance of business.

For example: Sujana Metals constructs an office buildings for its corporate office then ITC will not be available but if the said company constructs a blast furnace to use in manufacturing process of steel plant then ITC will be available as it is coming under category of plant and machinery for the company.

9.10 Goods or services or both on which tax has been paid under Section 10, i.e. composition scheme-section 17(5)(e) of CGST Act,2017

No ITC would be available to the person who has made the payment of tax under composition scheme as per Section 10 of the CGST Act, 2017

9.11 Goods or services or both received by a non-resident taxable person except on goods imported by him.

No ITC would be available on goods/services received by a non-resident taxable person-section 17(5)(f)

ITC is only available on any goods imported by him.

9.12 No ITC on CSR Activities carried by a company.

NO ITC would be available on goods or services or both received by a registered person which are used or intended to be used for activities relating to his obligations under corporate social responsibility referred to in section 135 of the companies Act, 2013- Section 17(5)(fa).

9.13 Goods or services or both used for personal consumption.

No ITC would be available on goods/services or both used for personal purposes and not for business purposes-Section 17(5)(g)

9.14 Goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples.

No ITC would be available for goods lost, stolen, destroyed, written off or free samples-Section 17(5)(h)

Explanation: For the Sr. Nos. 6 and 7, above - the expression “plant and machinery” means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes:—

- (i) land, building or any other civil structure;
- (ii) telecommunication towers; and
- (iii) Pipelines laid outside the factory premises.

NO ITC ON RECOVERY OF TAX OR ITC ON FRAUD CASES-Section 17(5)(i)

9.15 No ITC on tax collected by the department on account of –

- (i) Non-payment/short payment recovery, or
- (ii) Excessive refund; or
- (iii) ITC utilised on fraud cases.

ITC will not be available for any tax paid as per recovery process of department and fraud cases or wilful misstatements or suppression of facts, confiscation and seizure of goods.

NO ITC ON RESTAURANT SERVICES

9.16 No ITC on tax paid on restaurant services-section 17(5)(b)

A standalone restaurant will charge only 5% GST on items supplied by him but cannot avail ITC on the inputs used by him. However, restaurants as part of accommodation services room tariff exceeding ₹7,500/- will pay 18% GST and avail ITC.

BLOCKED CREDITS UNDER GST-Section 17**10. Other restrictions of Input Tax Credit**

10.1 In addition to forgoing detail of blocked credits on specific goods or services, there are other restrictions in taking Input Tax Credit as under:—

- (1) Any tax paid in accordance with the provisions of Section 74 of the CGST Act, i.e. pursuance to any order where any demand on account of non-levy, short levy due to suppression of facts, any fraud, wilful misstatement recovered by the department.
- (2) Any tax paid under Sections 129 and 130 of the CGST Act, i.e. recovered by the department on account of any detention or seizure of goods, release of goods and confiscation of goods in transit.
- (3) Where the goods or services or both are used by the registered person partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business. [17(1) of CGST Act]
- (4) Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies. The value of exempt supply shall be calculated in terms of formula prescribed in rules and shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and sale of building. [Section 17(2) of CGST Act.]

Special provisions in respect of Banks, Financial Institutions and NBFC

- (5) A banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances shall have the option to either comply with the provisions of formula so prescribed under Section 17(2) of CGST Act, or avail of, every month, an amount equal to 50% of the eligible Input Tax Credit on inputs, capital goods and input services in that month and the rest shall lapse.—section 17(4) of CGST Act.

Sale of warehoused goods before filing BOE includable in value of exempt supply for reversal of common ITC u/s 17(3) of the CGST Act,2017 as amended by Section 139 of the Finance Act,2023.

Sub-section (3) of section 17 of CGST Act is being amended as follows:—

Explanation to sub-section (3) of section 17 of the CGST Act is being amended so as to restrict availment of input tax credit in respect of certain transactions specified in para 8(a) of Schedule III of the said Act,

as may be prescribed, by including the value of such transactions in the value of exempt supply for the purpose of reversal of common input tax credit u/s 17(2) & 17(3) read with rule 42 & 43 of the CGST Act, 2017.

By which no ITC on services used for storage of goods under Customs Bond: This amendment has been done to included value of activities/ transactions specified in Para 8(a) of the Schedule III (High sea sale and sale of warehoused goods before clearance for Home Consumption) within the meaning of exempt supply for the reversal of common inputs under section 17(2) & 17(3)/rule 42/43 of CGST Rules. This is effective from 01.10.2023 vide Notification No.48/2023-CT, dated 29.09.2023.

Payment has to receive by buyer within 180 days, if due amount fails to pay to supplier then recipient have to reverse ITC but no interest liability- second proviso to Section 16(2)(d)

- (6) Payment for supplies received has to be made within a maximum period of 180 days; otherwise ITC already claimed will be added, with interest to output tax liability.

As per decision of 28'th meeting of the GST Council, in case the recipient fails to pay the due amount to the supplier within 180 days from the date of issue of invoice, the Input Tax Credit availed by the recipient will be reversed, but liability to pay interest is being done away with. So, the recipient shall no longer be required to pay interest liability.

As per amendment of Section 138 of the Finance Act, 2023 no interest is applicable, if the ITC availed remains unutilised in case of non-payment to vendor within 180 days. If the ITC so availed shall be paid by the recipient along with the interest leviable u/s 50. Further, the recipient would be entitled to re-avail the ITC on payment by him to the supplier of the amount towards the value of goods or services.

Consequently, the liability of interest on such reversal shall be determined in accordance with Section 50(3) instead of 50(1) of the CGST Act, only when such wrongly availed credit is utilised by the registered person.

This is effective from 1.10.2023 vide Notification No.48/2023-CT, dated 29.09.2023

Depreciation on Capital goods has been claimed then ITC to that extent is not admissible- Section 16(3) of CGST/SGST Act, 2017

- (7) 16 (3) of CGST Act, prescribes where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income tax Act, 1961 (43 of 1961), the input tax credit on the said tax component shall not be allowed.

ITC can be availed upto one year from the date of issue of invoice- Section 18(2) of CGST/SGST Act, 2017

- (8) Registered person shall not be allowed to take ITC if the same has not been credited within one year from the date of issue of tax invoice relating to such supply of goods or services or both.

ITC can be availed till 30th Day of November following the end of financial year- Section 16(4) of CGST/SGST Act, 2017

- (9) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the thirtieth day of November following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier.

11. Clarification on various issues pertaining to GST as under:

- (i) refund claimed by the recipients of supplies regarded as deemed export;
- (ii) interpretation of section 17(5) of the CGST Act;
- ITC so availed by the recipient of deemed export supplies would not be subjected to provisions of Section 17 of the CGST Act, 2017. Such ITC availed by the recipient of deemed export supply for claiming refund of tax paid on supplies regarded as deemed exports is not to be included in the “Net ITC” for computation of refund of unutilised ITC on account of zero-rated supplies under rule 89(4) or on account of inverted rated structure under rule 89(5) of the CGST Rules, 2017.
- Scope of ITC is being widened, and it would be made available in respect of goods or services which are obligatory for an employer to provide to its employees, under law time being force u/s 17(5)(b)(iii)
- Availment of ITC is not barred under 17(5)(b)(i) of the CGST Act, in case of leasing, other than leasing of motor vehicles, vessels and aircrafts

Vide Circular No. 172/04/2022-GST, dated 7-7-2022

12. Eligibility & conditions for taking Input Tax Credit

Section 16 of the CGST Act, specified the eligibility and conditions for taking Input Tax Credit. The registered person has to take credit in the electronic credit ledger as provided in Common portal. No registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both unless he has to certify the following conditions:

- (1) Possession of taxpaying documents such as tax invoice issued by the supplier under Section 31, debit note under Section 34 or a bill of entry.
- (2) Goods/Service should have actually been received/deemed to be received by the taxable person.
- (3) Tax charged on the invoice and should have been paid to the Government.
- (4) Return should have been furnished by the taxpayers under Section 39 of the CGST Act.
- (5) Input Tax Credit for goods against an invoice received in lots/instalments can be availed only on last lot in instalments.

In section 16 of the Central Goods and Services Tax Act, in sub-section (2), after clause (a), the following clause shall be inserted, 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;”. (Notified vide Notification No. 39/2021-Central Tax, dated 21.12.2021, w.e.f. 01.01.2022)

1. Introduction of a new condition for availing Input Tax Credit

(Clause 109 of Finance Act, 2021 - Effective Date: January 01, 2022)

- Section 16(2) of the CGST Act provides certain conditions on fulfilment of which the registered person would be entitled to claim the Input Tax Credit ('ITC') of GST charged on the inward supply of goods or services or both. The conditions include possession of the relevant document, payment of tax, furnishing of returns, etc.
- The Finance Act 2021 has made an amendment in the above provision to provide a new condition for availing the ITC.
- It has been provided that ITC on invoice or debit note can be availed only when the details of such invoices/debit notes have been furnished by the supplier in its Form GSTR 1 and the same is communicated to the recipient in the manner specified in Section 37 of the CGST Act
- As a result of this amendment, the registered person would be eligible to claim the ITC only when the details of invoices/debit notes are uploaded by their vendors in their Form GSTR 1 and the same reflects in Form GSTR 2A

(Notified vide Notification No. 39-Central Tax, dated 21.12.2021)

13. ITC appears in restricted category, the same cannot be availed by the registered person

Section 16(2)(ba) has been inserted as “the details of input tax credit in respect of the said supply communicated to such registered person under section 38 has not been restricted.”

This is a new condition which is to be satisfied for availment of input tax credit. In GSTR-2B, if the ITC appears in restricted category, the same cannot be availed by the registered person. Cases where the ITC can be restricted under GSTR-2B and ITC non-restricted to the recipient in GSTR-2B can be ITC availed fully.

Section 100(a)(i) of the Finance Act, 2022 vide Notification 18/2022-CT, dated 28.09.2022

Compulsory Reversal of Input Tax Credit by the Buyers for Non-payment of GST by Suppliers w.e.f. 1st October'2022.

- Section 16(2)(c) of the CGST Act, Supplier must pay taxes either in cash or through utilisation ITC in respect of supply made by him subject to Section 41 of the CGST Act.
- Section 41 of the CGST Act amended prospectively to:
 - * Remove the Concept of provisional ITC and
 - * Provide for reversal of ITC by Recipient where GST not deposited by the supplier to Government exchequer along with the interest @ 18% P.A.
 - * Recipient can re-avail such credit with no time limit, after supplier makes the payment of the corresponding GST liabilities to the Government subject to Section 16(4) of the CGST Act, 2017.

Proviso to Section (16):

Provided that where the goods against an invoice are received in lots or installments, the registered person shall be entitled to take credit upon receipt of the last lot or installment:

Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be paid by him along with interest payable under section 50 , in such manner as may be prescribed:

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment to the suppliers of the amount towards the value of supply of goods or services or both along with tax payable thereon.

This amendment clarifies the manner of payment of ITC availed by the recipient of invoices, but the payment of value of such invoices has not been made within a period of 180 days from the date of issue of the invoice. As per amendment no interest is applicable, if the ITC availed remains unutilised in case of non-payment to vendor within 180 days. If the ITC so availed shall be paid by the recipient along with the interest leviable u/s 50 of the Act. Further, the recipient would be entitled to re-avail the ITC on payment by him to the supplier of the amount towards the value of goods or services.

The above provision passed as per clause 138 vide Finance Act, 2023 and this provision is effective from 01.10.2023 vide Notification No.48/2023-CT dated 29.09.2023

Section 16(3): Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income Tax Act,1961 (43 of 1961), the input tax credit on the said tax component shall not be allowed.

Section 16(4): A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or

both after the thirtieth day of November following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier.

[A registered person shall be entitled to take credit of ITC after the due date of furnishing of the return u/s 39 (GSTR-3B) 30th November -means last return for the month of November.)

| |
|--|
| Summary of section 16(2) of the CGST Act, 2017 and the requirement for availing Input Tax Credit |
|--|

| Sr. No. | Sub-sections of section 16 of CGST Act, 2017 | Conditions for availing ITC | Documents/records for proving availing ITC |
|----------------|---|--|---|
| 01 | 16(2)(a) | Possession of tax invoice/ debit note | Invoice issued by supplier under section 31, debit note under section 34 or bill of entry as per Customs Act,1962 |
| 02 | 16(2)(aa) | The details of invoices/ debit notes has been furnished by the supplier in GSTR-1 and communicated to the recipient reflects in GSTR-2B. | Auto populated in GSTR-2B statement |
| 03 | 16(2) (b) | Goods/services actually have been received/ deemed received by the recipients. | E.way bill for receipt of Goods. Lorry receipt inward receipt register Stores stock receipt register Inventory register Stock – MRN voucher In case of Bill to ship there is no proof of receipt is required it is deemed supply |
| 04 | 16(2)(ba) | Reclaim of ITC on subsequent matching under section 38 | Operation of section 38 corresponding Rule has not been notified yet |
| 05 | 16(2)(c) | Tax charged on invoice or debit note has been paid to the Government | Download copy from GST Portal suppliers GSTIN filing table showing that supplier has filed their GSTR-3B |

| Sr. No. | Sub-sections of section 16 of CGST Act, 2017 | Conditions for availing ITC | Documents/records for proving availing ITC |
|---------|--|---|---|
| 06 | 16(2)(d) | Recipient has filed GSTR-3B under section 39 | Copy of GSTR-3B with ARN |
| 07 | Proviso to Section 16(2) | Payment made to supplier within 180 days from the date of invoice | Supplier's payment ledger Recipients bank statement |

14. Manner of distribution of credit by Input Service Distributor

Section 20(2) of CGST Act, prescribed Input Service Distributor may distribute the credit as per following conditions

(1) The Input Service Distributor shall distribute the credit of central tax as central tax or integrated tax and integrated tax as integrated tax or central tax, by way of issue of a document containing the amount of input tax credit being distributed in such manner as may be prescribed.

(2) The Input Service Distributor may distribute the credit subject to the following conditions, namely:—

- (a) the credit can be distributed to the recipients of credit against a document containing such details as may be prescribed;
- (b) the amount of the credit distributed shall not exceed the amount of credit available for distribution;
- (c) the credit of tax paid on input services attributable to a recipient of credit shall be distributed only to that recipient;
- (d) the credit of tax paid on input services attributable to more than one recipient of credit shall be distributed amongst such recipients to whom the input service is attributable and such distribution shall be pro rata on the basis of the turnover in a State or turnover in a Union territory of such recipient, during the relevant period, to the aggregate of the turnover of all such recipients to whom such input service is attributable and which are operational in the current year, during the said relevant period;
- (e) the credit of tax paid on input services attributable to all recipients of credit shall be distributed amongst such recipients and such distribution shall be pro rata on the basis of the turnover in a State or turnover in a Union territory of such recipient, during the relevant period, to the aggregate of the turnover of all recipients and which are operational in the current year, during the said relevant period.

*Explanation.—*For the purposes of this section,-

- (a) the "relevant period" shall be-

- (i) if the recipients of credit have turnover in their States or Union territories in the financial year preceding the year during which credit is to be distributed, the said financial year; or
- (ii) if some or all recipients of the credit do not have any turnover in their States or Union territories in the financial year preceding the year during which the credit is to be distributed, the last quarter for which details of such turnover of all the recipients are available, previous to the month during which credit is to be distributed;
- (b) the expression "recipient of credit" means the supplier of goods or services or both having the same Permanent Account Number as that of the Input Service Distributor;
- (c) the term "turnover", in relation to any registered person engaged in the supply of taxable goods as well as goods not taxable under this Act, means the value of turnover, reduced by the amount of any duty or tax levied ¹[under entries 84 and 92A] of List I of the Seventh Schedule to the Constitution and entries 51 and 54 of List II of the said Schedule.

BUDGET-2024 PROPOSAL ON ISD.

- The proposals in Budget 2024 provide for changes in ISD mechanism under in Two places in the GST Law.
- Firstly, definitions of ISD under Section 2(61) has been substituted as a result of which the scope has been explained to include offices that received tax invoices for input services for or on behalf of persons having same PAN , including those services liable to tax under RCM specified in sections 9(3) and 9 (4) of CGST Act.
- The proposed substituted definition is extracted hereunder:
 - (61) “Input Service Distributor” means an office of the supplier of goods or services or both which receives tax invoices towards the receipt of input services, including invoices in respect of services liable to tax under sub-section (3) or sub-section (4) of section 9, for or on behalf of distinct persons referred to in section 25, and liable to distribute the input tax credit in respect of such invoices in the manner provided in section 20;’.
 - For section 20 of the Central Goods and Services Tax Act, the following section shall be substituted, namely:—
 - “20. (1) Any office of the supplier of goods or services or both which receives tax invoices towards the receipt of input services, including invoices in respect of services liable to tax under sub-section (3) or sub-section (4) of section 9, for or on behalf of distinct persons referred to in section 25, shall be required to be registered as Input Service Distributor under clause (viii) of section 24 and shall distribute the input tax credit in respect of such invoices.

- (2) The Input Service Distributor shall distribute the credit of central tax or integrated tax charged on invoices received by him, including the credit of central or integrated tax in respect of services subject to levy of tax under sub-section (3) or sub-section (4) of section 9 paid by a distinct person registered in the same State as the said Input Service Distributor, in such manner, within such time and subject to such restrictions and conditions as may be prescribed.
- (3) The credit of central tax shall be distributed as central tax or integrated tax and integrated tax as integrated tax or central tax, by way of issue of a document containing the amount of input tax credit, in such manner as may be prescribed.

15. Documents' requirement for claiming Input Tax Credit

Rule 36 of the CGST Rules, prescribed that the Input Tax Credit shall be availed by a registered person, including the Input Service Distributor, on the basis of any of the following documents, namely:—

- (a) an invoice issued by the supplier of goods or services or both in accordance with the provisions of Section 31;
- (b) an invoice issued in accordance with the provisions of clause (f) of sub-section (3) of Section 31, subject to the payment of tax;
- (c) a debit note issued by a supplier in accordance with the provisions of Section 34;
- (d) a bill of entry or any similar document prescribed under the Customs Act, 1962 or rules made thereunder for the assessment of integrated tax on imports;
- (e) an Input Service Distributor invoice or Input Service Distributor credit note or any document issued by an Input Service Distributor in accordance with the provisions of sub-rule (1) of Rule 54.

16. Input Tax Credit shall be availed if relevant information contained in the document

(2) Input Tax Credit shall be availed by a registered person only if all the applicable particulars as specified in the provisions of Chapter VI are contained in the said document, and the relevant information, as contained in the said document.

Provided that if the said document does not contain all the specified particulars but contains the details of the amount of tax charged, description of goods or services, total value of supply of goods or services or both, GSTIN of the supplier and recipient and place of supply in case of inter-State supply, input tax credit may be availed by such registered person.

17. Input Tax Credit shall not be availed on confirmed demand of fraud or wilful misstatement or suppression of facts

(3) No Input Tax Credit shall be availed by a registered person in respect of any tax that has been paid in pursuance of any order where any demand has been confirmed on account of any fraud, wilful misstatement or suppression of facts.

18. Input tax credit to be availed that has been reflected in GSTR-2B

(4) Input tax credit to 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,—

- (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
- (b) the details of input tax credit in respect of such invoices or debit notes have been communicated to the registered person in FORM GSTR-2B under sub-rule (7) of rule 60.

19. Delinks availment of ITC on debit notes

Section 16(4) [Eligibility and conditions for taking Input Tax Credit]

Delinks availment of ITC on debit notes with the date of issuance of the original invoice. Thus, ITC on debit notes issued after 6 months from the end of the financial year to which invoice pertains can be availed post amendment.

Vide Notification No. 92/22-CT, dated 22-12-2020

20. As per 45 GST Council meeting decision availment of ITC on Debit Notes

- Circular No. 160/16/2021-GST, dated 20th September, 2021
- **Availment of ITC on Debit Notes**
- w.e.f. 01.01.2021, in case of debit notes, the date of issuance of debit note (not the date of underlying invoice) shall determine the relevant financial year for the purpose of section 16(4) of the CGST Act.

The availment of ITC on debit notes in respect of amended provision shall be applicable from 01.01.2021. Accordingly, for availment of ITC on or after 01.01.2021, in respect of debit notes issued either prior to or after 01.01.2021, the eligibility for availment of ITC will be governed by the amended provision of section 16(4), whereas any ITC availed prior to 01.01.2021, in respect of debit notes, shall be governed under the provisions of section 16(4), as it existed before the said amendment on 01.01.2021.

21. Extension of due date of availment of ITC till 30th November

As per Section 100(b) of the Finance Act, 2022 W.E.F. 1st October, 2022-read with Section 16(4) of the CGST Act, 2017. A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the “30th day of November” following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier.

(Vide Notification No.18/2022-CT, dated 28.09.2022)

22. Restriction on claim of ITC if details have not been uploaded by the suppliers in GSTR-1 return

A new sub-rule (4) of Rule 36 of the CGST Rules has been inserted by which a registered person can claim ITC in respect of invoices or debit notes, the details

of which have not been uploaded by the suppliers in GSTR-1 (i.e. not getting reflected in FORM GSTR-2A) only to the extent of 10% of the eligible credit available in respect of invoices or debit notes, the details of which have been uploaded by the suppliers. This is effective from 1st January'2020. (Notification No. 49/2019-C.T., dated 9.10.2019 as amended by Notification No. 75/2019-C.T, dated 26.12.2019.)

23. Inserted proviso to Rule 36(4) for cumulative adjustment of ITC

The CBIC vide **Notification No. 30/2020-Central Tax dated April 3, 2020** made following amendments to Central Goods and Services Tax Rules, 2017 (“CGST Rules”):

Inserted following proviso to Rule 36(4) of the CGST Rules:

“Provided that the said condition shall apply cumulatively for the period February, March, April, May, June, July and August, 2020 and the return in FORM GSTR-3B for the tax period September, 2020 shall be furnished with the cumulative adjustment of input tax credit for the said months in accordance with the condition above”

24. ITC claimed has to be matched as per rule 36(4) of the CGST Rules

“*36. Documentary requirements and conditions for claiming input tax credit.—(4) Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers under sub-section (1) of section 37, shall not exceed 10 per cent of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers under sub-section (1) of section 37.*” Therefore, for the GST Returns of the period February 2020 to August 2020, the Input Tax Credit (“ITC”) as per books can be claimed without considering the ITC as per GSTR-2A. However, the ITC claimed has to be matched as per rule 36(4) in a consolidated manner with GSTR-2A before filing the GSTR-3B of the month of September 2020.

Reduction in ITC entitlement for invoices not furnished by supplier from 10% to 5%

Rule 36(4) amended (effective from January 1, 2021)

Restriction on claiming ITC in respect of invoices/debit notes not furnished by the suppliers has now been reduced from 10% to 5% of eligible credit available in GSTR-2B- Vide Notification No.94/2020-C.T, dated 22-12-2020

Restricting use of ITC amount for discharging output tax liability in GST:

25. ITC availed only on the basis of GSTR-2B auto-populated return

The CBIC vide **Notification No. 40/2021-Central Tax dated December 29, 2021** amended Rule 36(4) of the CGST Rules as under w.e.f. January 01, 2022:

“(4) 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 sub-section (1) of section 37 unless,—

- (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
- (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."

Hence, w.e.f. January 01, 2022, following conditions need to be satisfied by registered person 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 in GSTR-01 or using invoice furnishing facility and such details have been communicated to the recipient in Form GSTR-2B under Rule 60(7) of the CGST Rules;**
- 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 by the supplier; and
- The recipient has furnished the return under Section 39 of the CGST Act.

26. ITC not to use in excess of 99% of output tax liability

New Rule 86B –: introduced (effective from January 1, 2021)

It is applicable where value of taxable supply other than exempt supply and export, in a month exceeds INR 50 lakh.

Taxpayer is not allowed to use ITC in excess of 99% of output tax liability.

Certain exceptions provided to above restrictions are:

- If the registered person has paid more than INR 1 lakh as income tax under the Income-tax Act, 1961 in each of the last two financial years.
- If the registered person has received a refund amount of more than INR 1 lakh in the preceding financial year on account of export under LUT/Bond or inverted tax structure.
- If the registered person has discharged his liability towards output tax through the electronic cash ledger for an amount which is in excess of 1% of the total output tax liability, applied cumulatively, upto the said month in the current financial year.

Vide Notification No. 94/2020-C.T, dated 22-12-2020

- If the registered person is the Government Department, Public Sector Undertaking, Local Authority or Statutory Body.

27. Reversal of ITC for non-payment of consideration to supplier

Rule 37A - Reversal of Input Tax Credit in the case of non-payment of consideration.—

(1) A registered person, who has availed of input tax credit on any inward supply of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, but fails to pay to the supplier thereof, the amount towards the value of such supply whether wholly or partly, along with the tax payable thereon, within the time limit specified in the second proviso to sub-section (2) of section 16, shall pay or reverse an amount equal to the input tax credit availed in respect of such supply proportionate to the amount not paid to the supplier along with interest payable thereon under section 50, while furnishing the return in FORM GSTR-3B for the tax period immediately following the period of one hundred and eighty days from the date of the issue of the invoice:

Provided that the value of supplies made without consideration as specified in Schedule I of the said Act shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16:

Provided further that the value of supplies on account of any amount added in accordance with the provisions of clause (b) of sub-section (2) of section 15 shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16.

(2) Where the said registered person subsequently makes the payment of the amount towards the value of such supply along with tax payable thereon to the supplier thereof, he shall be entitled to re-avail the input tax credit referred to in sub-rule (1).]

(3) Omitted

(4) The time limit specified in sub-section (4) of section 16 shall not apply to a claim for re-availing of any credit, in accordance with the provisions of the Act or the provisions of this Chapter that had been reversed earlier.

28. Re-availment of ITC by 30th November

37A. Reversal of input tax credit in the case of non-payment of tax by the supplier and re-availment thereof.—Where input tax credit has been availed by a registered person in the return in FORM GSTR-3B for a tax period in respect of such invoice or debit note, the details of which have been furnished by the supplier in the statement of outward supplies in FORMGSTR-1 or using the invoice furnishing facility, but the return in FORM GSTR-3B for the tax period corresponding to the said statement of outward supplies has not been furnished by such supplier till the 30thday of November following the end of financial year in which the input tax credit in respect of such invoice or debit note has been availed, the said amount of input tax credit shall be reversed by the said registered person, while furnishing a return in FORM GSTR-3Bon or before the 30thday of November following the end of such financial year:

Provided that where the said amount of input tax credit is not reversed by the registered person in a return in FORM GSTR-3B on or before the 30thday of November following the end of such financial year during which such input tax

credit has been availed, such amount shall be payable by the said person along with interest thereon under section 50.

Provided further that where the said supplier subsequently furnishes the return in FORM GSTR-3B for the said tax period, the said registered person may re-avail the amount of such credit in the return in FORM GSTR-3B for a tax period thereafter.

29. Value of exempt supply for reversal of ITC

In terms of Section 17(3) of the CGST Act that no reversal of common ITC shall be required on activities or transactions specified in Schedule III (other than sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building from the ambit of exempt supply for the purpose of reversal.

Explanation.—For the purposes of this sub-section, the expression "value of exempt supply" shall not include the value of activities or transactions specified in Schedule III, except

- (i) the value of activities or transactions specified in paragraph 5 of the said Schedule; and
- (ii) the value of such activities or transactions as may be prescribed in respect of clause (a) of paragraph 8 of the said schedule.

| |
|---|
| In case of Banking company eligible to avail ITC 50% -Section 17(4) |
|---|

Section 17(4) prescribed a banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances shall have the option to either comply with the provisions of subsection (2), or avail of, every month, an amount equal to 50% of the eligible input tax credit on inputs, capital goods and input services in that month and the rest shall lapse:

Provided that the option once exercised shall not be withdrawn during the remaining part of the financial year:

Provided further that the restriction of 50% shall not apply to the tax paid on supplies made by one registered person to another registered person having the same Permanent Account Number.

30. Utilisation of Input Tax Credit

The manner of availment and utilization of Input Tax credit of CGST, SGST, IGST and UTGST has explained in the following Table.

| Credit of | To be utilized first for payment of | May be utilized further for payment of |
|------------------|--|---|
| CGST | CGST | IGST |
| SGST/UTGST | SGST/UTGST | IGST |
| IGST | IGST | CGST, then SGST/UTGST |

Credit of CGST cannot be used for payment of SGST/UTGST and credit of SGST/UTGST cannot be utilized for payment of CGST.

31. Order of utilization of ITC [CGST/IGST (Amendment) Act, 2018]

Sub-section (5) of Section 49 prescribes, in which order the ITC has to be utilised. The following conditions are prescribed.

- ITC of IGST shall first be utilised to pay IGST and balance if any, shall be utilised to pay CGST, SGST and UTGST, in that order.
- ITC of CGST shall first be utilised to pay CGST and balance, if any, shall be utilised to pay IGST.
- ITC of SGST shall first be utilised to pay SGST and balance, if any, shall be utilised to pay IGST.
- ITC of UTGST shall first be utilised to pay UTGST and balance, if any, shall be utilised to pay IGST.
- ITC of CGST shall not be used to pay SGST or UTGST.
- ITC of SGST or UTGST shall not be used to pay CGST.

Now the following additional conditions have been added.

- ITC of SGST can be used to pay IGST, only after utilizing the balance of CGST, if any, to pay IGST.
- ITC of UTGST can be used to pay IGST, only after utilizing the balance of CGST, if any, to pay IGST.
- Before utilizing ITC of CGST, SGST and UTGST for payment of IGST, the ITC of IGST shall first be utilised and exhausted for payment of IGST (new Section 49A). As per (Amendment) Act, 2018
- In addition to the above, the Government can prescribe various other conditions also (new Section 49B), which subject to section 49(5) i.e. CGST and SGST/UTGST cannot be utilized.

32. Order of utilization of input tax credit (Rule 88A)

The CGST Rules amended vide Notification No. 16/2019-Central Tax, dated 29th March 2019, after rule 88, the following rule shall be inserted, namely: - “Rule 88A. Order of utilization of input tax credit.- Input tax credit on account of integrated tax shall first be utilised towards payment of integrated tax, and the amount remaining, if any, may be utilised towards the payment of Central tax and State tax or Union territory tax, as the case may be, in any order: Provided that the input tax credit on account of Central tax, State tax or Union territory tax shall be utilised towards payment of integrated tax, central tax, State tax or Union territory tax, as the case may be, only after the input tax credit available on account of integrated tax has first been utilised fully”.

33. Illustration: Order of Utilization of ITC as per Rule 88A

| ITC Balance | 1 Utilized | 2 Utilized | 3 Utilized | last Utilized | Remarks |
|-------------|------------|------------|------------|---------------|---|
| IGST | IGST | CGST | SGST | UTGST | After utilization towards payment of IGST only, balance can be used for set of liability for CGST or SGST or UTGST. |
| CGST | IGST | CGST | - | - | Cannot be used against SGST/UTGST. |
| SGST | IGST | - | SGST | - | Cannot be used against CGST/UTGST. |
| UTGST | IGST | - | - | UTGST | Cannot be used against CGST/SGST. |

*Note.—Utilization of CGST/SGST/UTGST shall be allowed only-
When ITC for IGST has been first utilized in full.*

34. Conditions of use of amount available in electronic credit ledger

Rule 86A has been inserted after Rule 86 of the CGST Rules with effect from December 26, 2019; namely:—

CBIC vide it's Notification No. 75/2019- Central Tax dated December 26, 2019 has made following changes as under:

“86A. Conditions of use of amount available in electronic credit ledger.—(1) The Commissioner or an officer authorised by him in this behalf, not below the rank of an Assistant Commissioner, having reasons to believe that credit of input tax available in the electronic credit ledger has been fraudulently availed or is ineligible in as much as

- (a) the credit of input tax has been availed on the strength of tax invoices or debit notes or any other document prescribed under rule 36—
 - (i) issued by a registered person who has been found non-existent or not to be conducting any business from any place for which registration has been obtained; or
 - (ii) without receipt of goods or services or both; or
- (b) the credit of input tax has been availed on the strength of tax invoices or debit notes or any other document prescribed under rule 36 in respect of any supply, the tax charged in respect of which has not been paid to the Government; or
- (c) the registered person availing the credit of input tax has been found non-existent or not to be conducting any business from any place for which registration has been obtained; or

- (d) the registered person availing any credit of input tax is not in possession of a tax invoice or debit note or any other document prescribed under rule 36,

may, for reasons to be recorded in writing, not allow debit of an amount equivalent to such credit in electronic credit ledger for discharge of any liability under section 49 or for claim of any refund of any unutilized amount.

(2) The Commissioner, or the officer authorised by him under sub-rule (1) may, upon being satisfied that conditions for disallowing debit of electronic credit ledger as above, no longer exist, allow such debit.

(3) Such restriction shall cease to have effect after the expiry of a period of one year from the date of imposing such restriction”

35. Transfer of balance from one heading to another

Rule 87 (13) of CGST Rules, 2017 (*Vide* Notification No.31/2019-Central Tax dated 28-06-2019).

Government amends CGST Rules and after Rule 87(12) inserted new sub-rule 13 for inter-transfer of balances lying in the electronic cash ledger under particular head to be available as set off against liability under any head. A registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger to other head of integrated tax, Central tax, State tax or Union territory tax or cess in FORM PMT-09.

It means amount paid in cash ledger under any head can be transferred from one major to another head. Hence, any tax paid wrongly can be transferred and restored to correct head.

36. Matching of ITC

The final credit would be allowed only when details of supplies made by supplier match with the recipient's return of availing credit. Rules provide that the matching has to be done in respect of GSTIN of Supplier and GSTIN of recipient in respect of each supply and recipient, Invoice number, Debit Note number, Credit Note number, Taxable Value and Tax amount involved. In case the details match or the return filed by supplier is accepted by recipient, the matter ends there. In such case an intimation of acceptance of credit would be sent to recipient in **FORM GST MIS-I**. However if details don't match and discrepancy is noticed, same would be communicated to both the supplier and recipient in case fault is that of supplier, or only to the recipient in case fault is that of recipient.

37. Mismatch of ITC

The discrepancies could be availing credit in excess of the tax declared by the supplier, or the outward supply is not declared by the supplier, or there is a second time claim of ITC by the recipient. In case of differences of figures of amount of supplier and recipient or non-declaration of outward supply by

supplier, the supplier would be asked to rectify the discrepancy in the return of month in which discrepancy is informed to him. In case of failure, such ITC would be added to the output tax liability of recipient next month. The recipient is liable to pay an interest @ 18% on the amount added to the output tax liability from the date of availing the ITC till the discrepancy is reflected in returns.

38. Re-claim of ITC on subsequent matching

In case the supplier rectifies the discrepancies after reversal of credit by recipient, ITC can be re claimed by recipient. In such a case, interest paid, if any would be refundable by crediting the amount to the recipient's Electronic Cash Ledger.

39. Transitional provisions of Input Tax Credit

The registrants under Central Excise, Service Tax and VAT on migration to GST would be allowed ITC, if already have available credits provided these are covered under GST law and in the following cases:

- (a) The amount of Cenvat credit on inputs, capital goods and input services carried forward in the last return filed.
- (b) Unavailed credit in respect of capital goods, i.e. the balance amount of credit that remains after subtracting the credit already availed.

In the above situation the registered person, other than a person opting to pay tax under composition scheme, has to file a declaration in **FORM GST TRAN-1** within 90 days from appointed date, specifying amount of credit claimed and admissible as per earlier credit rules. Then ITC can be availed in Electronic Credit Register.

40. Conditions for availing ITC by new registrant

A person who has applied for registration under GST, who is not registered person prior to 1-7-2017, Input Tax Credit can be admissible only, if-

- (i) goods on which Input Tax Credit is claimed were not unconditionally exempt from the whole of the duty of excise or not nil rated.
- (ii) the document for procurement of such goods is available with the registered person. In case these documents are not available Input Tax Credit shall be allowed at the rate of sixty per cent (30% in case of IGST is payable) on such goods which attract central tax at the rate of nine per cent or more and forty per cent (20% in case IGST is payable) for other goods of the central tax applicable on supply of such goods and shall be credited after the GST has to be paid prior to availing credit.
- (iii) the registered person availing of this scheme and having furnished the details of stock, submits a statement in **FORM GST TRAN-2** at the end of each of the six tax periods during which the scheme is in operation indicating the details of supplies of such goods effected during the tax period.
- (iv) the amount of credit allowed shall be credited to the electronic credit ledger of the applicant maintained in **FORM GST PMT-2** on the common portal.

- (v) the stock of goods on which the credit is availed is so stored that it can be easily identified by the registered person.

**41. Reversal of Input Tax Credit in the case of non-payment of consideration
(Rule 37 of the CGST Rules)**

A registered person, who has availed of Input Tax Credit on any inward supply of goods or services or both, but fails to pay to the supplier thereof, the value of such supply along with the tax payable thereon, within the time limit specified in the second proviso to sub-section (2) of Section 16, shall furnish the details of such supply, the amount of value not paid and the amount of Input Tax Credit availed of proportionate to such amount not paid to the supplier in **FORM GSTR-2** for the month immediately following the period of one hundred and eighty days from the date of the issue of the invoice:

Provided that the value of supplies made without consideration as specified in Schedule I of the said Act shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of Section 16.

Provided further that the value of supplies on account of any amount added in accordance with the provisions of clause (b) of sub-section (2) of section 15 shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of Section 16.

(2) The amount of Input Tax Credit referred to in sub-rule (1) shall be added to the output tax liability of the registered person for the month in which the details are furnished.

(3) The registered person shall be liable to pay interest at the rate notified under sub-section (1) of Section 50 for the period starting from the date of availing credit on such supplies till the date when the amount added to the output tax liability, as mentioned in sub-rule (2), is paid.

(4) The time limit specified in sub-section (4) of Section 16 shall not apply to a claim for re-availing of any credit, in accordance with the provisions of the Act or the provisions of this Chapter, which had been reversed earlier.

42. Claim of credit by a banking company or a financial institution

Rule 38 of the CGST Rules, specified the provision of claim of credit by a banking company or a financial institution.

A banking company or a financial institution, including a non-banking financial company, engaged in the supply of services by way of accepting deposits or extending loans or advances that chooses not to comply with the provisions of sub-section (2) of Section 17, in accordance with the option permitted under sub-section (4) of that section, shall follow the following procedure, namely—

- (a) the said company or institution shall not avail the credit of—
 - (i) the tax paid on inputs and input services that are used for non-business purposes; and
 - (ii) the credit attributable to the supplies specified in sub-section (5) of Section 17 in **FORM GSTR-2**;

- (b) the said company or institution shall avail the credit of tax paid on inputs and input services referred to in the second proviso to sub-section (4) of Section 17 and not covered under clause (a);
- (c) fifty per cent of the remaining amount of input tax shall be the Input Tax Credit admissible to the company or the institution and shall be furnished in **FORM GSTR-2**;
- (d) the amount referred to in clauses (b) and (c) shall, subject to the provisions of Sections 41, 42 and 43, be credited to the electronic credit ledger of the said company or the institution.

43. Procedure for distribution of Input Tax Credit by Input Service Distributor

Rule 39 of the CGST Rules, specified the procedure for distribution of Input Tax Credit by Input Service Distributor.

- (1) An Input Service Distributor shall distribute Input Tax Credit in the manner and subject to the following conditions, namely -
- (a) the Input Tax Credit available for distribution in a month shall be distributed in the same month and the details thereof shall be furnished in **FORM GSTR-6** in accordance with the provisions of Chapter VIII of these rules;
- (b) the Input Service Distributor shall, in accordance with the provisions of clause (d), separately distribute the amount of ineligible Input Tax Credit (ineligible under the provisions of sub-section (5) of Section 17 or otherwise) and the amount of eligible Input Tax Credit;
- (c) the Input Tax Credit on account of Central Tax, State Tax, Union Territory Tax and Integrated Tax shall be distributed separately in accordance with the provisions of clause (d);
- (d) the Input Tax Credit that is required to be distributed in accordance with the provisions of clauses (d) and (e) of sub-section (2) of Section 20 to one of the recipients ‘R₁’, whether registered or not, from amongst the total of all the recipients to whom Input Tax Credit is attributable, including the recipient(s) who are engaged in making exempt supply, or are otherwise not registered for any reason, shall be the amount, “C₁”, to be calculated by applying the following formula—

$$C_1 = (t_1 \div T) \times C$$

where,

“C” is the amount of credit to be distributed,

“t₁” is the turnover, as referred to in Section 20, of person R₁ during the relevant period, and

“T” is the aggregate of the turnover, during the relevant period, of all recipients to whom the input service is attributable in accordance with the provisions of Section 20;

- (e) the Input Tax Credit on account of integrated tax shall be distributed as Input Tax Credit of Integrated Tax to every recipient;
 - (f) the Input Tax Credit on account of Central Tax and State Tax or Union Territory Tax shall -
 - (i) in respect of a recipient located in the same State or Union territory in which the Input Service Distributor is located, be distributed as Input Tax Credit of Central Tax and State Tax or Union Territory Tax respectively;
 - (ii) in respect of a recipient located in a State or Union territory other than that of the Input Service Distributor, be distributed as integrated tax and the amount to be so distributed shall be equal to the aggregate of the amount of Input Tax Credit of Central Tax and State Tax or Union Territory Tax that qualifies for distribution to such recipient in accordance with clause (d);
 - (g) the Input Service Distributor shall issue an Input Service Distributor invoice, as prescribed in sub-rule (1) of Rule 54, clearly indicating in such invoice that it is issued only for distribution of Input Tax Credit;
 - (h) the Input Service Distributor shall issue an Input Service Distributor credit note, as prescribed in sub-rule (1) of Rule 54, for reduction of credit in case the Input Tax Credit already distributed gets reduced for any reason;
 - (i) any additional amount of Input Tax Credit on account of issuance of a debit note to an Input Service Distributor by the supplier shall be distributed in the manner and subject to the conditions specified in clauses (a) to (f) and the amount attributable to any recipient shall be calculated in the manner provided in clause (d) and such credit shall be distributed in the month in which the debit note is included in the return in **FORM GSTR-6**;
 - (j) any Input Tax Credit required to be reduced on account of issuance of a credit note to the Input Service Distributor by the supplier shall be apportioned to each recipient in the same ratio in which the Input Tax Credit contained in the original invoice was distributed in terms of clause (d), and the amount so apportioned shall be -
 - (i) reduced from the amount to be distributed in the month in which the credit note is included in the return in **FORM GSTR-6**; or
 - (ii) added to the output tax liability of the recipient where the amount so apportioned is in the negative by virtue of the amount of credit under distribution being less than the amount to be adjusted.
- (2) If the amount of Input Tax Credit distributed by an Input Service Distributor is reduced later on for any other reason for any of the recipients, including that it was distributed to a wrong recipient by the Input Service Distributor, the process specified in clause (j) of sub-rule (1) shall apply, *mutatis mutandis*, for reduction of credit.

(3) Subject to sub-rule (2), the Input Service Distributor shall, on the basis of the Input Service Distributor credit note specified in clause (h) of sub-rule (1), issue an Input Service Distributor invoice to the recipient entitled to such credit and include the Input Service Distributor credit note and the Input Service Distributor invoice in the return in **FORM GSTR-6** for the month in which such credit note and invoice was issued.

44. Manner of claiming credit in special circumstances

Rule 40 of the CGST Rules, specified the manner of claiming credit in special circumstances as per the following principles:

(1) The Input Tax Credit claimed in accordance with the provisions of sub-section (1) of Section 18 on the inputs held in stock or inputs contained in semi-finished or finished goods held in stock, or the credit claimed on capital goods in accordance with the provisions of clauses (c) and (d) of the said sub-section, shall be subject to the following conditions, namely,—

- (a) the Input Tax Credit on capital goods, in terms of clauses (c) and (d) of sub-section (1) of Section 18, shall be claimed after reducing the tax paid on such capital goods by five percentage points per quarter of a year or part thereof from the date of the invoice or such other documents on which the capital goods were received by the taxable person.
- (b) the registered person shall within a period of thirty days from the date of his becoming eligible to avail the Input Tax Credit under sub-section (1) of Section 18 shall make a declaration, electronically, on the common portal in **FORM GST ITC-01** to the effect that he is eligible to avail the Input Tax Credit as aforesaid;
- (c) the declaration under clause (b) shall clearly specify the details relating to the inputs held in stock or inputs contained in semi-finished or finished goods held in stock, or as the case may be, capital goods –
 - (i) on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of the Act, in the case of a claim under clause (a) of sub-section (1) of Section 18;
 - (ii) on the day immediately preceding the date of the grant of registration, in the case of a claim under clause (b) of sub-section (1) of Section 18;
 - (iii) on the day immediately preceding the date from which he becomes liable to pay tax under Section 9, in the case of a claim under clause (c) of sub-section (1) of Section 18;
 - (iv) on the day immediately preceding the date from which the supplies made by the registered person becomes taxable, in the case of a claim under clause (d) of sub-section (1) of Section 18;
- (d) the details furnished in the declaration under clause (b) shall be duly certified by a practicing chartered accountant or a cost accountant if the

aggregate value of the claim on account of Central Tax, State Tax, Union Territory Tax and Integrated Tax exceeds two lakh rupees;

- (e) the Input Tax Credit claimed in accordance with the provisions of clauses (c) and (d) of sub-section (1) of Section 18 shall be verified with the corresponding details furnished by the corresponding supplier in **FORM GSTR-1** or as the case may be, in **FORM GSTR-4**, on the common portal.
- (2) The amount of credit in the case of supply of capital goods or plant and machinery, for the purposes of sub-section (6) of Section 18, shall be calculated by reducing the input tax on the said goods at the rate of five percentage points for every quarter or part thereof from the date of the issue of the invoice for such goods.

45. Provisions of transfer of credit on sale, merger, amalgamation, lease or transfer of a business (Rules 41 of the CGST Rules)

A registered person shall transfer his unutilized Input Tax Credit in the following circumstances—

- (1) In the event of sale, merger, demerger, amalgamation, lease or transfer or change in the ownership of business for any reason, furnish the details in **FORM GST ITC-02**, electronically on the common portal along with a request for transfer of unutilized Input Tax Credit lying in his electronic credit ledger to the transferee;

Provided that in the case of demerger, the input tax credit shall be apportioned in the ratio of the value of assets of the new units as specified in the demerger scheme.

Explanation:—For the purpose of this sub-rule, it is hereby clarified that the “value of assets” means the value of the entire assets of the business, whether or not input tax credit has been availed thereon.

- (2) In case of demerger, the Input Tax Credit shall be apportioned in the ratio of the value of assets of the new units as specified in the demerger scheme.

- (3) The transferor shall also submit a copy of a certificate issued by a practicing chartered accountant or cost accountant certifying that the sale, merger, demerger, amalgamation, lease or transfer of business has been done with a specific provision for the transfer of liabilities.

- (4) The transferee shall, on the common portal, accept the details so furnished by the transferor and, upon such acceptance, the unutilized credit specified in **FORM GST ITC-02** shall be credited to his electronic credit ledger.

- (5) The inputs and capital goods so transferred shall be duly accounted for by the transferee in his books of account.

46. Transfer of credit on obtaining separate registration for multiple places of business within a State or Union territory (Rule 41A CGST Rules, 2017)

- (1) A registered person who has obtained separate registration for multiple places of business in accordance with the provisions of rule 11 and who intends

to transfer, either wholly or partly, the unutilised input tax credit lying in his electronic credit ledger to any or all of the newly registered place of business, shall furnish within a period of thirty days from obtaining such separate registrations, the details in **FORM GST ITC-02A** electronically on the common portal, either directly or through a Facilitation Centre notified in this behalf by the Commissioner:

Provided that the input tax credit shall be transferred to the newly registered entities in the ratio of the value of assets held by them at the time of registration.

Explanation.—For the purposes of this sub-rule, it is hereby clarified that the value of assets ‘means the value of the entire assets of the business whether or not input tax credit has been availed thereon.

(2) The newly registered person (transferee) shall, on the common portal, accept the details so furnished by the registered person (transferor) and, upon such acceptance, the unutilized input tax credit specified in **FORM GST ITC-02A** shall be credited to his electronic credit ledger.

47. Manner of determination of Input Tax Credit in respect of inputs or input services and reversal thereof (Rule 42 of the CGST Rules, 2017)

(1) The Input Tax Credit in respect of inputs or input services, which attract the provisions of sub-section (1) or sub-section (2) of Section 17, being partly used for the purposes of business and partly for other purposes, or partly used for effecting taxable supplies including zero rated supplies and partly for effecting exempt supplies, shall be attributed to the purposes of business or for effecting taxable supplies in the following manner, namely,—

- (a) the total input tax involved on inputs and input services in a tax period, be denoted as ‘T’;
- (b) the amount of input tax, out of ‘T’, attributable to inputs and input services intended to be used exclusively for the purposes other than business, be denoted as ‘ T_1 ’;
- (c) the amount of input tax, out of ‘T’, attributable to inputs and input services intended to be used exclusively for effecting exempt supplies, be denoted as ‘ T_2 ’;
- (d) the amount of input tax, out of ‘T’, in respect of inputs and input services on which credit is not available under sub-section (5) of Section 17, be denoted as ‘ T_3 ’;
- (e) the amount of Input Tax Credit credited to the electronic credit ledger of registered person, be denoted as ‘ C_1 ’ and calculated as -

$$C_1 = T - (T_1 + T_2 + T_3);$$

- (f) the amount of Input Tax Credit attributable to inputs and input services intended to be used exclusively for effecting supplies other than exempted but including zero rated supplies, be denoted as ‘ T_4 ’;
- (g) ‘ T_1 ’, ‘ T_2 ’, ‘ T_3 ’ and ‘ T_4 ’ shall be determined and declared by the registered person at the summary level in **FORM GSTR-3B**;

- (h) Input Tax Credit left after attribution of Input Tax Credit under clause (g) shall be called common credit, be denoted as 'C₂' and calculated as-

$$C_2 = C_1 - T_4;$$

- (i) the amount of Input Tax Credit attributable towards exempt supplies, be denoted as 'D₁' and calculated as -

$$D_1 = (E \div F) \times C_2$$

where,

'E' is the aggregate value of exempt supplies during the tax period, and 'F' is the total turnover in the State of the registered person during the tax period:

Provided that in case of supply of services covered by clause (b) of paragraph 5 of Schedule II of the Act, the value of 'E/F' for a tax period shall be calculated for each project separately, taking value of E and F as under:—

E = aggregate carpet area of the apartments, construction of which is exempt from tax plus aggregate carpet area of the apartments, construction of which is not exempt from tax, but are identified by the promoter to be sold after issue of completion certificate or first occupation, whichever is earlier;

F = aggregate carpet area of the apartments in the project;

Explanation 1: In the tax period in which the issuance of completion certificate or first occupation of the project takes place, value of E shall also include aggregate carpet area of the apartments, which have not been booked till the date of issuance of completion certificate or first occupation of the project, whichever is earlier;

Explanation 2: Carpet area of apartments, tax on construction of which is paid or payable at the rates specified for items (i), (ia), (ib), (ic) or (id), against serial number 3 of the Table in the notification No. 11/2017-Central Tax (Rate), published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) dated 28th June, 2017 *vide* GSR number 690(E) dated 28th June, 2017, as amended, shall be taken into account for calculation of value of 'E' in view of Explanation (iv) in paragraph 4 of the notification No. 11/2017-Central Tax (Rate), published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) dated 28th June, 2017 *vide* GSR number 690 (E) dated 28th June, 2017, as amended.

[Provided further that where the registered person does not have any turnover during the said tax period or the aforesaid information is not available, the value of 'E/F' shall be calculated by taking values of 'E' and 'F' of the last tax period for which the details of such turnover are available, previous to the month during which the said value of 'E/F' is to be calculated;

Explanation: For the purposes of this clause, it is hereby clarified that the aggregate value of exempt supplies and the total turnover shall exclude the amount of any duty or tax levied under entry 84⁷[and entry 92A] of List I of the Seventh Schedule to the Constitution and entry 51 and 54 of List II of the said Schedule;

- (j) the amount of credit attributable to non-business purposes if common inputs and input services are used partly for business and partly for non-business purposes, be denoted as 'D₂', and shall be equal to five per cent of C₂; and
- (k) the remainder of the common credit shall be the eligible Input Tax Credit attributed to the purposes of business and for effecting supplies other than exempted supplies but including zero rated supplies and shall be denoted as 'C₃', where,—

$$C_3 = C_2 - (D_1 + D_2);$$

- (l) the amount 'C₃', 'D₁' and 'D₂' shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax and declared in FORM GSTR-3B or through FORM GST DRC-03;
- (m) the amount equal to aggregate of 'D₁' and 'D₂' shall be⁹[reversed by the registered person in FORM GSTR-3B or through FORM GST DRC-03:
Provided that where the amount of input tax relating to inputs or input services used partly for the purposes other than business and partly for effecting exempt supplies has been identified and segregated at the invoice level by the registered person, the same shall be included in 'T 1' and 'T 2' respectively, and the remaining amount of credit on such inputs or input services shall be included in 'T 4'.

(2) Except in case of supply of services covered by clause (b) of paragraph 5 of the Schedule II of the Act, the input tax credit determined under sub-rule (1) shall be calculated finally for the financial year before the due date for furnishing of the return for the month of September following the end of the financial year to which such credit relates, in the manner specified in the said sub-rule and -

- (a) where the aggregate of the amounts calculated finally in respect of 'D₁' and 'D₂' exceeds the aggregate of the amounts determined under sub-rule (1) in respect of 'D₁' and 'D₂', such excess shall be added to the output tax liability of the registered person in the month not later than the month of September following the end of the financial year to which such credit relates and the said person shall be liable to pay interest on the said excess amount at the rate specified in sub-section (1) of Section 50 for the period starting from the first day of April of the succeeding financial year till the date of payment; or
- (c) where the aggregate of the amounts determined under sub-rule (1) in respect of 'D₁' and 'D₂' exceeds the aggregate of the amounts calculated finally in respect of 'D₁' and 'D₂', such excess amount shall be claimed as credit by the registered person in his return for a month not later than

the month of September following the end of the financial year to which such credit relates.

(3) In case of supply of services covered by clause (b) of paragraph 5 of the Schedule II of the Act, the input tax determined under sub-rule (1) shall be calculated finally, for each ongoing project or project which commences on or after 1st April, 2019, which did not undergo or did not require transition of input tax credit consequent to change of rates of tax on 1st April, 2019 in accordance with notification No. 11/2017- Central Tax (Rate), dated the 28th June, 2017, published vide GSR No. 690(E) dated the 28th June, 2017, as amended for the entire period from the commencement of the project or 1st July, 2017, whichever is later, to the completion or first occupation of the project, whichever is earlier, before the due date for furnishing of the return for the month of September following the end of financial year in which the completion certificate is issued or first occupation takes place of the project, in the manner prescribed in the said sub-rule, with the modification that value of E/F shall be calculated taking value of E and F as under:

E = aggregate carpet area of the apartments, construction of which is exempt from tax plus aggregate carpet area of the apartments, construction of which is not exempt from tax, but which have not been booked till the date of issuance of completion certificate or first occupation of the project, whichever is earlier:

F = aggregate carpet area of the apartments in the project;

and

- (a) where the aggregate of the amounts calculated finally in respect of 'D₁' and 'D₂' exceeds the aggregate of the amounts determined under sub-rule (1) in respect of 'D₁' and 'D₂', such excess shall be reversed by the registered person in **FORM GSTR-3B** or through **FORM GST DRC-03** in the month not later than the month of September following the end of the financial year in which the completion certificate is issued or first occupation of the project takes place and the said person shall be liable to pay interest on the said excess amount at the rate specified in sub-section (1) of section 50 for the period starting from the first day of April of the succeeding financial year till the date of payment; or
- (b) where the aggregate of the amounts determined under sub-rule (1) in respect of 'D₁' and 'D₂' exceeds the aggregate of the amounts calculated finally in respect of 'D₁' and 'D₂', such excess amount shall be claimed as credit by the registered person in his return for a month not later than the month of September following the end of the financial year in which the completion certificate is issued or first occupation takes place of the project.

(4) In case of supply of services covered by clause (b) of paragraph 5 of Schedule II of the Act, the input tax determined under sub-rule (1) shall be calculated finally, for commercial portion in each project, other than residential real estate project (RREP), which underwent transition of input tax credit

consequent to change of rates of tax on the 1st April, 2019 in accordance with Notification No. 11/2017- Central Tax (Rate), dated the 28th June, 2017, published *vide* GSR No. 690 (E) dated the 28th June, 2017, as amended for the entire period from the commencement of the project or 1st July, 2017, whichever is later, to the completion or first occupation of the project, whichever is earlier, before the due date for furnishing of the return for the month of September following the end of financial year in which the completion certificate is issued or first occupation takes place of the project, in the following manner.

- (a) The aggregate amount of common credit on commercial portion in the project ($C_3 \text{ aggregate_comm}$) shall be calculated as under,

$C_3 \text{ aggregate_comm} = [\text{aggregate of amounts of } C_3 \text{ determined under sub- rule (1) for the tax periods starting from 1st July, 2017 to 31st March, 2019, } x \\ (A_C/A_T)] + [\text{aggregate of amounts of } C_3 \text{ determined under sub- rule (1) for the tax periods starting from 1st April, 2019 to the date of completion or first occupation of the project, whichever is earlier}]$

Where,-

A_C = total carpet area of the commercial apartments in the project

A_T = total carpet area of all apartments in the project

- (b) the amount of final eligible common credit on commercial portion in the project ($C_3 \text{ final_comm}$) shall be calculated as under;

$C_3 \text{ final_comm} = C_3 \text{ aggregate_comm} x (E/F)$

Where, -

E = total carpet area of commercial apartments which have not been booked till the date of issuance of completion certificate or first occupation of the project, whichever is earlier.

$F = A_C$ = total carpet area of the commercial apartments in the project

- (c) where, $C_3 \text{ aggregate_comm}$ exceeds $C_3 \text{ final_comm}$, such excess shall be reversed by the registered person in **FORM GSTR-3B** or through **FORM GST DRC-03** in the month not later than the month of September following the end of the financial year in which the completion certificate is issued or first occupation takes place of the project and the said person shall be liable to pay interest on the said excess amount at the rate specified in subsection (1) of section 50 for the period starting from the first day of April of the succeeding financial year till the date of payment;

- (d) where, $C_3 \text{ final_comm}$ exceeds $C_3 \text{ aggregate_comm}$, such excess amount shall be claimed as credit by the registered person in his return for a month not later than the month of September following the end of the financial year in which the completion certificate is issued or first occupation takes place of the project.

(5) Input tax determined under sub-rule (1) shall not be required to be calculated finally on completion or first occupation of an RREP which underwent transition of input tax credit consequent to change of rates of tax on 1st April,

2019 in accordance with notification No. 11/2017- Central Tax (Rate), dated the 28th June, 2017, published *vide* GSR No. 690(E) dated the 28th June, 2017, as amended.

(6) Where any input or input service are used for more than one project, input tax credit with respect to such input or input service shall be assigned to each project on a reasonable basis and credit reversal pertaining to each project shall be carried out as per sub-rule (3).]

48. Manner of determination of Input Tax Credit in respect of capital goods and reversal thereof in certain cases (Rule 43 of the CGST Rules, 2017)

(1) Subject to the provisions of sub-section (3) of Section 16, the Input Tax Credit in respect of capital goods, which attract the provisions of sub-sections (1) and

(2) of Section 17, being partly used for the purposes of business and partly for other purposes, or partly used for effecting taxable supplies including zero-rated supplies and partly for effecting exempt supplies, shall be attributed to the purposes of business or for effecting taxable supplies in the following manner, namely,—

- (a) the amount of input tax in respect of capital goods used or intended to be used exclusively for non-business purposes or used or intended to be used exclusively for effecting exempt supplies shall be indicated in **FORM GSTR-3B** and shall not be credited to his electronic credit ledger;
- (b) the amount of input tax in respect of capital goods used or intended to be used exclusively for effecting supplies other than exempted supplies but including zero-rated supplies shall be indicated in **FORM GSTR-3B** and shall be credited to the electronic credit ledger;

Explanation: For the purpose of this clause, it is hereby clarified that in case of supply of services covered by clause (b) of paragraph 5 of the Schedule II of the said Act, the amount of input tax in respect of capital goods used or intended to be used exclusively for effecting supplies other than exempted supplies but including zero rated supplies, shall be zero during the construction phase because capital goods will be commonly used for construction of apartments booked on or before the date of issuance of completion certificate or first occupation of the project, whichever is earlier, and those which are not booked by the said date.

- (c) the amount of input tax in respect of capital goods not covered under clauses (a) and (b), denoted as 'A', shall be credited to the electronic credit ledger and the useful life of such goods shall be taken as five years from the date of the invoice for such goods:

Provided that where any capital goods earlier covered under clause (a) is subsequently covered under this clause, input tax in respect of such capital goods denoted as 'A' shall be credited to the electronic credit ledger subject to the condition that the ineligible credit attributable to the

period during which such capital goods were covered by clause (a), denoted as 'T_{ie}', shall be calculated at the rate of five percentage points for every quarter or part thereof and added to the output tax liability of the tax period in which such credit is claimed:

Provided further that the amount 'T_{ie}' shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax and declared in FORM GSTR-3B.

Explanation.—An item of capital goods declared under clause (a) on its receipt shall not attract the provisions of sub-section (4) of section 18, if it is subsequently covered under this clause.

- (d) the aggregate of the amounts of 'A' credited to the electronic credit ledger under clause (c), to be denoted as 'T_c', shall be the common credit in respect of capital goods for a tax period:

Provided that where any capital goods earlier covered under clause (b) is subsequently covered under clause (c), the value of 'A' arrived at by reducing the input tax at the rate of five percentage points for every quarter or part thereof shall be added to the aggregate value 'T_c';

- (e) the amount of Input Tax Credit attributable to a tax period on common capital goods during their useful life, be denoted as 'T_m' and calculated as -

$$T_m = T_c \div 60$$

Explanation.—For the removal of doubt, it is clarified that useful life of any capital goods shall be considered as five years from the date of invoice and the said formula shall be applicable during the useful life of the said capital goods.

- (f) omitted;
- (g) the amount of common credit attributable towards exempted supplies, be denoted as 'T_e', and calculated as -

$$T_e = (E \div F) \times T_r$$

Where,

'E' is the aggregate value of exempt supplies, made, during the tax period, and

'F' is the total turnover of the registered person during the tax period:

Provided that where the registered person does not have any turnover during the said tax period or the aforesaid information is not available, the value of 'E/F' shall be calculated by taking values of 'E' and 'F' of the last tax period for which the details of such turnover are available, previous to the month during which the said value of 'E/F' is to be calculated;

Explanation.—For the purposes of this clause, it is hereby clarified that the aggregate value of exempt supplies and the total turnover shall exclude the amount of any duty or tax levied under entry 84 of List I of the Seventh Schedule to the Constitution and entries 51 and 54 of List II of the said Schedule;

- (h) the amount ‘Te’ along with the applicable interest shall, during every tax period of the useful life of the concerned capital goods, be added to the output tax liability of the person making such claim of credit.
 - (i) The amount Te shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax and declared in **FORM GSTR-3B.**]
- (2) In case of supply of services covered by clause (b) of paragraph 5 of schedule II of the Act, the amount of common credit attributable towards exempted supplies (Te^{final}) shall be calculated finally for the entire period from the commencement of the project or 1st July, 2017, whichever is later, to the completion or first occupation of the project, whichever is earlier, for each project separately, before the due date for furnishing of the return for the month of September following the end of financial year in which the completion certificate is issued or first occupation takes place of the project, as under:

$$Te^{final} = [(E_1 + E_2 + E_3)/F] \times Tc^{final},$$

Where,-

E_1 = aggregate carpet area of the apartments, construction of which is exempt from tax

E_2 = aggregate carpet area of the apartments, supply of which is partly exempt and partly taxable, consequent to change of rates of tax on 1st April, 2019, which shall be calculated as under -

$$E_2 = [\text{Carpet area of such apartments}] \times [V_1(V_1 + V_2)],$$

Where,-

V_1 is the total value of supply of such apartments which was exempt from tax;

and

V_2 is the total value of supply of such apartments which was taxable

E_3 = aggregate carpet area of the apartments, construction of which is not exempt from tax, but have not been booked till the date of issuance of completion certificate or first occupation of the project, whichever is earlier:

F = aggregate carpet area of the apartments in the project;

Tc^{final} = aggregate of A^{final} in respect of all capital goods used in the project and A^{final} for each capital goods shall be calculated as under,

$A^{final} = A \times (\text{number of months for which capital goods is used for the project}/60)$ and

- (a) where value of Te^{final} exceeds the aggregate of amounts of Te determined for each tax period under sub-rule (1), such excess shall be reversed by the registered person in **FORM GSTR-3B** or through **FORM GST DRC-03** in the month not later than the month of November following the end of the financial year in which the completion certificate is issued or first occupation takes place of the project and the said person shall be liable to pay interest on the said excess amount at the rate specified in sub-section (1) of section 50 for the period starting from the first day of April of the succeeding financial year till the date of payment; or
- (b) where aggregate of amounts of Te determined for each tax period under sub-rule (1) exceeds Te^{final} , such excess amount shall be claimed as credit by the registered person in his return for a month not later than the month of September following the end of the financial year in which the completion certificate is issued or first occupation takes place of the project.

Explanation.—For the purpose of calculation of Tc^{final} , part of the month shall be treated as one complete month.

(3) The amount Te^{final} and date dc^{final} shall be computed separately for input tax credit of Central tax, State tax, Union territory tax and integrated tax.

(4) Where any capital goods are used for more than one project, input tax credit with respect to such capital goods shall be assigned to each project on a reasonable basis and credit reversal pertaining to each project shall be carried out as per sub-rule (2).

(5) Where any capital goods used for the project have their useful life remaining on the completion of the project, input tax credit attributable to the remaining life shall be availed in the project in which the capital goods is further used;]

[*Explanation 1:*—For the purposes of rule 42 and this rule, it is hereby clarified that the aggregate value of exempt supplies shall exclude: -

- (a) Omitted.
- (b) the value of services by way of accepting deposits, extending loans or advances insofar as the consideration is represented by way of interest or discount, except in case of a banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances; and
- (c) the value of supply of services by way of transportation of goods by a vessel from the customs station of clearance in India to a place outside India.]
- (d) the value of supply of Duty Credit Scrips specified in the notification of the Government of India, Ministry of Finance, Department of Revenue No. 35/2017-Central Tax (Rate), dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number GSR 1284(E), dated the 13th October, 2017

[Explanation 2: For the purposes of rule 42 and this rule,—

- (i) the term "apartment" shall have the same meaning as assigned to it in clause (e) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);
- (ii) the term "project" shall mean a real estate project or a residential real estate project;
- (iii) the term "Real Estate Project (REP)" shall have the same meaning as assigned to it in clause (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);
- (iv) the term "Residential Real Estate Project (RREP)" shall mean a REP in which the carpet area of the commercial apartments is not more than 15 per cent. of the total carpet area of all the apartments in the REP;
- (v) the term "promoter" shall have the same meaning as assigned to it in clause (zk) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);
- (vi) "Residential apartment" shall mean an apartment intended for residential use as declared to the Real Estate Regulatory Authority or to competent authority;
- (vii) "Commercial apartment" shall mean an apartment other than a residential apartment;
- (viii) the term "competent authority as mentioned in definition of "residential apartment", means the local authority or any authority created or established under any law for the time being in force by the Central Government or State Government or Union Territory Government, which exercises authority over land under its jurisdiction, and has powers to give permission for development of such immovable property;
- (ix) the term "Real Estate Regulatory Authority" shall mean the Authority established under sub- section (1) of section 20 (1) of the Real Estate (Regulation and Development) Act, 2016 (No.16 of 2016) by the Central Government or State Government;
- (x) the term "carpet area" shall have the same meaning assigned to it in clause (k) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);
- (xi) an apartment booked on or before the date of issuance of completion certificate or first occupation of the project shall mean an apartment which meets all the following three conditions, namely-
 - (a) part of supply of construction of the apartment service has time of supply on or before the said date; and
 - (b) consideration equal to at least one installment has been credited to the bank account of the registered person on or before the said date; and

- (c) an allotment letter or sale agreement or any other similar document evidencing booking of the apartment has been issued on or before the said date.
- (xii) The term "ongoing project" shall have the same meaning as assigned to it in notification No. 11/2017- Central Tax (Rate), dated the 28th June, 2017, published vide GSR No. 690(E) dated the 28th June, 2017, as amended;
- (xiii) The term "project which commences on or after 1st April, 2019" shall have the same meaning as assigned to it in notification No. 11/2017- Central Tax (Rate), dated the 28th June, 2017, published vide GSR No. 690(E) dated the 28th June, 2017, as amended;]

Procedure for reversal ITC in respect of Capital goods:

On recommendations made in 39th GST Council Meeting held on March 14, 2020 amendment is made to procedure for reversal of ITC in respect of capital goods partly used for affecting taxable supplies and partly for exempt supplies under Rule 43 (1) (c) of the Central Goods and Services Tax Rules, 2017 ("CGST Rules"). The CBIC vide **Notification No. 16/2020-Central Tax dated March 23, 2020** has amended CGST Rules in following manner:

49. Rule 43 of the CGST Rules — Manner of determination of ITC in respect of capital goods and reversal thereof in certain cases (w.e.f. 01.04.2020)

➤ **Sub-clause (c) is substituted with:**

"(c) the amount of input tax in respect of capital goods not covered under clauses (a) and (b), denoted as 'A', being the amount of tax as reflected on the invoice, shall credit directly to the electronic credit ledger and the validity of the useful life of such goods shall extend upto five years from the date of the invoice for such goods:

Provided that where any capital goods earlier covered under clause (a) is subsequently covered under this clause, input tax in respect of such capital goods denoted as 'A' shall be credited to the electronic credit ledger subject to the condition that the ineligible credit attributable to the period during which such capital goods were covered by clause (a),denoted as ' T_{ie} ', shall be calculated at the rate of five percentage points for every quarter or part thereof and added to the output tax liability of the tax period in which such credit is claimed:

Provided further that the amount ' T_{ie} ' shall be computed separately for input tax credit of Central tax, State tax, Union territory tax and integrated tax and declared in FORM GSTR-3B.

Explanation.—An item of capital goods declared under clause (a) on its receipt shall not attract the provisions of sub-section (4) of section 18, if it is subsequently covered under this clause."

➤ **Sub-clause (d) is substituted with:**

"the aggregate of the amounts of 'A' credited to the electronic credit ledger under clause (c) in respect of common capital goods whose useful life remains during the tax period, to be denoted as 'I'0', shall be the common credit in respect of such capital goods:

Provided that where any capital goods earlier covered under clause (b) are subsequently covered under clause (c), the input tax credit claimed in respect of such capital good(s) shall be added to arrive at the aggregate value 'Tc';"

➤ **In sub-clause (e) following explanation is inserted:**

"Explanation.—For the removal of doubt, it is clarified that useful life of any capital goods shall be considered as five years from the date of invoice and the said formula shall be applicable during the useful life of the said capital goods."

➤ **Sub-clause (d)(f) is omitted.**

(Vide Notification No. 16/2020-C.T, dated 23.3.2020)

Explanation 3:—For the purpose of rule 42 and this rule, the value of activities or transactions mentioned in sub-paragraph (a) of paragraph 8 of Schedule III of the Act which is required to be included in the value of exempt supplies under clause (b) of the Explanation to sub-section (3) of section 17 of the Act shall be the value of supply of goods from Duty Free Shops at arrival terminal in international airports to the incoming passengers."

*The explanation will be made effective from October 01, 2023 vide Notification No. 38/2023-CT dated 4th August, 2023

50. Manner of reversal of credit under special circumstances (Rule 44 of CGST Rules)

(1) The amount of Input Tax Credit relating to inputs held in stock, inputs contained in semi-finished and finished goods held in stock, and capital goods held in stock, shall for the purposes of sub-section (4) of section 18 or sub-section (5) of section 29, be determined in the following manner, namely,—

- (a) for inputs held in stock and inputs contained in semi-finished and finished goods held in stock, the Input Tax Credit shall be calculated proportionately on the basis of the corresponding invoices on which credit had been availed by the registered taxable person on such inputs;
- (b) for capital goods held in stock, the Input Tax Credit involved in the remaining useful life in months shall be computed on *pro-rata* basis, taking the useful life as five years.

Illustration:

Capital goods have been in use for 4 years, 6 months and 15 days. The useful remaining life in months = 5 months ignoring a part of the month Input tax credit taken on such capital goods = C Input tax credit attributable to remaining useful life = C multiplied by 5/60

(2) The amount, as specified in sub-rule (1) shall be determined separately for Input Tax Credit of Central Tax, State Tax, Union Territory Tax and Integrated Tax.

(3) Where the tax invoices related to the inputs held in stock are not available, the registered person shall estimate the amount under sub-rule (1) based on the prevailing market price of the goods on the effective date of the occurrence of any of the events in sub-section (4) of section 18 or, as the case may be, sub-section (5) of section 29.

(4) The amount determined under sub-rule (1) shall form part of the output tax liability of the registered person and the details of the amount shall be furnished in **FORM GST ITC-03**, where such amount relates to any event and in **FORM GSTR-10**, where such amount relates to the cancellation of registration.

(5) The details furnished in accordance with sub-rule (3) shall be duly certified by a practicing chartered accountant or cost accountant.

(6) The amount of Input Tax Credit for the purposes relating to capital goods shall be determined in the same manner as specified and the amount shall be determined separately for Input Tax Credit of Central Tax, State Tax, Union Territory Tax and Integrated Tax:

Provided that where the amount so determined is more than the tax determined on the transaction value of the capital goods, the amount determined shall form part of the output tax liability and the same shall be furnished in **FORM GSTR-1**.

51. Manner of reversal of credit of Additional duty of Customs in respect of Gold dore bar (Rule 44A of the CGST Rules, 2017)

The credit of Central tax in the electronic credit ledger taken in terms of the provisions of section 140 relating to the CENVAT Credit carried forward which had accrued on account of payment of the additional duty of customs levied under sub- section (1) of section 3 of the Customs Tariff Act, 1975 (51 of 1975), paid at the time of importation of gold dore bar, on the stock of gold dore bar held on the 1st day of July, 2017 or contained in gold or gold jewellery held in stock on the 1st day of July, 2017 made out of such imported gold dore bar, shall be restricted to one-sixth of such credit and five-sixth of such credit shall be debited from the electronic credit ledger at the time of supply of such gold dore bar or the gold or the gold jewellery made therefrom and where such supply has already been made, such debit shall be within one week from the date of commencement of these Rules.

52. Special provisions of ITC on capital goods

- (a) ITC would be available in full without restriction where capital goods have been used for effecting taxable supplies and business activity. No credit will be admissible on capital goods used exclusively for effecting exempt supplies or non-business or personal activity.
- (b) The scheme of 50% credit in first year in terms of erstwhile Cenvat Credit Rules has been dispensed with.

- (c) Credit to the extent of depreciation under Income Tax Act is not admissible.
- (d) Capital goods after taking credit can be sent to job worker without reversing credit. The capital goods so sent to job-worker are to be returned within three years and otherwise the principal shall be liable to pay the tax along with applicable interest. The said period may be extended by Commissioner for a further period of two years.

53. Input Tax Credit for importers

The earlier provisions of CVD paid on imports is entitled for CENVAT credit by the importer, which is replaced with IGST in GST regime. In GST regime also Integrated Tax is paid on imports entitled for Input Tax Credit in terms of document namely a bill of entry or any similar document prescribed under the Customs Act, 1962 or rules made thereunder for the assessment of integrated tax on imports read with Rule 36(d) of the CGST Rules, 2017. However, the credit of Basic Customs Duty (BCD) would not be available.

On import, EOUs/EHTPs/STPs will continue to be eligible for BCD exemption but not for IGST which has to be paid if payable. But the credit of the IGST so paid shall be eligible. This credit can be utilized towards payment of CGST on DTA clearance or refund can be claimed on accumulation of the IGST.

In case of goods imported by a unit or a developer of SEZ, authorised operations are exempted from the whole of the IGST.

54. Demand and penalty on registered person for violation of ITC provisions

(1) The demand notice to be issued to a registered person on violation of ITC provisions under Section 73 or 74 of the CGST Act, 2017.

(2) A penalty maximum equal to amount of ITC availed wrongly will be imposable under the said sections.

(3) A person issuing invoice without supplying goods, thus enabling recipient to take credit without possession of goods is also liable to a penalty equal to amount of ITC involved or ₹1,000/- whichever is higher.

(4) Prosecution can be initiated and the offender of ITC is liable for imprisonment and fine. Imprisonment may range from one year up to five years depending upon amount of ITC involved.

55. Conditions and restrictions in respect of inputs and capital goods sent to the job worker (Rule 45 of the CGST Rules, 2017)

(1) The inputs, semi-finished goods or capital goods shall be sent to the job worker under the cover of a challan issued by the principal, including where such goods are sent directly to a job worker:

Provided that the challan issued by the principal may be endorsed by the job worker, indicating there in the quantity and description of goods where the goods are sent by one job worker to another or are returned to the principal:

Provided further that the challan endorsed by the job worker may be further endorsed by another job worker, indicating there in the quantity and description

of goods where the goods are sent by one job worker to another or are returned to the principal.

(2) The challan issued by the principal to the job worker shall contain the details specified in Rule 55.

(3) The details of challans in respect of goods dispatched to a job worker or received from a job worker during the specified period shall be included in **FORM GST ITC-04** furnished for that period on or before the twenty-fifth day of the month succeeding the said period or within such further period as may be extended by the Commissioner by a notification in this behalf:

Provided that any extension of the time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner

*Explanation.—*For the purposes of this sub-rule, the expression "specified period" shall mean.—

- (a) the period of six consecutive months commencing on the 1st day of April and the 1st day of October in respect of a principal whose aggregate turnover during the immediately preceding financial year exceeds five crore rupees; and
- (b) a financial year in any other case.

(4) Where the inputs or capital goods are not returned to the principal within the time stipulated in Section 143, it shall be deemed that such inputs or capital goods had been supplied by the principal to the job worker on the day when the said inputs or capital goods were sent out and the said supply shall be declared in **FORM GSTR-1** and the principal shall be liable to pay the tax along with applicable interest.

Explanation.—

(1) the expressions "capital goods" shall include "plant and machinery" as defined in the Explanation to Section 17;

(2) for determining the value of an exempt supply as referred to in sub-section (3) of Section 17 -

- (a) the value of land and building shall be taken as the same as adopted for the purpose of paying stamp duty; and
- (b) the value of security shall be taken as one per cent of the sale value of such security.

56. Time-limit for availing ITC

A registered person shall not be entitled to take Input Tax Credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under Section 39 for the month of November following the end of financial year to which such invoice or pertains or furnishing of the relevant annual return, whichever is earlier.

57. Rate of Interest for wrong availment of ITC:

Interest for wrong availment of ITC: As per Notification No.13/2017-CT dated 28.06.2017 as amended by the Sixth Schedule of Finance Act, 2022 with retrospective effect from 01.07.2017, the rate of interest for wrong availment of ITC is 18% per Annum.

58. Important Circular

C.B.I. &C, Circular No. 1552, dated 2-11-2021

Guidelines for disallowing debit of electronic credit ledger under Rule 86A of the CGST Rules, 2017 -Reg.

Rule 86A of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as "the Rules") provides that in certain circumstances, Commissioner or an officer authorised by him, on the basis of reasonable belief that credit of input tax available in the electronic credit ledger has been fraudulently availed or is ineligible, may not allow debit of an amount equivalent to such credit in electronic credit ledger.

2. Doubts have been raised by the field formations on various issues pertaining to disallowing debit of input tax credit from electronic credit ledger, under rule 86 A of the Rules. Further, Hon'ble High Court in some cases have emphasized the need for laying down guidelines for the purpose of invoking rule 86A. In view of the above, the following guidelines are hereby issued with respect to exercise of power under rule 86 A of the Rules:

3.1 Grounds for disallowing debit of an amount from electronic credit ledger

3.1.1 Rule 86A of the Rules is reproduced hereunder for reference: "86A. Conditions of use of amount available in electronic credit ledger.—

(1) The Commissioner or an officer authorised by him in this behalf, not below the rank of an Assistant Commissioner, having reasons to believe that credit of input tax available in the electronic credit ledger has been fraudulently availed or is ineligible inasmuch as:—

- (a) the credit of input tax has been availed on the strength of tax invoices or debit notes or any other document prescribed under rule 36-
 - (i) issued by a registered person who has been found non-existent or not to be conducting any business from any place for which registration has been obtained; or
 - (ii) without receipt of goods or services or both; or
- (b) the credit of input tax has been availed on the strength of tax invoices or debit notes or any other document prescribed under rule 36 in respect of any supply, the tax charged in respect of which has not been paid to the Government; or
- (c) the registered person availing the credit of input tax has been found non-existent or not to be conducting any business from any place for which registration has been obtained; or

- (d) the registered person availing any credit of input tax is not in possession of a tax invoice or debit note or any other document prescribed under rule 36,
- (2) The Commissioner, or the officer authorised by him under sub-rule (1) may, upon being satisfied that conditions for disallowing debit of electronic credit ledger as above, no longer exist, allow such debit.
- (3) Such restriction shall cease to have effect after the expiry of a period of one year from the date of imposing such restriction. "

3.1.2 Perusal of the rule makes it clear that the Commissioner, or an officer authorised by him, not below the rank of Assistant Commissioner, must have "reasons to believe" that credit of input tax available in the electronic credit ledger is either ineligible or has been fraudulently availed by the registered person, before disallowing the debit of amount from electronic credit ledger of the said registered person under rule 86A. The reasons for such belief must be based only on one or more of the following grounds:

- (a) The credit is availed by the registered person on the invoices or debit notes issued by a supplier, who is found to be non-existent or is found not to be conducting any business from the place declared in registration.
- (b) The credit is availed by the registered person on invoices or debit notes, without actually receiving any goods or services or both.
- (c) The credit is availed by the registered person on invoices or debit notes, the tax in respect of which has not been paid to the government.
- (d) The registered person claiming the credit is found to be non-existent or is found not to be conducting any business from the place declared in registration.
- (e) The credit is availed by the registered person without having any invoice or debit note or any other valid document for it.

3.1.3 The Commissioner or an officer authorised by him, not below the rank of Assistant commissioner, must form an opinion for disallowing debit of an amount from electronic credit ledger in respect of a registered person. only after proper application of mind considering all the facts of the case, including the nature of *prima facie* fraudulently availed or ineligible input tax credit and whether the same is covered under the grounds mentioned in sub-rule (1) of rule 86A, as discussed in para 3.1.2 above; the amount of input tax credit involved; and whether disallowing such debit of electronic credit ledger of a person is necessary for restricting him from utilizing/passing on fraudulently availed or ineligible input tax credit to protect the interests of revenue.

3.1.4 It is reiterated that the power of disallowing debit of amount from electronic credit ledger must not be exercised in a mechanical manner and careful examination of all the facts of the case is important to determine case(s) fit for exercising power under rules 86A. The remedy of disallowing debit of amount from electronic credit ledger being, by its very nature. Extraordinary, has to be resorted to with utmost circumspection and with maximum care and caution. It

contemplates an objective determination based on intelligent care and evaluation as distinguished from a purely subjective consideration of suspicion. The reasons are to be on the basis of material evidence available or gathered in relation to fraudulent availment of input tax credit or ineligible input tax credit availed as per the conditions/grounds under sub-rule (l) of rule 86A.

3.2 Proper authority for the purpose of Rule 86A:

3.2.1 The Commissioner (including Principal Commissioner) is the proper officer for the purpose of exercising powers for disallowing the debit of amount from electronic credit ledger of a registered person under rule 864. However, commissioner/Principal Commissioner can also authorize any officer subordinate to him, not below the rank of Assistant Commissioner, to be the proper officer for exercising such power under rule 86A. It is advised that Commissioner/Principal Commissioner may authorize exercise of powers under rule 86A based on the following monetary limits as mentioned below:

| Total amount of ineligible fraudulently availed Input Tax credit | Officer to disallow debit of amount from electronic credit ledger under rule 86A |
|--|--|
| Not exceeding Rupees 1 crore | Deputy Commissioner/Assistant Commissioner |
| Above Rupees 1 crore but not exceeding ₹5 crore | Additional Commissioner/Joint Commissioner |
| Above ₹5 crore | Principal Commissioner/Commissioner |

3.2.2 The Additional Director General/Principal Additional Director General of DGGI can also exercise the powers assigned to the Commissioner under rule 86A. The monetary limits for authorization for exercise of powers under rule 86A to the officers of the rank of Assistant Director and above of DGGI by the Additional Director General/Principal Additional Director General may be same as mentioned for equivalent rank of officers in the table in para 3.2.1 above.

3.2.3 Where during the course of Audit under section 65 or 66 of CGST Act, 2017 it is noticed that any input tax credit has been fraudulently availed or is ineligible as per the grounds mentioned in sub-rule (l) of rule 86A, which may require disallowing debit of electronic credit ledger under rule 864, the concerned Commissioner/Principal Commissioner of CGST Audit Commissionate may refer the same to the jurisdictional CGST Commissioner for examination of the matter for exercise of power under rule 86A.

3.3 Procedure for disallowing debit of electronic credit ledger/blocking credit under Rule 86(A):

3.3.1 The amount of fraudulently availed or ineligible input tax credit availed by the registered person, as per the grounds mentioned in sub-rule (l) of rule 86A, shall be *prima facie* ascertained based on material evidence available or gathered on record. It is advised that the powers under rule 86A to disallow debit of the amount from electronic credit ledger of the registered person may be exercised

by the Commissioner or the officer authorized by him, as per the monetary limits detailed in Para 3.2.1 above. The officer should apply his mind as to whether there are reasons to believe that the input tax credit availed by the registered person has either been fraudulently availed or is ineligible, as per conditions/grounds mentioned in sub-rule (1) of rule 864 and whether disallowing such debit of electronic credit ledger of the said person is necessary for restricting him from utilizing/passing on fraudulently availed or ineligible input tax credit to protect the interests of revenue. Such "Reasons to believe" shall be duly recorded by the concerned officer in writing on file, before he proceeds to disallow debit of amount from electronic credit ledger of the said person.

3.3.2 The amount disallowed for debit from electronic credit ledger should not be more than the amount of input tax credit which is believed to have been fraudulently availed or is ineligible, as per the conditions/grounds mentioned in sub-rule (1) of rule 86A.

3.3.3 The action by the commissioner or the authorized officer, as the case may be, to disallow debit from electronic credit ledger of a registered person, is informed on the portal to the concerned registered person, along with the details of the officer who has disallowed such debit'

3.4 Allowing debit of disallowed/restricted credit under sub-rule (2) of Rule86A:

3.4.1 The commissioner or the authorized officer, as the case may be, either on his own or based on the submissions made by the taxpayer with material evidence thereof, may examine the matter afresh and on being satisfied that the input tax credit, initially considered to be fraudulently availed or ineligible as per conditions of sub-rule (1) of rule 86A, is no more ineligible or wrongly availed, either partially or fully, may allow the use of the credit, so disallowed/restricted, up to the extent of eligibility, as per powers granted under sub-rule (2) of rule 86A. Reasons for allowing the debit of electronic credit ledger, which had been earlier disallowed, shall be duly recorded on file in writing, before allowing such debit of electronic credit ledger.

3.4.2 The restriction imposed as per sub-rule (1) of rule 86A shall cease to have effect after the expiry of a period of one year from the date of imposing such restriction. In other words, upon expiry of on" year from the date of restriction, the registered person would be able to debit input tax credit so disallowed, subject to any other action that may be taken against the registered person.

3.4.3 As the restriction on debit of electronic credit ledger under sub-rule (1) of rule 86A is resorted to protect the interests of the revenue and the said action also has bearing on the working capital of the registered person, it should be endeavoured that in all such cases' the investigation and adjudication are completed at the earliest, well within the period of restriction, so that the due liability arising out of the same can be recovered from the said taxable person and the purpose of disallowing debit from electronic credit ledger is achieved.

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| CBIC issues clarification in respect of certain GST related issues on recommendation of GST Council |
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*Circular No. 159/15/2021-GST to
Circular No. 161/15/2021-GST Dated September 20th, 2021*

CBIC has issued three circulars to provide clarification on certain issues as per recommendation of GST Council whose 45th meeting took place on September 17th, 2021. The first circular provides clarification on scope of Intermediary & its services and also the primary requirements or basic prerequisites for intermediary services are specified.

The second circular provides clarification on amendment brought by Finance Act, 2020, to delink the date of issuance of debit note from the date of issuance of the underlying invoice for availing ITC and requirement to carry the physical copy of tax invoice in cases where invoice has been generated in the manner prescribed under rule 48(4). It is also clarified that w.e.f. 01.01.2021, in case of debit notes, the date of issuance of debit note (not the date of underlying invoice) shall determine the relevant financial year for the purpose of section 16(4) of the CGST Act.

The third circular clarifies that a company incorporated in India and a body corporate incorporated under foreign laws are separate persons and thus are separate legal entities. Accordingly, these two separate persons would be considered as a separate legal entity than the foreign company.

IMPORTANT NOTIFICATION

Clarification regarding extension of time limit for availing ITC and claiming adjustment in respect of credit note pursuant to issuance of Notification

No.18/2022-Central Tax, dated 28.09.2022:

The Central Government has notified Sections 100 to 114 except clause (c) of section 110 and section 111 of the Finance Act, 2022 shall come into force from 1st October, 2022. The time limit for the following compliances in respect of a particular financial year has been extended and fixed as 30th November of the next financial year, or furnishing of the relevant annual return, whichever is earlier.

| Relevant section of the Finance Act, 2022 | CGST Act, 2017 | Compliance Requirements |
|--|--------------------------|--|
| Clause (b) to Section 100 | Section 16(4) | Claiming of ITC in respect of any invoice or debit note in the return. |
| Section 102 | Section 34(2) | Declaration of the details of credit notes in the return |
| Clause (c) to section 103 | Proviso to Section 37(3) | Rectification of particulars in details of outward supplies. |

| Relevant section of the Finance Act, 2022 | CGST Act, 2017 | Compliance Requirements |
|---|--------------------------|--|
| Clause (c) to section 105 | Proviso to section 39(9) | Rectification of particulars furnished in a return. |
| Section 112 | Proviso to section 52(9) | Rectification of particulars in the statement furnished by a TCS operator. |

The above cited extended limitation period come into effect from 1st October, 2022 and listed applicable compliances effective from the Financial Year, 2021-2022 onwards. Accordingly, the amendments have been made in CGST Act, 2017 and benefits extended to the following:

- (i) The taxpayer will be entitled to avail input tax credit on invoices pertaining to FY 2021-22 till November 30, 2022.
- (ii) The taxpayer-supplier may issue credit notes relating to invoices raised in FY 2021-22 till November 30, 2022 or date of filing Annual return, which is earlier.
- (iii) Furnish their details and claim adjustment filing Form GSTR-1 statement and Form GSTR-3B return will have to be filed by November 30, 2022.
- (iv) No extension of due date of filing monthly return/October (due in November) or the due date of filing quarterly return/statement for the quarter ending September.

ITC restricted to 5% in case of transport of passengers by motor vehicle if supplier charges 12% GST: Notification

The CBIC has issued notification No. 12/2023- Central Tax (Rate) dated 19.10.2023 to provide that in case of services of transport of passengers by any motor vehicle, where the supplier of input service in the same line of business charges 12% GST, then credit of only 5% shall be available.

CBIC allowed refund of accumulated ITC on construction of civil structures, etc., which are not intended for sale to buyer

The CBIC has issued notification No. 15/2023- Central Tax (Rate) dated 19-10-2023 to provide that refund of accumulated ITC shall be allowed on construction of civil structures, like bridges, roads, etc., which are not intended for sale to a buyer.

59. Case Law/Advance Ruling

ITC on goods/services used in the construction of mall allowed to use for payment payable GST on rental income:

The Hon'ble High Court of Orissa had delivered a Landmark judgment in the case of *M/s Safari Retreats Private Limited v Chief Commissioner of Central*

Goods and Services Tax, Orissa reported in [2019 (25) G.S.T. L.341 (Ori.)] and [2019(105) taxmann.com 324 (Orissa)].

The petitioner was engaged in construction of shopping malls and letting out of the shops constructed. For construction purpose, materials and other inputs in the form of cement, bricks, sand, steel, electric equipments and services in the form of consultancy, architectural, legal services, etc., were required. Those goods/services purchased were taxable and petitioner had paid huge amount of GST.

The High Court observed that input tax credit is not available to a taxable person who has constructed the immovable property 'on his own account'. This condition cannot be applied in cases where construction of immovable property is intended for letting out. In this case, the shopping mall which the petitioner was constructing neither intended for sale nor on his own account but was 'intended for letting out'. Therefore, narrow interpretation by the department could not be accepted as the petitioner was retaining the property not for its own purpose but to let out the same. The High Court has held that the petitioner would be allowed to set off the input tax credit on the goods/services used in the construction of mall from the GST payable on the rental income received.

Thus, the Hon'ble High Court of Orissa had allowed Input Tax Credit of the GST paid on all construction materials and input services used for the construction of an immovable property (shopping mall) that was used for letting out of shops and ITC shall be used for the payment of GST liability on lease rental services of shops.

It is pertinent to mention that even though, department filed SLP before the Apex Court against the said order of Orissa High Court and the Supreme Court has issued notice to the respondents but the Apex Court did not grant any stay for the said judgement of Orissa High Court, reported in **[2020 (32) G.S.T.L. J120 (S.C.)]**.

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| ITC allowed on Construction Materials for Warehouse and it's maintenances: AAR-MP. |
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In Re: *Unity Traders*, reported in [2020(35) G.S.T.L. 231 (A.A.R. - GST-M.P.)] vide Order No. 06/2020, dated 10-02-2020.

Ruling:

1. We hold that no ITC of GST paid on goods purchased for the purpose of construction and maintenance of warehouse such as Vitrified Tiles, Marble, Granite, ACP sheet, Steel Plates, TMT Tor (saria), Bricks, Cement, Paint and other construction material is admissible under Section 17(5) of CGST Act, 2017.

2. We hold that no ITC of GST paid on work contract service received from registered and unregistered contractor for construction and maintenance contract of building is admissible under Section 17(5) of CGST Act, 2017.

3. We hold that no ITC of GST paid on goods purchased and works contract service received during the FY 2017-18 for the purpose of construction and maintenance of warehouse is admissible under Section 17(5) of CGST Act, 2017.

4. The ruling is valid subject to the provisions under Section 103(2) until and unless declared void under Section 104(1) of the GST Act.

ITC allowed on hiring bus for transportation of employees.

AAR-Maharashtra -In Re: TATA Motors Ltd, reported in [2020 (41) G.S.T.L. 35 (A.A.R. - GST-Mah.)] vide Order No. GST-ARA-23/2019-20/B-46-Mumbai, dated 25-08-2020.

Ruling/Order:

Q1: Whether Input Tax Credit (ITC) available to applicant on GST charged by service provider on hiring of bus/motor vehicle having seating capacity of more than thirteen persons for transportation of employees to and from work place?

Ans: ITC is available to the applicant but only after 1-2-2019.

Q2: Whether GST is applicable on nominal amount recovered by applicant from employees for usage of employees' bus transportation facility in on-air conditioned bus?

Ans: Answered in the negative.

Q3: If ITC is available as per Question No. (1) Above, whether it will be restricted to the extent of cost borne by the applicant (employer)?

Ans: Answered in the affirmative.

ITC allowed only for business purposes-AAR- Uttar Pradesh

In Re: Indo Prosoya Foods (P) Ltd. [2018 (17) G.S.T.L. 35 (A.A.R. - GST)] Held: In reference to Input [Tax] Credit (ITC) of GST paid on goods/services, when common inputs are being used for both taxable and exempted supplies, the party is required to reverse the credit proportionate to the amount of credit pertaining to the exempted supplies. ITC can be availed only on goods and services for business purposes. If they are used for non-business (personal) purposes, or for making exempt supplies, ITC cannot be claimed. Applicant required to reverse the credit proportional to the amount of credit pertaining to the exempted supplies immediately - Section 17(2) of Central Goods and Services Tax Act, 2017.

NO ITC on Construction for foundation for Installation-AAR-Andhra Pradesh

In Re: Maruti Ispat & Energy Pvt. Ltd. reported in [2018 (18) G.S.T.L. 847 (A.A.R. – GST)] Held: Inputs and input services used for constructing foundation for installation of plant and machinery and for creating sheds for protection of such plant and machinery - Contention of assessee that such civil structures to be treated as structural support for plant and machinery not acceptable - Civil structures under consideration would squarely fall within term

'other civil structures' and excluded from ambit of explanation to the proviso to Section 17(5) of Central Goods and Services Tax Act, 2017 and Andhra Pradesh Goods and Services Tax Act, 2017 - Assessee not entitled to claim the Input Tax Credit on the goods and services. [Para 9]

NO ITC on cash carry van: AAR-Maharashtra.

In Re: CMS Info Systems Ltd., [2018(15) G.S.T.L. 727 (APP.A.A.R.-GST)]

Issue on Input Tax Credit - Admissibility on Motor Vehicle - Cash carrying vans - Applicant pleading that since disposal of used cash vans has been held as taxable to GST, he is entitled to avail ITC at time of purchase of these Vans.

AAR Held: Since there is difference of Opinion on this issue between two Members of Advance Ruling Authority, matter has been referred to Appellate Authority on Advance Ruling for appropriate Ruling.

AAAR Held: As the law now stands, Input Tax Credit is not available on purchase of motor vehicles i.e. cash carry vans, which are purchased and used for cash management business and supplied post usage as scrap.

**NO ITC on input services used for township, guest house and hospitals:
AAR-Odisha.**

In Re: National Aluminium Company Ltd., (GST AAR Odisha) ORDER NO.02/ODISHA-AAR/18-19 dated September 28, 2018- reported in [2018(18) G.S.T.L. 508 (AAR-GST)]

Issue Involved: Whether the applicant is entitled to take input credit of tax paid on various goods and services used for maintenance of applicant's townships, guest houses, hospitals and horticulture for paying output tax.

Held: The input, and/or input services received by the applicant for the activities such as maintenance and repair of the townships, guest houses, hospitals and horticulture have no nexus with the manufacturing activity undertaken by the applicant. The said activities are neither relating to business nor relating to manufacture of final product and its supply. The said activities may be welfare activities undertaken while carrying on the business but to qualify as input service; the activity must have nexus with the business of the applicant. The expression "in course or furtherance of business" appearing in Section 16(1) of the GST Act refers to activities which are integrally related to the business activity and not welfare activities. So, the **Input Tax Credit shall not be available to the applicant in respect of the services and goods procured for these activities.**

No ITC on exempted output supply – AAR- Chhattisgarh

In Re: V N R Seeds Pvt. Ltd. [2018 (14) G.S.T.L. 559 (A.A.R. – GST)].

Issue: Input Tax Credit of GST paid on purchase packing materials (taxable) which were used for packing of seeds (exempted goods).

Held: The applicant is not entitled to ITC on the packing material used for packaging seeds, while making such exempted supply of seeds to their own

branches and to other purchasers. They are however, entitled for ITC (of the tax involved in the purchase of such packing material) on the exclusive taxable supply of such packing material made to their own branches in other States, in terms of Section 17(2) of Chhattisgarh Goods and Services Tax Act, 2017.

ITC is not matter of right

The Government has restricted in availment of input tax credit under Section 17(5)(d) of the CGST Act and OGST Act, 2017. The petitioner has erred in thinking that input tax credit is not a matter of right which cannot be deprived. This issue has already been decided by the Hon'ble Supreme Court in case of *Oil Corporation India Limited. v State of Bihar 2018(11) G.S.T.L.8 (S.C.)*.

Government imposes restrictions on availing ITC:

Powers to restrict flow of credit also exit under Section 16(1) of the CGST Act which empowers the Central Government to impose conditions and restrictions on availing input tax credit. This shows a Legislative intent that input tax credit may not always be allowed partially or fully. Input tax credit provisions do not provide for that all the tax paid on inputs should be available as credit. Some credits have been denied under Section 17 in the Act itself and to allow flexibility, the Act provides that restrictions can be placed on availability of credit. In this regard, reliance is also placed on the recent judgment of Hon'ble Delhi High Court in the case of *Cellular Operators Association of India and others v Union of India [2018(14) G.S.T.L. 522 (Del.)]*

Denial of refund on 'Input Services' under Inverted Duty Structure Scheme is ultra vires to Section 54 (3): GUJ HC

[High Court of Gujarat, *VKC Footsteps India Pvt. Ltd. v Union of India*- reported in [2020 (43) G.S.T.L. 336 (Guj)]]

The petitioner is a manufacturer and supplier of footwear which attracts 5% GST. It procures input services such as job work service, goods transport agency service etc. and inputs such as synthetic leather, PU Polyol, etc., on payment of applicable GST and avails input tax credit ('ITC') of the same. Majority of its inputs and input services attract 12% or 18% GST.

Since GST rate on procurements is higher than the rate of tax payable on outward supply of footwear, unutilized credit is accumulated in electronic credit ledger of the petitioner.

The department was allowing refund of accumulated ITC of tax paid on inputs. However, refund of accumulated ITC of tax paid on procurement of input services was denied on ground that explanation (a) of Rule 89(5) which defines Net ITC does not include input services. The petitioner challenged the validity of this definition Central Goods and Services Tax Rules, 2017 ('CGST Rule') to the extent it denies refund of ITC of input services.

The Hon'ble Gujarat High Court observed that explanation (a) to Rule 89(5) of the CGST Rule provides that 'Net Input Tax Credit' shall mean ITC availed on inputs during the relevant period other than the ITC availed for which refund

is claimed under sub-rule (4A) or (4B) or both. By prescribing the formula in Rule 89(5) to exclude refund of tax paid on ‘input service’ as part of the refund of unutilised ITC goes contrary to the provisions of Section 54(3) of the Central Goods and Services Tax Act, 2017 (‘CGST Act’) which provides for claim of refund of ‘any unutilised input tax credit’. On perusal of definitions under Section 2, it can be inferred that ‘input’ and ‘input service’ both are part of ‘input tax’ and ‘input tax credit’.

As per Section 54(3), registered person may claim refund of ‘any unutilised input tax’. Hence, by way of Rule 89(5) such claim of the refund cannot be restricted only to ‘input’ excluding the ‘input services’ from the purview of ‘Input tax credit’. Moreover, clause (ii) of proviso to Section 54(3) also refers to both supply of goods or services and not only supply of goods as per amended Rule 89(5) of the CGST Rules.

In view of the above, Explanation (a) to Rule 89(5) which denies the refund of unutilised input tax paid on input services as part of ITC accumulated on account of inverted duty structure held as ultra vires the provision of Section 54(3) of the CGST Act.

Refund restriction on Input services under Inverted Duty structure scheme is 'valid and Constitutional': Madras HC

[*Tvl. Transtunnelstroy Afcons Joint Venture v Union of India* [2020 (43) G.S.T.L. 433 (Mad.)]

Contrary to the Gujarat High Court Judgment [*VKC Footsteps India (P.) Ltd.* [2020 (43) G.S.T.L. 336 (Guj.)], the Hon’ble Madras High Court dismissed the WRIT petitions filed challenging the restrictions imposed by Rule 89(5) of the Central Goods and Services Tax Rules, 2017 (‘CGST Rules’) on claiming refund of unutilised input tax credit (‘ITC’) on input services under inverted rate structure scheme.

The Hon’ble Madras High Court held that Section 54(3)(ii) of the Central Goods and Services Tax Act, 2017 (‘CGST Act’) does not violate Article 14 of the Constitution of India. It was also held that the extension of the benefit of refund only to the unutilised ITC that accumulates on account of input goods thereby excluding unutilised ITC accumulated on account of input services in case of inverted rate structure is valid.

Restaurant & sweetshop operated from same premises are not ‘Composite Supplier’ of restaurant services: Appellate AAR

[*Kundan Misthan Bhandar, In re* [2019 (24) G.S.T.L.94 (App. AAR GST-Uttarakhand)]

The applicant is running sweetshop and a restaurant in two distinctly marked separate parts of the same premises and also maintaining separate accounts and billings for the two types of business. It has sought an Advance Ruling on whether the supply of sweets, namkeens, cold drinks and other edible items from a sweetshop which also runs a restaurant is a supply of goods or a supply of service?

The Authority for Advance Ruling reported in [2018(19) G.S.T.L. 356(AAR-GST-Uttarakhand), held that the above supply shall be treated as a supply of service and sweetshop will be treated as an extension of restaurant. The applicant filed an appeal before the Appellate Authority for Advance Ruling.

The Appellate Authority for Advance Ruling observed that as per the CGST Act, 2017 ‘composite supply’ consists of two or more taxable supplies of goods or services or both which are naturally bundled and supplied in conjunction with each other. The supply of food to customers in a restaurant or as a takeaway from the restaurant counter which is being billed under restaurant sales head should fall under ‘composite supply’ of restaurant services.

However, goods supplied to customers through sweetshop counter have no direct or indirect nexus with restaurant services. Anyone can come and purchase any item of any quantity from the counter without visiting the restaurant. These sales are completely independent of restaurant activity and will continue even when the restaurant is closed.

The Appellate Authority for Advance Ruling held that in case of food items from restaurant, GST rates on restaurant service will be applicable on all such sales and ITC will not be allowed. In case of sale of those items from sweetshop counter it will be treated as supply of goods and GST rates of the respective items being sold will be levied and ITC will be allowed on such supply.

Persons Registered in a particular State can't claim credit of GST paid on hotel services availed in other State: AAAR-Rajasthan.

In Re: *IMF Cognitive Technology (P) Ltd.*, reported in 2019(28) GSTL.500 (App. AAR-GST).

The applicant is engaged in development, designing and trading of all types of computer software. It procures hotel services in the Haryana State on which hotel collects GST and State GST of Haryana. It is registered under GST in the State of Rajasthan. It has filed an application for Advance Ruling to determine the availability of input tax credit of GST paid in Haryana.

Registration is required for availing ITC on the transaction of the same State

The Authority for Advance Ruling, Rajasthan [2019 (21) G.S.T.L. 579 (A.A.R. – GST-Rajasthan)] held that the ITC of GST paid in Haryana State shall not be available to the applicant registered in Rajasthan State. The applicant filed an appeal before Appellate Authority for Advance Ruling, Rajasthan.

The Appellate Authority observed that Central GST is levied on all intra-State supplies where the location of supplier and place of supply are in the same State. For reason registered in Rajasthan, ITC of Central GST would be available to him, if the location of supplier and place of supply of services are in the same State, i.e. Rajasthan. ITC of Central GST charged from the applicant in Haryana is not available as in this case as both location of supplier and place of supply of services are in Haryana. The Appellate Authority upheld the order of AAR that ITC of GST paid in Haryana State is not admissible to the applicant registered in Rajasthan.

ITC available on motor vehicle purchased to provide trial runs to customers: AAR-Goa.

In Re: *Chowgule Industries (P) Ltd.*, reported in [2019(27) G.S.T.L.272 (AAR-GST-Goa)]

The Applicant is an authorised dealer of Maruti Suzuki India Ltd, for sale of motor vehicles and spares. It has sought an Advance Ruling to determine availability of ITC on motor vehicle purchased for demonstration purposes.

The Authority for Advance Ruling observed that the vehicles purchased from suppliers are being capitalized by the applicant in the books of account. The vehicles are used as demo cars to provide trial runs to customers to understand the features of vehicles are sold. Therefore, sale of demo vehicle is a further supply of such vehicle which is excluded from the provisions of blocked credits in GST. Also, the capital goods which are used in the course or furtherance of business are entitled to ITC. Therefore, the Authority for Advance Rulings held that ITC on motor vehicle purchased for demonstration purposes can be availed as ITC on capital goods and eligible to be set-off against output tax liability. This view also further has been affirmed by the Authority for Advance Ruling, In Re-[2020(27) G.S.T.L.272-AAR-GST-Goa].

No ITC related to Land Development: AAR-Madhya Pradesh

In Re: *Atriwal Amusement Park*, reported in 2020 (40) G.S.T.L. 80 (A.A.R. - GST - M.P.), held that 'Regarding the Input Tax on Goods and services used for area development and preparation of land on which water slides are placed, we have to state that area development and expenditure on preparation of land like **site formation** services are part of the cost of the land and thus are interminably bound with land. These expenses are liable to be capitalized under the head Land. Therefore, on account of the specific exclusion of Land from the meaning of 'plant and machinery', ITC related to Land Development, subject to its capitalization as per accounting principles shall not be available.'

No denial of ITC, if payment to supplier can be made through book adjustment: AAR-West Bengal.

The Authority for Advance Ruling, West Bengal in the case of *Senco Gold Limited*, reported in 2019(24) G.S.T.L. 688(A.A.R-GST), held that consideration for inward supplies by way of setting off book debt. The GST Act and rules made thereunder does not restrict the recipient from claiming the input tax credit when consideration is paid through book adjustment and instead of money. In other words, reduction in book debt (an asset in the payer's books of account) is a valid 'consideration'.

Issue of credit note means payment received by supplier:

In *Shiva Electricals v CST* (2007) 7 STR 35: STT 105 (CESTAT), it was held that issue of credit notes also amounts to payment (to recipient) – relying on *Mohd. Ekram Khan v CTO* 2004 (6) SCC 1083 (SC), where it was held that issue

of credit note to client is also a form of payment-view upheld in *GST v Shiva Analyticals* (2009) 21 STT 328 (Karn HC DB).

In Re: *MRF Ltd.*, reported in 2019(27) G.S.T.L. 578 (AAAR-Tamil Nadu), applicant was getting post sale, post supply and post issue of invoices discount. Thus, the applicant was making net payment to supplier after deducting such discount. It was held that the appellant (recipient of goods or services) is not required to reverse ITC on such discount and issue of commercial credit note (without GST) is sufficient [reversing decision In Re: *MRF Ltd.* reported in 2019 (23) 193(AAR-GST-TN)].

No restriction ITC, even consideration not received within 180 days:

The Appellate Authority for Advance Ruling, Tamil Nadu, In the case of *Sanghvi Movers Ltd.*, reported in 2020 (32) G.S.T.L. 586 (App. AAR-GST), held that Input Tax Credit in case of distinct person transaction even non-payment of consideration directly to the supplier and payment made to H.O, no restriction on ITC - Appellant, a Branch Office is registered in Tamil Nadu having inter-State transaction with HO in Maharashtra wherein said HO transferring Cranes on payment of IGST on agreed value - Appellant supplying said Cranes to inter-State customers on GST payment, payment of which generally directly made by customer to HO.

AAR in its *Ruling* in 2019 (27) GSTL.588 (AAR-GST) has restricted ITC to amount of value set-off, i.e., to extent of payment of value to their HO denying. But even then ITC is not deniable as consideration stands paid to HO either directly by customer or by setting of same between HO and appellant in terms of accepting accounting principles - In view of above AAR erred and the recipient of goods are different. The explanation to clause (b) of sub-section (2) of Section 16 of the Acts is not applicable.

Rule 37(1) provides that registered person who has earlier availed ITC and has failed to make the payment of the value of supply as well as tax thereon shall furnish such details in FORM GSTR-2 for the month immediately following the period of 180 days. As per Rule 37(2), such amount furnished in GSTR-2 shall be added to output liability ledger for the month in which such details are furnished. Here it is to be noted that GSTR-2 has been suspended till further notice. Hence can it be said that in view of the fact that the machinery provisions for the reversal of ITC prescribed under Rule 37 is not applicable at present, ITC reversal is not required? It can be referred to the decision of Apex Court in the case of *CIT v B.C. Srinivasa Shetty* [(1981) 2 SCC 460] wherein it was held that without machinery provision, charging provision shall fail.

Due to seller's mistakes Modvat credit should not be denied:

The Hon'ble Tribunal Bangalore in the case of *Larsen and Toubro Ltd v Commissioner of Customs & Central Excise*, reported in 2001 (127) E.L.T. 0807 (Tri. Bang), held that Modvat credit not to be denied for the mistake of seller goods namely Indian Oil Corporation Ltd, Modvat credit to be granted to assessee in the strength of invoice issued by the IOCL.

ITC on Bill to Ship to basis transactions:

The Appellate Authority for Advance Ruling, Maharashtra in the case of *Pasco Motor LLP*, reported in 2019 (22) G.S.T.L. 312(AAR-GST-Haryana), held that where the goods are delivered by the supplier to a recipient on the directions of such registered person. It covers the situations where the goods are supplied on "Bill to Ship to" basis. In other words, the goods are supplied to some other person on the directions of the buyer of the said goods, i.e., the buyer and the recipient of goods are different. The explanation to clause (b) of sub-section (2) of Section 16 of the Acts is not applicable.

No ITC on personal consumption:

The Appellate Authority for Advance Ruling, Maharashtra in the case of *Posco India Pune Processing Centre Pvt. Ltd.* reported in 2019 (21) G.S.T.L. 351 (A.A.R. - GST), held that GST paid for hotel stay in case of rent free hotel accommodation provided to General Manager (GM) and Managing Director (MD) of assessee - Hotel Accommodation used by assessee as a residential premises of its MD/GM which was for personal comfort of both - Assessee not eligible to claim ITC for same - Sections 16 and 17(5) (g) of the CGST Act, 2017.

No ITC on Gift and requirement of reversal:

The Appellate Authority for Advance Ruling, Maharashtra, in the case of *Biostadt India Ltd.* reported in 2019 (22) G.S.T.L. 551 (A.A.R. - GST), held that distributing Gold Coins to customers for achieving specified sales targets is nothing but supply of gifts, ITC in respect of which is specifically barred under Section 17(5)(h) of the CGST Act, 2017.

No ITC on construction materials for civil structure:

The Appellate Authority for Advance Ruling, Karnataka, in the case of *Tarun Realtors Pvt. Ltd.*, reported in 2019 (30) G.S.T.L. 245 (A.A.R. - GST), held that input tax credit on the inward supplies of goods or services involved in the construction of immovable property which is a civil structure or building is not available to the applicant and blocked - Section 17(5) of the CGST Act, 2017.

ITC not available on construction of mall:

The Appellate Authority for Advance Ruling, Tamil Nadu, in the case of *Sree Varalkshmi Mahaal LLP*, reported in 2020 (32) G.S.T.L. 597 (A.A.R. - GST - T.N.) ITC on inputs/input services used in construction of building (Mall), even if said immovable property is used for furtherance of business as said building is to be used for renting to customers, ITC on material/services used in construction cannot be claimed Since legislation intention in this regard is absolutely clear, there is no reason for going beyond statutory provisions - ITC not admissible - Section 17(5) of the CGST Act, 2017.

Assessee is not eligible to avail ITC in respect of GST paid on lift installation charges paid to lift contractor:

In Re: *Las Palmas Co-op. Housing Society*, 2020 (41) G.S.T.L. 548 (App. A.A.R. - GST - Mah.)

The applicant is Housing Society, is recovering amount, from each of the society members under various heads such as Service Charges, Electricity Charges, Lift Charges, Ground Rent, Sinking Fund, Repair Fund, Water Charges, Parking Charges, etc., and paying 18% GST on it after availing the Input Tax Credit under the GST.

The applicant is under the process of replacing existing lift of the society for which contract has been awarded to M/s. Fujitec India Private Limited (*hereinafter referred to as "Fujitec" or "lift contractor" interchangeably*). The appellant is also recovering separate amount for replacement of lifts from the members (apart from the normal charges as stated above) as "contribution for installation of new lifts" and charging 18% GST on it to the members of the society. The appellant is recovering such amount of contribution for the installation of the new lifts under the separate Tax Invoice.

In this connection the applicant wanted to know whether he is eligible for the input tax credit of lift installation charges paid to Fujitec, if it is booked as Capital expenditure in their books without availing the depreciation on 18% GST charged by Fujitec. As regards, the Circular No. 109/28/2019-GST, dated 22-7-2019, issued by the C.B.I. & C. as referred to by the appellant to contend that the Circular does not disallow the ITC in respect of goods, which become immovable property after being installed, and hence they are rightfully eligible to avail ITC in respect of the lift installation charges paid to the lift contractor, even if the lift is considered as immovable property, as held by the Maharashtra Advance Ruling Authority.

It is not in dispute that the appellant is availing the works contact services from the lift contractor for the replacement of the lift in the Society, which after being installed, becomes immovable property, and therefore ITC in respect of GST paid on such works contract services would not be admissible to the appellant. Accordingly, it is held that the appellant will not be eligible to avail the ITC in respect of the GST paid on lift installation charges paid to the lift contractor, in terms of Section 16(2)(b) read with Section 17(5)(c) and 17(5)(d) of the CGST Act, 2017.

ITC not allowed if supplier furnishes invoices for FY 2019-20 in GSTR-1 of November 2020: AAR WB

Authority for Advance Rulings West Bengal *Eastern Coalfields Ltd.*, In re - [2021] 130 taxmann.com 232 (AAR-WEST BENGAL)

The applicant was a producer and supplier of coal. It availed input tax credit during the tax periods January 2020, February 2020 and March 2020 against invoices issued by the supplier and payments against such supplies had also been made. However, the supplier furnished returns of those three months in the month of November 2020. It filed an application for advance ruling to know whether it would be eligible to avail such ITC or required to reverse it.

The Authority for Advance ruling observed that the supplier had paid the GST amount involved in the invoices issued during the month of January 2020, February 2020 and March 2020 in November, 2020 and it was beyond the due date of furnishing of FORM GSTR-3B under section 39 of the CGST Act for the month of September 2020. Since, the credit which was availed by the applicant was in violation of restrictions as prescribed in sub-rule (4) of rule 36, it would be treated as availment of ineligible input tax credit. Therefore, it was held that the applicant would be required to reverse the said input tax credit.

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Press release clarifying last date for availing ITC for invoices of July'2017 to March'2018 is valid: SC

Union of India v AAP & Company (2021) 133 taxmann.com-168 (SC)

The Honourable Gujarat High Court earlier held that para 3 of press release dated 18-10-2018, clarifying that last date for availing ITC relating to invoices issued during July'2017 to March'2018, as last date for filing return in Form GSTR-3B, was illegal and contrary to section 16(4) read with section 39(1) and rule 61 of the CGST Rules. The revenue has filed appeal before the Supreme Court against this decision.

The Honourable Apex Court has referred its decision in case of *Bharti Airtel Ltd.* (2021) 131 taxmann.com 319 (SC) by a three-judge Bench which disapproved the decision of Gujarat High Court. Since, the three-judge Bench judgment expressly overruled the impugned judgment, in such a case, the argument of distinguishing the three-judge Bench judgment would not be available. Thus, the limitation mentioned in para 3 of press release dated 18-10-2018, clarifying that last date of availing ITC for invoices issued from July'2017

to March'2018 shall be last date for filing return FORM GSTR-3B for month of September'2018 would be valid.

ITC would be available on invisible loss of inputs caused during manufacturing process: HC

R. K. Ganapathy Chettiar v Assistant Commissioner (ST), Kangeyam-2022 (56) G.S.T.L-129 (Mad) and (2021) 133 taxmann.com 259 (Madras)

The petitioner was engaged in the manufacturing activity and there was a loss of a small portion of the inputs, inherent to the manufacturing process. The order was issued by the department to reverse a portion of the ITC claimed by the petitioners, proportionate to the loss of the input, referring to the provisions of Section 17(5)(h) of the GST Act. It challenged the order for reversal of ITC and filed writ petition.

The Honorable High Court observed that impugned assessment orders rejected a portion of ITC claimed. But the situations as set out in clause (h) of Section 17(5) indicate loss of inputs that are quantifiable, and involve external factors or compulsions. A loss that is occasioned by consumption in the process of manufacture is one which is inherent to the process of manufacture itself. The reversal of ITC by invoking Section 17(5)(h) by the revenue, in cases of loss by consumption of input inherent to manufacturing loss was misconceived. Therefore, it was held that ITC would be available on total quantity and value of inputs that went into making of final product and order was liable to be set aside.

Input tax credit is not allowed to the extent of capitalization:

Advance Ruling of Madhya Pradesh- In Re: *Atriwal Amusement Park*, reported in 2020 (40) G.S.T.L. 80 (A.A.R. - GST-M.P.), wherein ruled that “Regarding eligibility of Input Tax Credit on Goods and Services used for construction of swimming pools/Wave Pools in which the water slides directly run into, we have to state that such Swimming Pools/Wave Pools are not support structure or foundation for a plant, but are independent items per se. Since they are not foundation or support structure on which slides are fastened for affixing them to earth and also on account they being Civil Structures, they are therefore excluded from the meaning of ‘plant and machinery’. Thus, the ITC related to the construction of the Swimming Pools and Wave Pools, subject to its capitalization shall not be available.”

Advance Ruling, Rajasthan, In Re: *Rambagh Palace Hotels Pvt. Ltd*, reported in 2019 (24) G.S.T.L. 691 (A.A.R.-GST), ruled that “ITC of GST paid on construction material, i.e. cement, concrete, bricks, paints, etc., purchased on own account and/or GST paid in engaging manpower for construction not available to extent of capitalization of said goods and/or services in terms of 17(5) (d) of the CGST Act, 2017 read with its explanation of construction. In case of immovable property, it would be covered under works contract service and ITC would not be available to the extent of capitalization of these goods.”

ITC is not available for personal consumption of employees

AAR-Tamilnadu - In Re: *Chennai Port Trust*, reported in 2019(28) G.S.T.L. 600 (A.A.R-GST), held that "In the instant case, the applicant has their own in-house hospital for use by the employees, retirees and their dependents. This is a free center where all the services and medicines are provided free to the employees. No consideration is charged from the employees for this. This provision of free medical care is mandatory as per the Regulations made under Major Ports Act. These are mandated to be provided to the applicant's employees, their dependents, pensioners and family pensioners for their own in-patient and out-patient treatments. These treatments includes the use of medical, diagnostic equipment, apparatus, instruments, consumables, disposables, spares and repairing services for these. These goods and services are used for providing personal medical care to the individuals who are the employees and pensioners of the applicant. They are in effect used for personal consumption of the employees, pensioners and dependents. Therefore, as per Section 17(5)(g) of CGST/TNGST Act, input tax credit is not available for medical, diagnostic equipment, apparatus, instruments, consumables, disposables, spares and repairing services for these which the applicant is procuring for the consumption of its employees and pensioners and their dependents. The applicant has stated in their application that these are not "goods or services used for personal consumption" as the applicant pays for the same. The argument does not hold. The fact of who pays for the goods and services here is irrelevant to the usage of the said goods and services. They are used by the employees and dependents and hence are for personal consumption and the applicant is ineligible to take input tax credit on the inward supply of medical, diagnostic equipment, apparatus, instruments, consumables, disposables, spares and repairing services for these used to provide health facilities to its employees in its hospital."

ITC not available on capital goods to the extent of Capitalisation

Input tax credit of GST paid on works contract service in relation to an immovable property is not available to extent of capitalization - *Jabalpur Entertainment Complexes (P.) Ltd., In re (2022) 142 taxmann.com 114 (AAAR-Madhya Pradesh)*

No ITC on preliminary work relating to construction

AAR-Gujarat – In Re: Deendayal Port Trust-reported in 2020(38) G.S.T.L.339 (A.A.R-GST), Appellant engaged in development of port based smart city, i.e., Smart Industrial Port City (SIPC) within Gandhidham-Kandla-Adipur Complex - Such project development being merely construction of an immovable property, attract the provisions of clauses (c) and (d) of sub-section (5) of Section 17 of Central Goods and Services Tax Act, 2017 which specifically deny input tax credit in respect of Works Contract services or goods and services used for construction of an immovable property - Accordingly, input tax credit not available on project development services like Programme Management Consultancy, Marketing Consultancy, Land levelling and other related works, Roads, Water, Electricity, & Drainage Infrastructure and other

related works for development of SIPC, i.e., construction of an immovable property.”

No ITC on creation of temporary structure (i.e. hall or shamiana or pandal etc.) especially for functions.

AAR-Haryana: In Re: *VDM Hospitality (P) Ltd.*, reported in 2021 (48) G.S.T.L. 64 (A.A.R-GST), HELD: Section 17(5) of Central Goods and Services Tax Act, 2017 bars taxpayers to avail benefit of Input Tax Credit in case goods or services or both received used in construction of immovable property even if same in course of furtherance of business - Temporary structure, immovable property for purposes of GST law - Applicant not entitled to credit of input tax in view of Section 17(5)(d) of Central Goods and Services Tax Act, 2017 - Section 17(5)(d) of Haryana Goods and Services Tax Act, 2017.

No ITC on free supplies under CSR activity.

AAR-Kerala: In Re: *Polycab Wires (P) Ltd*, reported in 2019 (24) G.S.T.L.103 (A.A.R.GST), Held, Free distribution of Electrical Items to flood effected people under CSR Activity - For these free direct supplies as gift, etc., ITC credit not admissible to applicant - Section 17(5)(h) of Central Goods and Services Tax Act, 2017/Kerala State Goods and Services Tax Act, 2017.”

No ITC on goods supplied free for brand promotion or sales Promotion of products.

AAR-Maharashtra - In Re: *Sanofi India Ltd*, reported in 2019 (26) G.S.T.L In cases where goods are procured with levy of input tax and supplied without tax being paid on such output supplies, no input tax credit available, except on export - If giver of gift does not pay output tax on same then compensation to Department would be foregoing of ITC on such gifts - Supply of assessee without consideration i.e. free supply and without payment of output tax - Distribution of promotional articles by assessee was nothing but gifts and transaction covered by provisions of Section 17(5) of Central Goods and Services Tax Act, 2017 - Issue not covered by Principal Commissioner of GST Circular No. 92/11/2019-GST, dated 7-3-2019 - Input tax credit not available of GST paid on expenses incurred towards promotional schemes of Shubh Labh Loyalty Program and given as brand reminder.

* * *

SECTION 16 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 — INPUT TAX CREDIT — ELIGIBILITY AND CONDITIONS FOR TAKING CREDIT.

HC allows assessee to amend GSTR-1 to rectify mistake of wrong GSTIN mentioned against invoices raised on purchase-*Mahalaxmi Infra Contract Ltd. v Goods and Services Tax Council (2022) 144 taxmann.com 138 (Jharkhand)*

* * *

The Orissa High Court had allowed to make correction in B2C to B2B in GSTR-1 for the year 2017-2018 and avail ITC on that account by the buyer on the said purchase - *Shiva Jyoti Construction v Chairperson CBI&C and others* 2023-TAXSCAN(HC)165.

The compliance of Statutory provisions u/s 16(2) of the Act and how to prove that conditions has been satisfied by the taxpayer in order to discharge the burden of proof and to ensure right to avail ITC by the documentary evidences are summarised as under:

| Sr. No. | Section 16 of CGST Act, 2017 and its sub-Sections | Conditions to satisfy for availing ITC by the taxable persons | Documentary evidences/records to prove eligibility to avail ITC |
|---------|---|---|---|
| 01 | 16(2)(a) | Possession of tax invoice/debit note issued by a supplier registered under this Act. | Invoice issued by supplier under Section 31(1)(2) of the Act, Debit note under Section 34 of the Act, Self invoice against RCM payment u/s 31(3)(f) of the Act and bill of entry as per the Customs Act,1962 |
| 02 | 16(2)(aa) | The detail of the invoice/debit note has been furnished by the supplier in GSTR-1 (outward supplies) and communicated to the recipient u/s section 37 of the Act. | Auto populated in GSTR-2B statement |
| 03 | 16(2) (b) | Goods or services or both has been received or deemed received by the recipient. | <ul style="list-style-type: none"> ➤ E.way bill for receipt of Goods. ➤ Lorry receipt ➤ Check post stamp as proof of movement of goods ➤ Inward receipt register ➤ Stock receipt statement ➤ Goods receipt register ➤ Stock – MRN voucher ➤ In case of Bill to ship goods there is no proof of receipt is required it is deemed supply. |

| Sr. No. | Section 16 of CGST Act, 2017 and its sub-Sections | Conditions to satisfy for availing ITC by the taxable persons | Documentary evidences/records to prove eligibility to avail ITC |
|---------|---|--|---|
| 04 | 16(2)(ba) | Details of input tax credit in respect of the said supply communicated to such registered person under Section 38 has not been restricted | Operation of Section 38 corresponding Rule has not been notified yet |
| 05 | 16(2)(c) | Tax charged on invoice or debit note has been paid to the Government by the supplier | Download copy from GST Portal suppliers GSTIN filing table showing that supplier has filed their GSTR-3B |
| 06 | 16(2)(d) | Recipient has filed GSTR-3B under section 39 | Copy of GSTR-3B with ARN Bank payment particulars |
| 07 | Proviso to Section 16(2) | Provided that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment. Provided further, Payment made to the supplier within 180 days from the date of invoice. | In case of goods received in lots ITC allow last lot, Copy of ITC avail in GSTR-3B filed copy with ARN. Supplier's payment ledger Recipients bank statement |

The cited table is the summary of statutory provisions of section 16(2) of the CGST Act, 2017 and documentary evidence as proof of compliance to satisfy the eligibility conditions as per statute to avail ITC by the recipient of goods or services. Non-compliances of these conditions lead to litigations. In order to handle litigations relating to provisions of Section 16 (2) of the Act, the responsibility of the recipient/purchaser to keep appropriate documentary evidence to defend allegation of non-compliance of statutory provisions and to ensure availment of ITC.

How to handle litigation on 16(2) of the CGST Act, 2017 and the relevant case laws as under:

- (i) The Hon'ble Madras High Court in ***M/s. D.Y. Beathel Enterprises v the State Tax Officer, reported in 2022 (58) GSTL 269 (Mad)***, had quashed the assessment order passed by the officer levying the entire tax liability on the purchasing dealer without involving the Seller, where the payment of tax has been made, but tax has not been remitted to the government, by the Seller on the ground that Revenue Department had not initiated any proceedings against the sellers in the first place for non-payment of tax.
The Court observed that, the Respondent has not taken any recovery action against the Seller. When it has come out that the Seller has collected tax from the Petitioner, the omission on the part of the Sellers to remit the tax must have been viewed very seriously and strict action ought to have been initiated against the Sellers.”
- (ii) The Madhya Pradesh High Court, in the case of ***Kabeer Reality Private Limited v The Union of India & Others, reported in 2020(33) GSTL 27 (MP)***, held that the GSTR-1 is the declaration of tax liability and GSTR-3B is evidence of actual payment and further pronounced the tax recovery has to initiate against such registered person only. The Court also observed that the credit availed by the recipient on the basis of invoices issued by the said registered person also became invalid/ineligible despite no fault on their part.”
- (iii) The Hon'ble High Court of Madras in the case of ***Sun Dye chem. v Assistant Commissioner reported in 2021(44) G.S.T.L. 358 (Mad)***, held that in the absence of an enabling mechanism, I am of the view that assessees should not be prejudiced from availing credit that they are otherwise legitimately entitled to. The error committed by the petitioner is an inadvertent human error and the petitioner should be in a position to rectify the same, particularly in the absence of an effective, enabling mechanism under statute.”
- (iv) The Hon'ble High Court of Delhi in the case of ***Arise India Ltd v Commissioner of Trade and Taxes, reported in 2018(10) G.S.T.L.182 (Del)***, held that there was need restrict the denial of ITC only to the selling dealers who had failed to deposit the tax collected by them and not to punish bona fide purchasing dealers.” This view was affirmed by the Supreme Court reported in 2022(60) GSTL 215(SC), held that Input Tax Credit under Delhi VAT Act, 2004 cannot be denied in bona fide transactions to purchasing dealer for non-payment of tax by selling dealer.
- (v) The Hon'ble High Court of Chhattisgarh in the case of ***Bharat Aluminium Company Limited-2021(6) TMI 1052-(Chhattisgarh High Court)***, held that if the default is made by non-payment of tax by the seller, the recovery shall be made from the seller. Therefore, Input Tax

Credit which was claimed by the petitioner cannot be denied for the reason that the seller has not uploaded their invoices on time in GSTR-1 and not reflection of invoice in GSTR-2A”

- (vi) The Hon’ble Calcutta High Court in the case of ***LGW Industries Limited v Union of India, reported in 2021-TIOL-2308-HC-KOL-GST***, held that if the transactions undertaken by the petitioner were genuine and supported by valid documents and such transactions were made before the cancellation of GST registration of suppliers, then the input tax credit shall be allowed.
- (vii) The Hon’ble High Court of Kerala in the case of ***Diya Agencies v State Tax Officer, reported in 2023-TIOL-1199-HC-KERALA-GST***, held that where the ITC claimed by the petitioner is bona fide and genuine, the same cannot be denied merely because of the fact that the amount was not reflected in FORM GSTR-2A of the petitioner, if the supplier does not remit the amount paid to him by the petitioner, the petitioner cannot be held responsible.
- (viii) The Hon’ble High Court of Calcutta in the case of ***Suncraft Energy Pvt.Ltd. v Assistant Commissioner, State Tax, reported in 2023-TIOL-917-HC-KOL-GST***, held that before directing the recipient to reverse the ITC, the department ought to have taken an action against the supplier. The reversal of ITC cannot be demanded unless it is an exceptional case where the department is able to prove collusion between the supplier and recipient or where the supplier is missing.
- (ix) The Hon’ble High Court of Delhi in the case of ***Balaji Exim v Commissioner, CGST, reported in 2023-TIOL-333-HC-DEL-GST***, held that a taxpayer is not required to examine the affairs of its supplying dealers. The input tax credit cannot be questioned unless it is established that the taxpayer did not receive the goods or pay for them.
- (x) The Hon’ble Tribunal Bangalore in the case of ***Larsen and Toubro Ltd v Commissioner of Customs & Central Excise, reported in 2001 (127) E.L.T. 0807(Tri. Bang)***, held that Modvat credit not to be denied for the mistake of seller goods namely Indian Oil Corporation Ltd, Modvat credit to be granted to assessee in the strength of invoice issued by the IOCL.”
- (xi) The Hon’ble High Court of Delhi in the case of ***On Quest Merchandising India Pvt.Ltd. v Government of NCT of Delhi, reported in 2017-TIOL-2251-HC-DEL-VAT***, wherein, held that “the selling dealer has failed to deposit the tax collected by him from the purchasing dealer, the remedy for the Department would be to proceed against the defaulting selling dealer to recover such tax and not deny the purchasing dealer the ITC.”

Chapter 8

Registration

Synopsis

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The provision of registration has been prescribed under chapter VI of the CGST Act, 2017 and Section 22 to Section 30 of the CGST Act, deals with the registration by the every supplier of goods and services.

1. Person liable for registration

Section 22 of the CGST Act, specified that “Every supplier shall be liable to be registered under this Act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds twenty lakh rupees”.

But the person makes taxable supplies of goods or services or both from any of the special category States; he shall be liable to be registered if his aggregate turnover in a financial year exceeds ten lakh rupees.

As per decision of 28th meeting of GST Council, the threshold limit for registration in respect of States of Assam, Arunachal Pradesh, Himachal Pradesh, Meghalaya, Sikkim and Uttarakhand to be enhanced to ₹20 lakhs from ₹10 lakhs.

Taxpayers may opt for multiple registrations within a States/Union territory in respect of multiple places of business located within the same State/Union territory.

As per the Finance (No. 2) Act, 2019: in Section 22(1) of the CGST Act, 2017 inserted new proviso:—

“Provided also that the Government may, at the request of a State and on the recommendations of the Council, enhance the aggregate turnover from ₹20 lakh to such amount not exceeding ₹40 lakh in case of supplier who is engaged exclusively in the supply of goods, subject to such conditions and limitations, as may be notified.

Explanation.—For the purpose of this sub-section, a person shall be considered to be engaged exclusively in the supply of goods even if he is engaged in exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.”

Notified Vide Notification No. 01/2020-Central Tax dated 1.1.2020.

1.1 To sum up threshold limit of registration

Every business entity engaged in **exclusive** supply of goods and whose aggregate turnover in the financial year does not exceed ₹40 Lakhs in a financial year is required to be registered under the GST Act. For supply of services, aggregate turnover of ₹20 Lakhs (₹10 Lakhs in special category States) is the limit for registration.

The GST Council increased the threshold limits for GST registration w.e.f. 01 April 2019. The limit has been increased for exclusive supply of goods only. The states have an option to opt for a higher limit of ₹40 Lakhs or continue with the existing limits of ₹20 Lakhs (₹10 Lakhs for special category States.)

Normal Category States who opted for a new limit of ₹40 lakhs are Chhattisgarh, Jharkhand, Delhi, Bihar, Maharashtra, Andhra Pradesh, Gujarat, Haryana, Goa, Punjab, Uttar Pradesh, Himachal Pradesh, Karnataka, Madhya Pradesh, Odisha, Rajasthan, Tamil Nadu, West Bengal.

Assam & J&K have also opted to raise the limit to ₹40 lakhs.

Kerala and Telangana who are normal category states choose to maintain status quo (maintains existing limit of ₹ 20 Lakhs)

Puducherry, Meghalaya, Mizoram, Tripura, Manipur, Sikkim, Nagaland, Arunachal Pradesh, Uttarakhand are the special Category States who opted for new limit of ₹20 lakhs.

Registration to remain temporarily suspended while cancellation of registration is under process, so that the taxpayer is relieved of continued compliance under the law.

Every person who is holding a license or registration under the earlier laws shall be liable to be registered under this Act, with effect from 1-7-2017.

When a business carried on by a taxable person registered under this Act is transferred on account of succession or otherwise, to another person as a going concern, the transferee or the successor as the case may be liable to be registered with effect from the date of such transfer or succession.

In a case of transfer pursuant to sanction of a scheme or an arrangement for amalgamation or, as the case may be, demerger of two or more companies pursuant to an order of a High Court, Tribunal or otherwise, the transferee shall be liable to be registered, with effect from the date on which the Registrar of Companies issues a certificate of incorporation giving effect to such order of the High Court or Tribunal.

For the purposes of this section there are certain points has been clarified as under,—

- (i) the expression “aggregate turnover” shall include all supplies made by the taxable person, whether on his own account or made on behalf of all his principals;
- (ii) the supply of goods, after completion of job work, by a registered job worker shall be treated as the supply of goods by the principal referred to

in Section 143, and the value of such goods shall not be included in the aggregate turnover of the registered job worker;

- (iii) the expression “special category States” shall mean the States as specified in sub-clause (g) of clause (4) of article 279A of the Constitution.

Thus, from the above analysis there are two terms that are very important needs to be defined before proceeding to further analysis of the topic and the two words are namely “supplier” and “aggregate turnover.”

2. Definition of Supplier

Section 2(105) of the CGST Act, defines “Supplier” in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services;

3. Definition of Aggregate Turnover

Section 2(6) of the CGST Act, defines “aggregate turnover” means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-State supplies of persons having the same Permanent Account Number, to be computed on all India basis but excludes Central Tax, State Tax, Union Territory Tax, Integrated Tax and Cess;

4. Persons not liable for registration

Section 23 of the CGST Act, specified that the following persons shall not be liable to registration, namely—

- (a) any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax under this Act or under the Integrated Goods and Services Tax Act;
- (b) an agriculturist, to the extent of supply of produce out of cultivation of land.

The Government may, on the recommendations of the Council, by notification, specify the category of persons who may be exempted from obtaining registration.

5. Compulsory registration in certain cases

Section 24 of the CGST Act, specified that the following categories of persons compulsorily shall be required to take registration under GST:

- (i) persons making any inter-State taxable supply;
- (ii) casual taxable persons making taxable supply;
- (iii) persons who are required to pay tax under reverse charge;
- (iv) person who are required to pay tax under sub-section (5) of Section 9;
- (v) non-resident taxable persons making taxable supply;
- (vi) persons who are required to deduct tax under Section 51, whether or separately registered under this Act;

- (vii) persons who make taxable supply of goods or services or both on behalf of other taxable persons whether as an agent or otherwise;
- (viii) Input Service Distributor, whether or not separately registered under this Act;
- (ix) persons who supply goods or services or both, other than supplies specified under sub-section (5) of Section 9, through such electronic commerce operator who is required to collect tax at source under Section 52;
- (x) every electronic commerce operator;
- (xi) every person supplying online information and database access or retrieval services from a place outside India to a person in India, other than a registered person; and
- (xii) such other person or class of persons as may be notified by the Government on the recommendations of the Council.

As per decision of 28th meeting of GST Council, the mandatory registration is required for only those e-commerce operators who are required to collect tax at source under Section 52 of the CGST Act, other e-commerce operators who are not required to collect tax at source under Section 52 would henceforth not be required to take registration if their aggregate turnover in a financial year did not exceed ₹20 lakhs.

6. Two threshold limits of Registration under GST

As per decision of 32'nd meeting of GST Council, there would be two threshold limits for exemption from registration and payment of GST for the suppliers of goods i.e. ₹40 lakhs and ₹20 lakhs.

States would have an option to decide about one of the limits within a week's time.

The threshold for registration for service providers would continue to be ₹20 lakhs and in case of Special Category States ₹10 lakhs.

The above changes have been given effect w.e.f. from 1st April'2019 vide Notification No. 10/2019-Central Tax dated 7March'2019. The theme of Notification is as follows:

Threshold limit for registration (For those engaged in exclusive supply of goods- Enhanced to ₹40 lacs)

- Except persons engaged in making intra-State supplies in the States of Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Puducherry, Sikkim, Telangana, Tripura, Uttarakhand.
- Except persons required to take compulsory registration under Section 24.
- Except supplies of Ice cream and other edible ice, whether or not containing cocoa; Pan Masala; Tobacco and manufactured tobacco substitutes.
- The threshold for registration for service providers would continue to be ₹20 lakhs and in case of Special category States ₹10 lakhs.

7. Process of Registration - Rule 8

Every person, other than a non-resident taxable person, a person required to deduct tax at source under Section 51, a person required to collect tax at source under Section 52 and a person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient referred to in Section 14 of the Integrated Goods and Services Tax Act, 2017, every person seeking registration under sub-section-1 shall, before applying for registration, declare his Permanent Account Number, mobile number, e-mail address, State or Union territory in **Part A of FORM GST REG-01** on the common portal, either directly or through a Facilitation Centre.

Provided that every person being an Input Service Distributor shall make a separate application for registration as such Input Service Distributor.

1. Every person who is liable to be registered under sub-section (1) of section 25 and every person seeking registration under sub-section (3) of section 25 (hereafter in this Chapter referred to as "the applicant"), except-

- (i) a non-resident taxable person;
- (ii) a person required to deduct tax at source under section 51;
- (iii) a person required to collect tax at source under section 52;
- (iv) a person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient referred to in section 14 or a person supplying online money gaming from a place outside India to a person in India referred to in section 14A under the Integrated Goods and Services Tax Act, 2017 (13 of 2017), shall, before applying for registration, declare his Permanent Account Number, State or Union territory in Part A of FORM GST REG-01 on the common portal, either directly or through a Facilitation Centre notified by the Commissioner:

Provided that every person being an Input Service Distributor shall make a separate application for registration as such Input Service Distributor.

2. (a) The Permanent Account Number shall be validated online by the common portal from the database maintained by the Central Board of Direct Taxes and shall also be verified through separate one-time pass words sent to the mobile number and e-mail address linked to the Permanent Account Number;

- (b) Omitted
- (c) Omitted [vide Notification No.26/2022-CT., dated 26.12.2022]

(3) On successful verification of the Permanent Account Number, mobile number and e-mail address, a temporary reference number shall be generated and communicated to the applicant on the said mobile number and e-mail address.

(4) Using the reference number generated under sub-rule (3), the applicant shall electronically submit an application in **Part B of FORM GST REG-01**, duly signed or verified through electronic verification code, along with the

documents specified in the said Form at the common portal, either directly or through a Facilitation Centre notified by the Commissioner.

*(4A) very application made under sub-rule (4) by a person, other than a person notified under sub-section (6D) of section 25, who has opted for authentication of Aadhaar number and is identified on the common portal, based on data analysis and risk parameters, shall be followed by biometric-based Aadhaar authentication and taking photograph of the applicant where the applicant is an individual or of such individuals in relation to the applicant as notified under sub-section (6C) of section 25 where the applicant is not an individual, along with the verification of the original copy of the documents uploaded with the application in FORM GST REG-01at one of the Facilitation Centres notified by the Commissioner for the purpose of this sub-rule and the application shall be deemed to be complete only after completion of the process laid down under this sub-rule.”

*(4B) The Central Government may, on the recommendations of the Council, by notification specify the States or Union territories wherein the provisions of sub-rule (4A) shall not apply.

* Inserted vide Notification No.26/2022-CT., dated 26.12.2022[(Central Government, on the recommendations of the Council, hereby specifies that the provisions of sub-rule (4A) of rule 8 of the said rules shall not apply in all the States and Union territories except the State of Gujarat) vide Notification No. 27/2022-CT., dated 26.12.2022]

(5) On receipt of an application under sub-rule (4), an acknowledgement shall be issued electronically to the applicant in **FORM GST REG-02**.

(6) A person applying for registration as a casual taxable person shall be given a temporary reference number by the common portal for making advance deposit of tax in accordance with the provisions of Section 27 and the acknowledgement under sub-rule (5) shall be issued electronically only after the said deposit.

7.1 Authentication of Aadhar number

After Rule 8(4) inserted (4A) vide Notification No.16/2020-C.T., dated 23.3.2020 – with effect

“(4A) The applicant shall, while submitting an application under sub-rule (4), with effect from 01.04.2020, undergo authentication of Aadhaar number for grant of registration.”

7.2 Verification of the application and approval - Rule 9

(1) The application shall be forwarded to the proper officer who shall examine the application and the accompanying documents and if the same are found to be in order, approve the grant of registration to the applicant within a period of seven working days from the date of submission of the application.

With effect from 1.4.2020 inserted after Rule 9(1) as under:

“Provided that where—

- (a) a person, other than those notified under sub-section (6D) of section 25, fails to undergo authentication of Aadhaar number as specified in sub-rule (4A) of rule 8, is identified on the common portal, based on data analysis and risk parameters, for carrying out physical verification of places of business; or
- (aa) a person, who has undergone authentication of Aadhaar number as specified in sub-rule (4A) of rule 8, is identified on the common portal, based on data analysis and risk parameters, for carrying out physical verification of places of business; or
- (b) the proper officer, with the approval of an officer authorised by the Commissioner not below the rank of Assistant Commissioner, deems it fit to carry out physical verification of places of business,

the registration shall be granted within thirty days of submission of application, after physical verification of the place of business , in the manner provided under rule 25 and verification of such documents as the proper officer may deem fit;]

(2) Where the application submitted under rule 8 is found to be deficient, either in terms of any information or any document required to be furnished under the said rule, or where the proper officer requires any clarification with regard to any information provided in the application or documents furnished therewith, he may issue a notice to the applicant electronically in **FORM GST REG-03** within a period of three working days from the date of submission of the application and the applicant shall furnish such clarification, information or documents electronically, in **FORM GST REG-04**, within a period of seven working days from the date of the receipt of such notice.

[**Provided** that where—

- (a) a person, other than a person notified under sub-section (6D) of section 25, fails to undergo authentication of Aadhaar number as specified in sub-rule (4A) of rule 8 or does not opt for authentication of Aadhaar number; or
- (b) the proper officer, with the approval of an officer authorised by the Commissioner not below the rank of Assistant Commissioner, deems it fit to carry out physical verification of places of business,

the notice in FORM GST REG-03 may be issued not later than thirty days from the date of submission of the application.]

Explanation.—For the purposes of this sub-rule, the expression -clarification includes modification or correction of particulars declared in the application for registration, other than Permanent Account Number, State, mobile number and e-mail address declared in **Part A of FORM GST REG-01**.

(3) Where the proper officer is satisfied with the clarification, information or documents furnished by the applicant, he may approve the grant of registration to the applicant within a period of seven working days from the date of the receipt of such clarification or information or documents.

(4) Where no reply is furnished by the applicant in response to the notice issued under sub-rule (2) or where the proper officer is not satisfied with the clarification, information or documents furnished, he shall, for reasons to be recorded in writing, reject such application and inform the applicant electronically in **FORM GST REG-05**.

(5) If the proper officer fails to take any action,—

- (a) within a period of three working days from the date of submission of the application; or
- (b) Omitted
- (c) Omitted

Explanation 1:—For the purposes of rule 42 and this rule, it is hereby clarified that the aggregate value of exempt supplies shall exclude:—

8. Issue of registration certificate available on the common portal - Rule 10 of CGST Rules, 2017

(1) Subject to the provisions of sub-section (12) of Section 25, where the application for grant of registration has been approved under rule 9, a certificate of registration in **FORM GST REG-06** showing the principal place of business and additional place or places of business shall be made available to the applicant on the common portal and a Goods and Services Tax Identification Number shall be assigned subject to the following characters, namely:—

- (a) two characters for the State code;
- (b) ten characters for the Permanent Account Number or the Tax Deduction and Collection Account Number;
- (c) two characters for the entity code; and
- (d) one checksum character.

(2) The registration shall be effective from the date on which the person becomes liable to registration where the application for registration has been submitted within a period of thirty days from such date.

(3) Where an application for registration has been submitted by the applicant after the expiry of thirty days from the date of his becoming liable to registration, the effective date of registration shall be the date of the grant of registration under sub- rule (1) or sub-rule (3) or sub-rule (5) of rule 9.

(4) Every certificate of registration shall be [duly signed or verified through electronic verification code] by the proper officer under the Act.

(5) Where the registration has been granted under sub-rule (5) of rule 9, the applicant shall be communicated the registration number, and the certificate of registration under sub-rule (1), duly signed or verified through electronic

verification code, shall be made available to him on the common portal, within a period of three days after the expiry of the period specified in sub-rule (5) of rule 9.

8.1 Furnishing of Bank Account Details - Rule 10A

After a certificate of registration in **FORM GST REG-06** has been made available on the common portal and a Goods and Services Tax Identification Number has been assigned, the registered person, except those who have been granted registration under rule 12 or, as the case may be rule 16, shall as soon as may be, but not later than 30 days from the date of grant of registration or the date on which the return required under section 39 is due to be furnished, whichever is earlier, furnish information with respect to details of bank account, or any other information, as may be required on the common portal in order to comply with any other provision.]

“within a period of thirty days from the date of grant of registration, or before furnishing the details of outward supplies of goods or services or both under section 37 in FORM GSTR-1 or using invoice furnishing facility, whichever is earlier, furnish information with respect to details of bank account on the common portal”.

Registration may be suspended in case Bank Account Details are not furnished by the registered person on common portal within the time limit of 30 days. Vide Notification No. 38/2023-Central Tax dated 04.08.2023

8.1.1 During suspension of registration the said registered person may not be allowed to furnish the details of outward supplies in FORM GSTR-1 or IFF.

8.2 Separate registration for multiple places of business within a State or a Union territory - Rule 11

(1) Any person having multiple places of business within a State or a Union territory, requiring a separate registration for any such place of business under sub-section (2) of section 25 shall be granted separate registration in respect of each such place of business subject to the following conditions, namely:—

- (a) such person has more than one place of business as defined in clause (85) of section 2;
- (b) such person shall not pay tax under section 10 for any of his places of business if he is paying tax under section 9 for any other place of business;
- (c) all separately registered places of business of such person shall pay tax under the Act on supply of goods or services or both made to another registered place of business of such person and issue a tax invoice or a bill of supply, as the case may be, for such supply.

Explanation.—For the purposes of clause (b), it is hereby clarified that where any place of business of a registered person that has been granted a separate registration becomes ineligible to pay tax under section 10, all other registered places of business of the said person shall become ineligible to pay tax under the said section.

(2) A registered person opting to obtain separate registration for a place of business shall submit a separate application in **FORM GST REG-01** in respect of such place of business.

(3) The provisions of rule 9 and rule 10 relating to the verification and the grant of registration shall, mutatis mutandis, apply to an application submitted under this rule.

8.3 Grant of registration to persons required to deduct tax at source or to collect tax at source - Rule 12

(1) Any person required to deduct tax in accordance with the provisions of section 51 or a person required to collect tax at source in accordance with the provisions of section 52 shall electronically submit an application, duly signed or verified through electronic verification code, in FORM GST REG-07 for the grant of registration through the common portal, either directly or through a Facilitation Centre notified by the Commissioner. (1A) A person applying for registration to deduct or collect tax in accordance with the provisions of section 51, or, as the case may be, Section 52, in a State or Union territory where he does not have a physical presence, shall mention the name of the State or Union territory in PART-A of the application in FORM GST REG-07 and mention the name of the State or Union territory in PART-B thereof in which the principal place of business is located which may be different from the State or Union territory mentioned in PART-A.]

(2) The proper officer may grant registration after due verification and issue a certificate of registration in **FORM GST REG-06** within a period of three working days from the date of submission of the application.

(3) Where ‘on a request made in writing by a person to whom a registration has been granted under sub-rule (2) or’, upon an enquiry or pursuant to any other proceeding under the Act, the proper officer is satisfied that a person to whom a certificate of registration in **FORM GST REG-06** has been issued is no longer liable to deduct tax at source under section 51 or collect tax at source under section 52, the said officer may cancel the registration issued under sub-rule (2) and such cancellation shall be communicated to the said person electronically in **FORM GST REG-08**:

Provided that the proper officer shall follow the procedure as provided in rule 22 for the cancellation of registration.

8.4 Grant of registration to non-resident taxable person - Rule 13

(1) A non-resident taxable person shall electronically submit an application, along with a self-attested copy of his valid passport, for registration, duly signed or verified through electronic verification code, in **FORM GST REG-09**, at least five days prior to the commencement of business at the common portal either directly or through a Facilitation Centre notified by the Commissioner:

Provided that in the case of a business entity incorporated or established outside India, the application for registration shall be submitted along with its tax

identification number or unique number on the basis of which the entity is identified by the Government of that country or its Permanent Account Number, if available.

(2) A person applying for registration as a non-resident taxable person shall be given a temporary reference number by the common portal for making an advance deposit of tax in accordance with the provisions of section 27 and the acknowledgement under sub-rule (5) of rule 8 shall be issued electronically only after the said deposit in his electronic cash ledger.

(3) The provisions of rule 9 and rule 10 relating to the verification and the grant of registration shall, mutatis mutandis, apply to an application submitted under this rule.

(4) The application for registration made by a non-resident taxable person shall be duly signed or verified through electronic verification code by his authorised signatory who shall be a person resident in India having a valid PAN.

8.5 Grant of registration to a person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient or a person supplying online money gaming from a place outside India to a person in India - Rule 14

(1) Any person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient or any person supplying online money gaming from a place outside India to a person in India shall electronically submit an application for registration, duly signed or verified through electronic verification code, in **FORM GST REG-10**, at the common portal, either directly or through a Facilitation Centre notified by the Commissioner.

(2) The applicant referred to in sub-rule (1) shall be granted registration, in **FORM GST REG-06**, subject to such conditions and restrictions and by such officer as may be notified by the Central Government on the recommendations of the Council.

8.6 Extension in period of operation by casual taxable person and non-resident taxable person – Rule 15

(1) Where a registered casual taxable person or a non-resident taxable person intends to extend the period of registration indicated in his application of registration, an application in **FORM GST REG-11** shall be submitted electronically through the common portal, either directly or through a Facilitation Centre notified by the Commissioner, by such person before the end of the validity of registration granted to him.

(2) The application under sub-rule (1) shall be acknowledged only on payment of the amount specified in sub-section (2) of section 27.

8.7 Suo moto registration – Rule 16

(1) Where, pursuant to any survey, enquiry, inspection, search or any other proceedings under the Act, the proper officer finds that a person liable to registration under the Act has failed to apply for such registration; such officer may register the said person on a temporary basis and issue an order in **FORM GST REG-12**.

(2) The registration granted under sub-rule (1) shall be effective from the date of such order granting registration.

(3) Every person to whom a temporary registration has been granted under sub-rule (1) shall, within a period of ninety days from the date of the grant of such registration, submit an application for registration in the form and manner provided in rule 8 or rule 12:

Provided that where the said person has filed an appeal against the grant of temporary registration, in such case, the application for registration shall be submitted within a period of thirty days from the date of the issuance of the order upholding the liability to registration by the Appellate Authority.

(4) The provisions of rule 9 and rule 10 relating to verification and the issue of the certificate of registration shall, *mutatis mutandis*, apply to an application submitted under sub-rule (3).

(5) The Goods and Services Tax Identification Number assigned, pursuant to the verification under sub-rule (4), shall be effective from the date of the order granting registration under sub-rule (1).

8.8 Assignment of Unique Identity Number to certain special entities - Rule 17

(1) Every person required to be granted a Unique Identity Number in accordance with the provisions of sub-section (9) of section 25 may submit an application electronically in **FORM GST REG-13**, duly signed or verified through electronic verification code, in the manner specified in rule 8 at the common portal, either directly or through a Facilitation Centre notified by the Commissioner.

(1A) The Unique Identity Number granted under sub-rule (1) to a person under clause (a) of sub-section (9) of section 25 shall be applicable to the territory of India.

(2) The proper officer may, upon submission of an application in **FORM GST REG-13** or after filling up the said form or after receiving a recommendation from the Ministry of External Affairs, Government of India, assign a Unique Identity Number to the said person and issue a certificate in **FORM GST REG-06** within a period of three working days from the date of the submission of the application.

8.9 Display of registration certificate and Goods and Services Tax Identification Number on the name board – Rule 18

(1) Every registered person shall display his certificate of registration in a prominent location at his principal place of business and at every additional place or places of business.

(2) Every registered person shall display his Goods and Services Tax Identification Number on the name board exhibited at the entry of his principal place of business and at every additional place or places of business.

8.10 Manner of registration

Section 25 of the CGST Act, specified the manner of registration by the various taxable person as under:

(1) Every person who is liable to be registered under Section 22 or Section 24 shall apply for registration in every such State or Union territory in which he is also liable within 30 days from the date on which he becomes liable to registration.

In case of a casual taxable person or a non-resident taxable person shall apply for registration at least 5 days prior to the commencement of business.

In case of any person who makes a supply from the territorial waters of India shall obtain registration in the coastal State or Union territory where the nearest point of the appropriate baseline is located.

(2) Any person who is seeking registration under GST shall be granted a single registration in a State or Union territory.

In case a person having multiple business verticals in a State or Union territory may be granted a separate registration for each business. (Allows multiple places of business of the taxpayers in addition to the different business verticals within the state to be registered separately.)

(3) A person, though not liable to be registered under Section 22 or Section 24 of the CGST Act, may get himself voluntarily and comply the all provisions of GST Act as applicable to a registered person.

(4) A person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as distinct persons for the purposes of the GST Act.

(5) Where a person who has obtained or is required to obtain registration in a State or Union territory in respect of an establishment, has an establishment in another State or Union territory, then such establishments shall be treated as establishments of distinct persons for the purposes of the GST Act.

(6) Every person shall have a Permanent Account Number issued under the Income Tax Act, 1961 in order to be eligible for grant of registration.

(7) Where an eligible person fails to obtain registration, the proper officer may take suitable action as per law.

(8) Any specialized agency of the UNO or any other organisation as notified by the commissioner shall be granted Unique Identity Number for all purposes including refund of taxes.

(9) The registration or Unique Identity Number shall be issued as per procedure or shall be deemed to have been granted within period of 7 days.

8.11 Physical verification of business premises in certain cases

(With effect from 01.04.2020)

“Physical verification of business premises in certain cases.-Where the proper officer is satisfied that the physical verification of the place of business of a person is required due to failure of Aadhaar authentication before the grant of registration, or due to any other reason after the grant of registration, he may get such verification of the place of business, in the presence of the said person, done

and the verification report along with the other documents, including photographs, shall be uploaded in **FORM GST REG-30** on the common portal within a period of fifteen working days following the date of such verification.” Vide Notification No. 16/2020-C.T., dated 23.3.2020.

8.12 Proof of possession of Aadhaar for registration

The Finance (No. 2) Act, 2019: In section 25 of the CGST Act, 2017, the following after sub-sections (6), the following sub-sections have been inserted, namely

“(6A) Every registered person shall undergo authentication, or furnish proof of possession of Aadhaar number, in such form and manner and within such time as may be prescribed:

Provided that if an Aadhaar number is not assigned to the registered person, such person shall be offered alternate and viable means of identification in such manner as Government may, on the recommendations of the Council, prescribe:

Provided further that in case of failure to undergo authentication or furnish proof of possession of Aadhaar number or furnish alternate and viable means of identification, registration allotted to such person shall be deemed to be invalid and the other provisions of this Act shall apply as if such person does not have a registration.

(6B) On and from the date of notification, every individual shall, in order to be eligible for grant of registration, undergo authentication, or furnish proof of possession of Aadhaar number, in such manner as the Government may, on the recommendations of the Council, specify in the said notification:

Provided that if an Aadhaar number is not assigned to an individual, such individual shall be offered alternate and viable means of identification in such manner as the Government may, on the recommendations of the Council, specify in the said notification.

(6C) On and from the date of notification, every person, other than an individual, shall, in order to be eligible for grant of registration, undergo authentication, or furnish proof of possession of Aadhaar number of the Karta, Managing Director, whole time Director, such number of partners, Members of Managing Committee of Association, Board of Trustees, authorised representative, authorised signatory and such other class of persons, in such manner, as the Government may, on the recommendations of the Council, specify in the said notification:

Provided that where such person or class of persons have not been assigned the Aadhaar number, such person or class of persons shall be offered alternate and viable means of identification in such manner as the Government may, on the recommendations of the Council, specify in the said notification.

(6D) The provisions of sub-section (6A) or sub-section (6B) or sub-section (6C) shall not apply to such person or class of persons or any State or Union territory or part thereof, as the Government may, on the recommendations of the Council, specify by notification.

Explanation.—For the purposes of this section, the expression “ Aadhaar number” shall have the same meaning as assigned to it in clause (a) of section 2 of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 (18 of 2016).”

Notified vide Notification No. 1/2020-Central Tax dated 01.01.2020.

Requirement of authentication of Aadhar

Notification No.36/2021-Central Tax dated 24th September 2021 [Amends Notn. No. 03/2021-Central Tax, dated 23rd February 2021]

Provisions of 25(6A) of CGST Act (Requirement of authentication of Aadhar) shall not apply to following persons –

- A person who is not a citizen of India
- A Department or establishment of the Central Government or State Government
- A local authority
- A statutory body
- A Public Sector Undertaking
- A person applying for registration under the provision of section 25 (9) of the said Act. (UINs).

9. Deemed Registration

Section 26 of the CGST Act, specified that the grant of registration or the Unique Identity Number under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act shall be deemed to be a grant of registration or the Unique Identity Number, provided the application for registration or Unique Identity Number has been rejected under within 30 days in terms of Section 25(10) of the CGST Act.

10. Registration for casual taxable or non-resident taxable person

Section 27 of the CGST Act, specified that the certificate of registration issued to a casual taxable person or non-resident taxable person shall be valid for 90 days from the effective date of registration. The registration certificate can be extended for a further period of 90 days by the proper officer on sufficient reasons shown by the taxable person. The casual or non-resident taxable persons have to make an advance deposit of tax liability and make additional deposit of tax for extension period if so.

11. Amendment of Registration

Section 28 of the CGST Act, specified the provision of amendment of registration. Every registered person or a person to whom a Unique Identity Number has been issued shall inform the proper officer of any changes in the information furnished at the time of registration within 15 days of the said changes.

Where there is any change in any of the particulars furnished in the application for registration in **FORM GST REG-01** or **FORM GST REG-07** or

FORM GST REG-09 or **FORM GST REG-10** or for Unique Identity Number in **FORM GST-REG-13**, either at the time of obtaining registration or Unique Identity Number or as amended from time to time, the registered person shall, within a period of fifteen days of such change, submit an application, duly signed or verified through electronic verification code, electronically in **FORM GST REG-14**, along with the documents relating to such change at the common portal, either directly or through a Facilitation Centre.

The proper office may approve or reject the amendment in the registration of such particulars but the proper officer shall not reject the application for registration without giving the person an opportunity of being heard.

12. Cancellation of registration

Section 29 of the CGST Act, provides the procedure for cancellation of registration either by the proper officer or an application filed by the registered person or by his legal heirs in the following circumstances where,—

- (a) the business has been discontinued, transferred fully for any reason including death of the proprietor, amalgamated with other legal entity, demerged or otherwise disposed of; or
- (b) there is any change in the constitution of the business; or
- (c) the taxable person, other than the person registered as voluntarily, is no longer liable to be registered under Section 22 or Section 24.

(2) The proper officer may cancel the registration of a person from such date, including any retrospective date, as he may deem fit, where,—

- (a) a registered person has contravened such provisions of the Act or the rules made thereunder as may be prescribed; or
- (b) a person paying tax under Section 10 (composition levy scheme) has not furnished returns for three consecutive tax periods; or
- (c) any registered person, other than a person specified in clause (b), has not furnished returns for a continuous period of six months; or
- (d) any person who has taken voluntary registration under sub-section (3) of Section 25 has not commenced business within six months from the date of registration; or
- (e) registration has been obtained by means of fraud, wilful misstatement or suppression of facts:

Provided that the proper officer shall not cancel the registration without giving the person an opportunity of being heard.

(3) The cancellation of registration under this section shall not affect the liability of the person to pay tax and other dues under this Act or to discharge any obligation under this Act or the rules made thereunder for any period prior to the date of cancellation whether or not such tax and other dues are determined before or after the date of cancellation.

(4) The cancellation of registration under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, shall be deemed to be a cancellation of registration under this Act.

(5) Every registered person whose registration is cancelled shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock or capital goods or plant and machinery on the day immediately preceding the date of such cancellation or the output tax payable on such goods, whichever is higher, calculated in such manner as may be prescribed:

Provided that in case of capital goods or plant and machinery, the taxable person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery, reduced by such percentage points as may be prescribed or the tax on the transaction value of such capital goods or plant and machinery under Section 15, whichever is higher.

(6) The amount payable under sub-section (5) shall be calculated in such manner as may be prescribed.

Section 29(1)(c) allows cancellation of persons who has taken voluntary registrations under Section 25(3) of the CGST Act.

13. Registration to be cancelled in certain cases - Rule 21

The registration granted to a person is liable to be cancelled, if the said person,—

- (a) does not conduct any business from the declared place of business; or
- (b) issues invoice or bill without supply of goods or services in violation of the provisions of this Act, or the rules made thereunder; or
- (c) violates the provisions of section 171 of the Act or the rules *made thereunder*;
- (d) violates the provision of rule 10A.

13.1 Suspension of registration - Rule 21A

(1) Where a registered person has applied for cancellation of registration under rule 20, the registration shall be deemed to be suspended from the date of submission of the application or the date from which the cancellation is sought, whichever is later, pending the completion of proceedings for cancellation of registration under rule 22.

(2) Where the proper officer has reasons to believe that the registration of a person is liable to be cancelled under section 29 or under rule 21, he may, after affording the said person a reasonable opportunity of being heard, suspend the registration of such person with effect from a date to be determined by him, pending the completion of the proceedings for cancellation of registration under rule 22.

(2A) Where,—(a) a comparison of the returns furnished by a registered person under section 39 with the details of outward supplies furnished in FORM GSTR-1 or the details of inward supplies derived based on the details of outward supplies furnished by his suppliers in their FORM GSTR-1, or such other analysis, as may be carried out on the recommendations of the Council, show that there are significant differences or anomalies indicating contravention of the

provisions of the Act or the rules made thereunder, leading to cancellation of registration of the said person, or

(b) there is a contravention of the provisions of rule 10A by the registered person, the registration of such person shall be suspended and the said person shall be intimated in FORM GST REG-31, electronically, on the common portal, or by sending a communication to his e-mail address provided at the time of registration or as amended from time to time, highlighting the said differences, anomalies or non-compliances and asking him to explain, within a period of thirty days, as to why his registration shall not be cancelled..

(3) A registered person, whose registration has been suspended under sub-rule (1) or sub-rule (2), shall not make any taxable supply during the period of suspension and shall not be required to furnish any return under section 39.

Explanation.—For the purpose of this sub-rule, the expression “shall not make any taxable supply” shall mean that the registered person shall not issue a tax invoice and accordingly, not charge tax on supplies made by him during the period of suspension.

(4) The suspension of registration under sub-rule (1) or sub-rule (2) shall be deemed to be revoked upon completion of the proceedings by the proper officer under rule 22 and such revocation shall be effective from the date on which the suspension had come into effect.

Provided that the suspension of registration under this rule may be revoked by the proper officer, anytime during the pendency of the proceedings for cancellation, if he deems fit.

Provided further that where the registration has been suspended under sub-rule (2A) for contravention of the provisions contained in clause (b) or clause (c) of sub-section (2) of section 29 and the registration has not already been cancelled by the proper officer under rule 22, the suspension of registration shall be deemed to be revoked upon furnishing of all the pending returns.

(Deemed Revocation of Registration) *vide* Notification No.14/2022-CT., dated 05.07.2022

Provided also that where the registration has been suspended under sub-rule (2A) for contravention of provisions of rule 10A and the registration has not already been cancelled by the proper officer under rule 22, the suspension of registration shall be deemed to be revoked upon compliance with the provisions of rule 10A.”

(5) Where any order having the effect of revocation of suspension of registration has been passed, the provisions of clause (a) of sub-section (3) of section 31 and section 40 in respect of the supplies made during the period of suspension and the procedure specified therein shall apply.

14. Physical verification of business premises in certain cases

Where the proper officer is satisfied that verification of the place of business of a registered person is required after the grant of registration, he may get such verification done and the verification report along with the other documents,

including photographs, shall be uploaded in **FORM GST REG-30** on the common portal within a period of fifteen working days following the date of such verification.

15. Revocation of cancellation of registration

Section 30 of the CGST Act, specified the provision of revocation of cancellation of registration as per the following conditions:

1. Any registered person whose registration is cancelled by the proper officer, he can apply to such officer for revocation of cancellation of the registration within such manner within such time and subject to such conditions and restrictions, as may be prescribed.
2. The proper officer either revokes cancellation of the registration or rejects the application, but before rejection of application, the applicant should be given an opportunity of being heard by the proper officer.
3. The revocation of cancellation of registration under SGST Act, and UTGST Act, as the case may be, shall be deemed to be a revocation of cancellation of registration under section 30 of the CGST Act. Vide Notification No.38/2023-Central Tax dated 04.08.2023

Time limit on application for Revocation of Cancelled registration has been extended:

The time period has now been prescribed under Rule 23 which is increased to 90 days from the date of order of cancellation or such further period as may be allowed by Commissioner not exceeding 180 days.

Section 141 of FA, 2023. This is effective from 01.10.2023 vide Notification No.48/2023-CT dated 29.09.2023

Removal of Difficulty Order No.5/2019-C.T., dated 23-4-2019 has been issued by C.B.I& C, with the recommendation of GST Council, upon receipt of representation from a number of persons whose registration was cancelled by proper officer due to non-filing of returns for consecutive of six months in terms of section 29(2) of the CGST Act, 2017 and they could not apply for revocation of cancellation of registration within 30 days as stipulated in Section 30 of the CGST Act, 2017. The key features of this order are as follows:

- It is applicable on persons whose registration has been cancelled till 31-3-2019.
- Before cancellation of registration, the notice was issued in accordance with Section 29(2) by proper officer.
- The said persons could not reply the said notice and consequently cancellation order was passed.

The registrants whose registration was cancelled till 31-03-2019 have been allowed to file the application for revocation of cancellation of registration on or before 22nd July 2019. This is one time opportunity is being given to such persons by issuing the above stated Removal Difficulty Order. This order further clarified vide C.B.I& C, Circular No.99/18/2019-GST, dated 23rd April2019.

The Finance Act, 2020 has made amendment to substitute this proviso and provide a permanent mechanism to apply for revocation of cancellation of registration.

The new proviso reads—

"Provided that such period may, on sufficient cause being shown, and for reasons to be recorded in writing, be extended,—

- (a) *by the Additional Commissioner or the Joint Commissioner, as the case may be, for a period not exceeding thirty days;*
- (b) *by the Commissioner, for a further period not exceeding thirty days, beyond the period specified in clause (a)." Notified Vide Notification No92/22-C.T., dated 22-02-2020.*

Operationalize Aadhaar authentication for new taxpayers.

16. Operationalize Aadhaar authentication for new taxpayers

On recommendations made in 39th GST Council Meeting held on March 14, 2020 amendment is made to operationalize Aadhaar authentication for new taxpayers. The CBIC vide **Notification No. 16/2020-Central Tax dated March 23, 2020** has amended Central Goods and Services Tax Rules, 2017 (“CGST Rules”) in following manner:

1. Rule 8 of the CGST Rules- Application for registration

Sub-rule (4A) is inserted after sub-rule (4) for authentication of Aadhaar Number:

“(4A) The applicant shall, while submitting an application under sub-rule (4), with effect from 01.04.2020, undergo authentication of Aadhaar number for grant of registration.”

2. Rule 9 of CGST Rules- Verification of the application and approval

Proviso to sub-rule (1) is inserted w.r.t. Aadhaar card authentication w.e.f. 01.04.2020:

“Provided that where a person, other than those notified under sub-section (6D) of section 25, fails to undergo authentication of Aadhaar number as specified in sub-rule (4A) of rule 8, then the registration shall be granted only after physical verification of the principal place of business in the presence of the said person, not later than sixty days from the date of application, in the manner provided under rule 25 and the provisions of sub-rule (5) shall not be applicable in such cases.”

Section 25(6D) of the CGST Act:

“(6D) The provisions of sub-section (6A) or sub-section (6B) or sub-section (6C) shall not apply to such person or class of persons or any State or Union territory or part thereof, as the Government may, on the recommendations of the Council, specify by notification.

*Explanation.—*For the purposes of this section, the expression “Aadhaar number” shall have the same meaning as assigned to it in clause (a) of

section 2 of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 (18 of 2016.)”

Rule 8(4A) of CGST Rules:

“(4A) The applicant shall, while submitting an application under sub-rule (4), with effect from 01.04.2020, undergo authentication of Aadhaar number for grant of registration.”

3. Rule 25 of the CGST Rules was substituted as:

Rule 25 - Physical verification of business premises in certain cases.—
 (1) Where the proper officer is satisfied that the physical verification of the place of business of a person is required after the grant of registration, he may get such verification of the place of business done and the verification report along with the other documents, including photographs, shall be uploaded in FORM GST REG-30 on the common portal within a period of fifteen working days following the date of such verification.

(2) Where the physical verification of the place of business of a person is required before the grant of registration in the circumstances specified in the proviso to sub-rule (1) of rule 9, the proper officer shall get such verification of the place of business done and the verification report along with the other documents, including photographs, shall be uploaded in FORM GST REG-30 on the common portal at least five working days prior to the completion of the time period specified in the said proviso.”

Vide Notification No.38/2023-Central Tax dated 04.08.2023

Provision for Aadhaar Authentication

16.1 Provision for Aadhaar Authentication in GST Registration 21/08/2020

1. Aadhaar Authentication process has been introduced, for the persons applying for GST registration as Normal Taxpayer/Composition/Casual Taxable Person/Input Service Distributor (ISD)/SEZ Developer/SEZ Unit etc., in Form GST REG 01(refer Notification No 62/2020-C.T., dt. 20.08.2020).
2. Under this, Individuals, Authorised signatory of all types of businesses, Managing and Authorised partners of a partnership firm and Karta of an Hindu undivided family, applying for new registration, can opt to undergo e-KYC authentication of their Aadhaar number.
3. Applicants, who, either do not provide Aadhaar, while applying for new registration or whose Aadhaar authentication fails in validation, would be subjected to site verification by the tax department. However, Tax authority based on the documents produced can grant registration.
4. Timelines for grant of registration are:
 - In case of successful authentication of Aadhaar, registration will be deemed approved within 3 working days.

- If Aadhaar authentication is not opted for or if authentication fails in validation and no SCN is issued within 21 days by tax official, registration will be deemed approved.
 - Tax Officer can issue SCN within the period specified for grant of registration, like in cases of successful Aadhaar authentication i.e. 3 working days, or in cases when taxpayer do not opt to provide Aadhaar or when Aadhaar authentication fails i.e. 21 working days. Applicants can submit their reply within 7 working days from issue of SCN.
5. Important points while opting for Aadhaar authentication is as follows:
- Once registration application is submitted, an authentication link will be shared on GST registered mobile numbers and e-mail ids mentioned in the GST application.
 - On clicking the verification link, a window for Aadhaar Authentication will open where they have enter Aadhaar Number and the OTP received by them on the mobile number linked with Aadhaar.
 - Taxpayer need to complete Aadhaar authentication of all Promoters/Partners/Authorized Signatories/Karta etc. as mentioned in the application to avail this option.
 - Applicant can access the link again for authentication by navigating to ***My Saved Applications > Aadhaar Authentication Status > RESEND VERIFICATION LINK***.
 - Persons already registered on GST portal are not required to undergo Aadhaar authentication at this stage.
 - Persons who are not resident/citizen of India are exempted from the Aadhaar authentication process.

Aadhaar Authentication for already registered persons

**16.2 Aadhaar Authentication for already registered persons in specified cases
(Effective Date: January 01, 2022)**

> **Scenarios where Aadhaar Authentication would be mandatory**

- The existing registered persons are required to do Aadhaar Authentication of their registration in the following cases:
 - (a) Revocation of cancellation of registration;
 - (b) IGST refund on export of goods under Rule 96 of CGST Rules; or
 - (c) Refund under rule 89 of CGST Rules.
- Consequent amendments have also been made in the above provisions (*i.e. registration, refund etc.*) to provide that Aadhaar Authentication would be a pre-requisite for filing applications.

16.3 Whose Aadhaar would be required to be authenticated

- Following persons are notified whose Aadhaar would be required to be authenticated:

- (a) Authorized Signatory of the registered person; and
- (b) A specified individual as per below table.

| Sl.No | Registered Person | Aadhaar Individual Person is to be authenticated. |
|-------|---------------------|---|
| 1 | Proprietorship firm | Proprietor |
| 2 | Partnership firm | Any partner |
| 3 | HUF | Karta |
| 4 | Company | Managing Director or any whole time Director |
| 5 | AOP/BOI/Society | Any of the Members of the Managing Committee |
| 6 | Trust | Trustee |

e-KYC where Aadhaar is not available.

- Where Aadhaar number has not been assigned to an individual, e-KYC would be required to be done
 - Following documents are required to be submitted for e-KYC:
 - (a) Aadhaar Enrolment ID slip, and
 - (b) Any document such as
 - (i) Bank passbook with photograph; or
 - (ii) Voter identity card issued by the Election Commission of India; or
 - (iii) Passport; or
 - (iv) Driving license issued by the Licensing Authority under the Motor Vehicles Act, 1988.
 - Further, Aadhaar authentication would be required to be done within 30 days from the date of allotment of Aadhaar number
- Notified category of persons who are not required to do Aadhaar Authentication*
- The following registered persons are exempted from the requirement of Aadhaar authentication:
 - (a) A person who is not a citizen of India
 - (b) Department or establishment of the Central Government or State Government
 - (c) Local authority
 - (d) Statutory body
 - (e) Public Sector Undertaking
 - (f) Person to whom Unique Identification Number is granted.

(Notified vide Notification No39/2021-Central Tax, dated 21.12.2021.

Aadhaar authentication of registration made mandatory

Notification No35/2021-Central Tax dated 24th September 2021 [Amends CGST Rules 2017];

- Rule 10B inserted in the CGST Rules 2017
- Aadhaar authentication of registration made mandatory for being eligible for filing refund claim and application for revocation of cancellation of registration.
- Aadhaar number of the proprietor, in the case of proprietorship firm, or of any partner, in the case of a partnership firm, or of the karta, in the case of a Hindu undivided family, or of the Managing Director or any whole time Director, in the case of a company, or any of the Members of the Managing Committee of an Association of persons or body of individuals or a Society, or of the Trustee in the Board of Trustees, in the case of a Trust and of the authorized signatory.

Time limit to apply for revocation of cancellation of registration under section 30 of the CGST Act, 2017

The CBIC vide *Circular No. 148/04/2021-GST dated May 18, 2021* issued Standard Operating Procedure (SOP) for implementation of the provision of extension of time limit to apply for revocation of cancellation of registration under section 30 of the CGST Act, 2017 and rule 23 of the CGST Rules, 2017.

Standard Operating Procedure (SOP) for implementation of the provision of extension of time limit to apply for revocation of cancellation of registration under section 30 of the CGST Act, 2017 and rule 23 of the CGST Rules, 2017 – reg.

As you are aware vide Finance Act, 2020, section 30 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”) was amended and the same has been notified with effect from 01.01.2021 vide Notification No. 92/2020-Central Tax, dated 22.12.2020. The amended provision provides for extension of time limit for applying for revocation of cancellation of registration on sufficient cause being shown and for reasons to be recorded in writing, by:

- (a) the Additional or Joint Commissioner, as the case may be, for a period not exceeding thirty days;
- (b) the Commissioner, for a further period not exceeding thirty days, beyond the period specified in clause (a) above.

Consequently, changes have also been made in rule 23 and **FORM GST REG-21** of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the “CGST Rules”) vide Notification No.15/2021- Central Tax, dated 18.05.2021.

2. In order to ensure uniformity in the implementation of the provisions of above rule across the field formations, till the time an independent functionality for extension of time limit for applying in FORM GST REG-21 is developed on the GSTN portal, the Board, in exercise of its powers conferred by section 168 (1) of the CGST Act, hereby provides the following guidelines for implementation of the provision for extension of time limit for applying for revocation of cancellation of registration under the said section and rule.

3. As has been provided in section 30 of the CGST Act, any registered person whose registration is cancelled by the proper officer on his own motion, may apply to such officer in FORM GST REG-21, for revocation of cancellation of registration within 30 days from the date of service of the cancellation order.

4. In case the registered person applies for revocation of cancellation beyond 30 days, but within 90 days from the date of service of the cancellation order, the following procedure is specified for handling such cases:

4.1. Where a person applies for revocation of cancellation of registration beyond a period of 30 days from the date of service of the order of cancellation of registration but within 60 days of such date, the said person may request, through letter or e-mail, for extension of time limit to apply for revocation of cancellation of registration to the proper officer by providing the grounds on which such extension is sought. The proper officer shall forward the request to the jurisdictional Joint/Additional Commissioner for decision on the request for extension of time limit.

4.2 The Joint/Additional Commissioner, on examination of the request filed for extension of time limit for revocation of cancellation of registration and on sufficient cause being shown and for reasons to be recorded in writing, may extend the time limit to apply for revocation of cancellation of registration. In case the request is accepted, the extension of the time limit shall be communicated to the proper officer. However, in case the concerned Joint/Additional Commissioner, is not satisfied with the grounds on which such extension is sought, an opportunity of personal hearing may be granted to the person before taking decision in the matter. In case of rejection of the request for the extension of time limit, the grounds for such rejection may be communicated to the person concerned, through the proper officer.

4.3 On receipt of the decision of the Joint/Additional Commissioner on request for extension of time limit for applying for revocation of cancellation of registration, the proper officer shall process the application for revocation of cancellation of registration according to the law and procedure laid down in this regard.

5. Procedure similar to that explained in paragraph 4.1 to 4.3 above, shall be followed *mutatis mutandis* in case a person applies for revocation of cancellation of registration beyond a period of 60 days from the date of service of the order of cancellation of registration but within 90 days of such date.

6. The circular shall cease to have effect once the independent functionality for extension of time limit for applying in **FORM GST REG-21** is developed on the GSTN portal.

17. Procedure of Registration

Rule 8 to Rule 25 of the CGST Rules, deals with procedure of registration under GST, the details of procedure and the various Forms are required for the registration purposes are summarized in the below Table:

| Process | Rule | Name of the FORM | Particulars of Action |
|---|-------------|-------------------------|---|
| Application for Registration. | 8 | FORM GST REG-01 | Every person seeking registration shall declare his Permanent Account Number, mobile number, e-mail address, State or Union territory in Part A of FORM GST REG-01 , a person having a unit in SEZ or other units outside SEZ as business vertical and an Input Service Distributor shall make a separate application for registration on the Common portal or through a Facilitation Centre. On successful verification of the Permanent Account Number, mobile number and e-mail address, a temporary reference number shall be generated and communicated to the applicant. Using the reference number the applicant shall submit an application in Part B of FORM GST REG-01 duly signed along with documents at the Common portal or Facilitation Centre. |
| | | FORM GST REG-02 | On receipt of an application an acknowledgement shall be issued electronically to the applicant in FORM GST REG-02 . A person applying for registration as a casual taxable person shall be given a temporary reference number for making advance deposit of tax and after deposit of tax an acknowledgement shall be issued. |
| Verification of the application and approval. | 9 | FORM GST REG-03 | The proper officer shall examine the application, if the documents are found to be correct, approve the grant of registration to the application within a period of 3 working days. In case the proper Officer requires any clarification with regard to any information provided in the application or documents |

| Process | Rule | Name of the FORM | Particulars of Action |
|---|-------------|-------------------------|--|
| | | | furnished, he may issue a notice to the applicant electronically in FORM GST REG-03 within a period of 3 working days from the date of submission of application. |
| | | FORM GST REG-04 | The applicant shall furnish such clarification or documents electronically in FORM GST REG-04 within a period of seven working days from the date of the receipt of such notice. If the clarification or information so furnished by the applicant is satisfied to the proper officer, he may grant of registration within seven working days from the date of receipt of information. |
| | | FORM GST REG-05 | If the proper officer is not satisfied with the information or clarification, he shall reject such application and inform the applicant electronically in FORM GST REG-05 . If the proper officer fails to take any action, within 3 working days from the date of submission of application or within 7 working days from the date of the receipt of the clarification furnished by the applicant, the application for grant of registration shall be deemed to have been approved. |
| Issue of registration certificate | 10 | FORM GST REG-06 | A certificate of registration in FORM GST REG-06 showing the principal place of business or additional place of business shall be made available to the applicant in the common portal with tax identification number. |
| Separate registration for multiple business verticals | 11 | | Any person having multiple business verticals within a State or a Union territory, requiring a separate registration for any of its business verticals shall be granted separate registration may submit a separate application in FORM GST REG-01 in respect of each vertical. The provision of Rule 9 and Rule 10 relating to the verification and the grant of registration shall mutatis mutandis apply under this Rule 11. |

| Process | Rule | Name of the FORM | Particulars of Action |
|---|------|------------------------|--|
| Grant of registration to persons required to deduct TDS or to collect TCS | 12 | FORM GST REG-07 | <p>Any person required to deduct tax at source in accordance with the provisions of Section 51 or to collect tax at source in accordance with the provisions of Section 52 shall electronically submit an application, duly signed in FORM GST REG-07 for the grant of registration through the common portal or through facilitation Centre.</p> <p>The proper officer may grant registration after due verification and issue a certificate in FORM GST REG-06 within a period of three working days from the date of submission of application.</p> |
| | 12 | FORM GST REG-08 | <p>Upon verification if the proper officer is satisfied that a person to whom a certificate of registration in FORM GST REG-06 has been issued is no longer liable to deduct tax at source under Section 51 or to collect tax at source under Section 52, the said officer may cancel the registration and such cancellation shall be communicated to the said person electronically in FORM GST REG-08.</p> |
| Grant of Registration to non-resident taxable person | 13 | FORM GST REG-09 | <p>A non-resident taxable person shall electronically submit an application with a self-attested copy of his valid passport, for registration duly signed in FORM GST REG-09, at least five days prior to commencement of business at the common portal and after making advance deposit of tax, after due verification registration shall be approved by the proper officer.</p> |
| Grant of registration to a person supplying OIDAR services | 14 | FORM GST REG-10 | <p>Any person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient shall electronically submit an application for registration, in FORM GST REG-10, at the common portal and the applicant shall be granted registration, in FORM GST REG-06.</p> |
| Extension in period of | 15 | FORM GST | <p>A registered casual taxable person or a non-resident taxable person intends to extend the</p> |

| Process | Rule | Name of the FORM | Particulars of Action |
|---|-------------|-------------------------|---|
| operation by Casual taxable person and non-resident taxable person. | | REG-11 | period of registration indicated in his application of registration, an application in FORM GST REG-11 shall be submitted electronically through the common portal, by such person before the end of the validity of registration granted to him and application shall be acknowledged only on payment of the advance tax. |
| Suo motu registration. | 16 | FORM GST REG-12 | <p>The proper officer finds that a person liable to registration but has failed to apply for such registration, such officer may register the said person on a temporary basis and issue an order in FORM GST REG-12.</p> <p>Every person to whom a temporary registration has been granted within a period of ninety days from the date of the grant of such registration, submit an application for registration, if the said person filed an appeal against the grant of temporary registration, in such case, the application for registration shall be submitted within a period of thirty days from the date of the issuance of the order upholding the liability to registration by the Appellate Authority. The provisions of Rule 9 and Rule 10 relating to verification and the issue of the certificate of registration shall, mutatis mutandis, apply to an application submitted under shall be effective from the date of the order granting registration.</p> |
| Assignment of Unique Identity Number to certain Special entities. | 17 | FORM GST REG-13 | Every person required to be granted a Unique Identity Number to the special entities such as UNO members may submit an application electronically in FORM GST REG-13 , duly signed at the common portal, the proper officer may, upon submission of an application in FORM GST REG-13 or after filling up the said form or after receiving a recommendation from the Ministry of External Affairs, Government of India, assign a Unique Identity Number to the said person and issue a certificate in FORM GST REG- |

| Process | Rule | Name of the FORM | Particulars of Action |
|--------------------------------------|-------------|-------------------------|---|
| | | | 06 within a period of three working days from the date of the submission of the application. |
| Display of Registration Certificate. | 18 | | Every registered person shall display his certificate of registration in a prominent location at his principal place of business and at every additional place or places of business. Every registered person shall display his Goods and Services Tax Identification Number on the name board exhibited at the entry of his principal place of business and at every additional place or places of business. |
| Amendment of Registration | 19 | FORM GST REG-14 | If any change of the particulars of furnished in the application for registration or for Unique Identity, either at the time of obtaining registration or Unique Identity Number or as amended from time to time, the registered person shall, within a period of fifteen days of such change, submit an application, duly signed, electronically in FORM GST REG-14 , along with the documents relating to such change at the common portal or through facilitation centre. |
| | 19 | FORM GST REG-15 | The proper officer shall, after due verification, approve the amendment within a period of fifteen working days from the date of the receipt of the application in FORM GST REG-14 and issue an order in FORM GST REG-15 electronically and such amendment shall take effect from the date of the occurrence of the event warranting such amendment. |
| Application for Registration | 20 | FORM GST REG-16 | A registered person, other than a person to whom a registration has been granted under Rule 12 or a person to whom a Unique Identity Number has been granted under Rule 17, seeking cancellation of his registration under sub-section (1) of Section 29 shall electronically submit an application in FORM GST REG-16 , including therein the details of inputs held in stock or inputs contained in |

| Process | Rule | Name of the FORM | Particulars of Action |
|--|-------------|-------------------------|---|
| | | | <p>semi-finished or finished goods held in stock and of capital goods held in stock on the date from which the cancellation of registration is sought, liability thereon, the details of the payment, if any, made against such liability and may furnish, along with the application, relevant documents in support thereof, at the common portal within a period of thirty days of the occurrence of the event warranting the cancellation, either directly or through a Facilitation Centre notified by the Commissioner.</p> <p>Provided that no application for the cancellation of registration shall be considered in case of a taxable person, who has registered voluntarily, before the expiry of a period of one year from the effective date of registration.</p> |
| Registration to be cancelled in certain cases. | 21 | | <p>The registration granted to a person is liable to be cancelled, if the said person,—</p> <ul style="list-style-type: none"> (a) does not conduct any business from the declared place of business; or (b) issues invoice or bill without supply of goods or services in violation of the provisions of this Act, or the rules made thereunder; or (c) violates the provisions of Section 171 of the Act or the rules made thereunder. |
| Cancellation of Registration | 22 | FORM GST REG-17 | <p>The proper officer has reasons to believe that the registration of a person is liable to be cancelled under Section 29, he shall issue a notice to such person in FORM GST REG-17, requiring him to show cause, within a period of seven working days from the date of the service of such notice, as to why his registration shall not be cancelled.</p> |
| | | FORM GST REG-18 | <p>The reply to the show cause notice issued shall be furnished in FORM REG-18 within the period of 7 working days from the date of the service of notice as per Rule 22(1) of CGST Rules, 2017.</p> |

| Process | Rule | Name of the FORM | Particulars of Action |
|--|------|------------------------|---|
| | | FORM GST REG-19 | A person who has submitted an application for cancellation of his registration is no longer liable to be registered or his registration is liable to be cancelled, the proper officer shall issue an order in FORM GST REG-19 , within a period of thirty days from the date of application submitted under Rule 20 or reply to the show cause notice under sub-rule (1) of Rule 22. The date of the reply to show cause issued, cancel the registration with effect from a date to be determined by him and notify the taxable person, directing him to pay arrears of any tax, interest or penalty including the amount liable to be paid. |
| | | FORM GST REG-20 | In response to show cause notice the registered person furnish reply to the proper officer and if reply is found satisfactory the proper officer shall drop proceedings and pass an order in FORM GST REG-20 . |
| Revocation of Cancellation of registration | 23 | FORM GST REG-21 | <p>A registered person, whose registration is cancelled by the proper officer on his own motion, may submit an application for revocation of cancellation of registration, in FORM GST REG-21, to such proper officer, within a period of thirty days from the date of the service of the order of cancellation of registration at the common portal or through a Facilitation Centre.</p> <p>Provided that no application for revocation shall be allowed due to non-filing of returns, unless such returns are furnished and amount due as tax, has been paid along with any amount payable towards interest, penalty and late fee in respect of the said returns.</p> <p>Further, CBIC vide Notification No. 15/2021-Central Tax, dated 18-05-2021 has made amendment to CGST Rules, so that revocation application is also allowed to be filed after 30 days but up to 90 days, if approved by the Additional Commissioner/Joint Commissioner further 30 days and the Commissioner further</p> |

| Process | Rule | Name of the FORM | Particulars of Action |
|-----------------------------|-------------|-------------------------|---|
| | | | 30 days after lapse of 60 days. Accordingly, incorporated in the GSTN Portal and if extension is not allowed, an opportunity of being heard shall be given before taking any action and in case of rejection grounds of such rejection may be communicated to the tax payer. |
| | | FORM GST REG-22 | If the proper officer is satisfied, for reasons to be recorded in writing, that there are sufficient grounds for revocation of cancellation of registration, he shall revoke the cancellation of registration by an order in FORM GST REG-22 within a period of thirty days from the date of the receipt of the application and communicate the same to the applicant. |
| | | FORM GST REG-23 | If the proper officers is not satisfied for the reasons to be recorded in writing and cancel the application of revocation of registration before that he has to issue a notice in FORM GST REG-23 . |
| | | FORM GST REG-24 | The applicant shall furnish the reply within a period of seven working days from the date of the receipt of the notice in FORM GST REG-24 . On receipt of reply the proper officer shall dispose of application within a period of 30 days. |
| Migrated registered persons | 24 | FORM GST REG-25 | In case of migrated registrant, he shall be granted registration on a provisional basis and a certificate of registration in FORM GST REG-25 and made available in common portal. |
| | | FORM GST REG-26 | The person granted provisional registration shall submit an application electronically in FORM GST REG-26 duly signed on the common portal. |
| | | FORM GST REG-27 | On verification by the proper officer if the information not found to be correct, the proper officer shall issue show cause notice in FORM GST REG-27 . |

| Process | Rule | Name of the FORM | Particulars of Action |
|--|------|------------------------|--|
| | | FORM GST REG-28 | <p>The proper officer affording the applicant a reasonable opportunity of being heard, cancel the provisional registration and issue an order in FORM GST REG-28.</p> <p>If the applicant present his case satisfactory and found to be genuine then show cause notice issued in FORM GST REG-27 can be withdrawn by issuing order in FORM GST REG-20 and a certificate of registration shall be made available on common portal within a period of fifteen working days, if not available the certificate of Registration shall be deemed to have been granted.</p> |
| | | FORM GST REG-29 | <p>Every person registered under any of the existing laws, who is not liable to be registered under the Act may, on or before 31st December 2017, at his option, submit an application electronically in FORM GST REG-29 at the common portal for the cancellation of registration granted to him and the proper officer shall, after conducting such enquiry as deemed fit, cancel the said registration.</p> |
| Physical Verification of business in certain cases. Elimination of Physical verification of Business premises in the presence of applicant for GST registration | 25 | FORM GST REG-30 | <p>Where the proper officer is satisfied that the physical verification of the place of business of a registered person is required after the grant of registration, he may get such verification done and the verification report along with the other documents, including photographs, shall be uploaded in FORM GST REG-30 on the common portal within a period of fifteen working days following the date of such verification.</p> <p>The CBIC vide Notification No. 38/2023 – (Central Tax) dated August 04, 2023 has issued ‘the Central Goods and Services Tax (Second Amendment) Rules, 2023’ to further amend the CGST Rules in to order to align with recommendations of the 50th GST Council Meeting held on July 11, 2023.</p> |

| Process | Rule | Name of the FORM | Particulars of Action |
|---------|------|------------------|--|
| | | | <p>In the said rules, for rule 25, the following rule shall be substituted, namely:—</p> <p>“25. Physical verification of business premises in certain cases.—</p> <p>(1) <i>Where the proper officer is satisfied that the physical verification of the place of business of a person is required after the grant of registration, he may get such verification of the place of business done and the verification report along with the other documents, including photographs, shall be uploaded in FORM GST REG-30 on the common portal within a period of fifteen working days following the date of such verification.</i></p> <p>(2) <i>Where the physical verification of the place of business of a person is required before the grant of registration in the circumstances specified in the proviso to sub-rule (1) of rule 9, the proper officer shall get such verification of the place of business done and the verification report along with the other documents, including photographs, shall be uploaded in FORM GST REG-30 on the common portal at least five working days prior to the completion of the time period specified in the said proviso.”</i></p> |

C.B.I &C, Vide Notification No. 31/2019-Central Tax dated 28-06-2019 has made amendment in CGST Rules, as under:

Rule 10A [newly inserted]: Taxpayers are required to furnish bank account information on the portal: Upon obtaining a certificate of registration in **FORM GST REG-06**, the registered person shall furnish information with respect to details of bank account at the earliest, but not later than forty-five days from the date of grant of registration or the date on which the return required under section 39 of the CGST Act, 2017 is due to be furnished, whichever is earlier. However, such details are not required to be furnished by persons who have been granted registration by the department on its own in terms of rule 16 or persons who have taken registration as Tax Deductor at source under Section 51 of the CGST Act, 2017 or Tax collector at source under Section 52 of the CGST Act, 2017. Corresponding amendments are also made in **FORMS GST REG-01, GST REG-07 and GST REG-12**.

Rule 21 of the CGST Rules, 2017: Registration is liable to be cancelled: (Effective from 28th June 2017).

Inserted rule 21(d) [newly inserted]: If bank account are not furnished within the prescribed time in terms of rule 10A, then the registration so granted shall be liable to be cancelled.

The GST Council in its 25th meeting held on 18-1-2018 allowed taxable persons who have obtained voluntary registration to apply for cancellation of registration even before the expiry of one year from the effective date of registration. (*Notification No. 8/2017-IGST, dated 14th September' 2018.*)

The GST Council in its 28th meeting held on 21-7-2018 recommended certain amendments to be carried out in the GST Act, 2017 & the IGST Act, 2017 which would help the MSME sector. Significant recommendations made in this regard are as below:

- Threshold exemption limit for registration in the State of Assam, Arunachal Pradesh, Himachal Pradesh, Meghalaya, Sikkim and Uttarakhand is to be increased to ₹20 lakh from ₹10 lakh.
- Allowing taxpayers to opt for multiple registrations for different places of business within the same State or Union Territory.
- Mandatory registration would be required only for those e-commerce operators who are required to collect tax at source under Section 52 of the CGST Act, 2017.
- Temporary suspension of registration would be allowed while proceedings of cancellation of registration are underway.

These measures will be effective from the date appropriate changes made in the GST Laws takes effect.

18. Turnover limit for registration in inter-state supply of services enhanced to ₹20 lakhs for 5 special category states

C.B.I. & C, has issued a Notification No 6/2019 dated January 29, 2019 has increased the threshold limit for taking GST registration for suppliers who supply services through e-commerce operator in the states of State of Jammu and Kashmir, States of Arunachal Pradesh, Assam, Himachal Pradesh, Meghalaya, Sikkim and Uttarakhand. The said amendment will be applicable from February 01, 2019.

Circular No. 69/43/2018 dated 26.10.2018. The circular is revised in view of the amendment carried out in section 29 of the CGST Act, 2017 vide section 14 of the CGST (Amendment) Act, 2018 allowing suspension of registration. Accordingly, the original and the amended relevant para of the circular are detailed hereunder.

It is pertinent to mention here that section 29 of the CGST Act has been amended by the CGST (Amendment) Act, 2018 to provide for “Suspension” of registration. The intent of the said amendment is to ensure that a taxpayer is freed from the routine compliances, including filing returns, under GST Act during the

pendency of the proceedings related to cancellation. Accordingly, the field formations may not issue notices for non-filing of return for taxpayers who have already filed an application for cancellation of registration under section 29 of the CGST Act. Further, the requirement of filing a final return, as under section 45 of the CGST Act, remains unchanged.

Circular No. 88/07/2019-GST dated 1st February 2019)

19. Standard Operating Procedure (SOP) for verification of taxpayers granted deemed registration – regarding

With effect from 21.08.2020, rule 9 of the **Central Goods and Services Tax Rules, 2017** (hereinafter referred to as the CGST Rules) provide that in cases where Aadhaar authentication has either not been opted for by the applicant or where such authentication has failed, the proper officer has to mandatorily initiate physical verification of the premises, or in cases where the physical verification is difficult, certain additional documents may be called for by the proper officer (upon approval of an officer not below the rank of Joint Commissioner) for verification before deciding upon grant of registration. Further, the present provisions allow for deemed registration upon completion of 21 days of application in such cases if the proper officer has not issued any notice within the said 21 days.

2. Data suggests that during the period from 21st August, 2020 to 16th November, 2020 deemed registration has been granted in many cases where Aadhaar authentication has not been opted for or has failed. These registrations granted on deemed basis require verifications to ascertain that they have genuine business or intends to carry out so. In order to complete the verification of such registrants, following instructions are issued for immediate compliance:

3.1 The list of registrations granted on deemed approval basis, zone wise, during the period from 21st August, 2020 to 16th November, 2020 have been circulated to the field formations by the DG, Systems.

3.2 Rule 25 of the CGST Rules provide for physical verification of business premises in certain cases and include such verification after grant of registration. All such deemed registrations would be subjected to compulsory post registration verification. On completion of verification, if the proper officer has reasons to believe that the registration is liable for cancellation, he shall initiate the proceedings under rule 22 of the CGST Rules.

3.3 Pending physical verification, notice in **FORM REG-17** may be issued in specific cases based on following risk parameters seeking explanation from the registered person regarding the differences and anomalies noticed:

- (i) Where **FORM GSTR-1** is filed and **FORM GSTR-3B** is not filed either for August or September, 2020 tax period;
- (ii) The difference in tax amount, as reported in **FORM GSTR-1** and **FORM GSTR-3B** is more than ₹1 lakh ($R1 > R3B$)

On receipt of the reply to the notice, the proper officer would complete the proceedings under rule 22 of the CGST Rules.

3.4 All the verifications must be completed in a time bound manner, within 3 weeks of these instructions. Zonal Chief Commissioners already have the freedom to divert the staff from one formation to another within the Zone to complete the task. A weekly status report to be submitted to the Board in the format enclosed to this instruction.

4.1 The Standard Operating Procedure (SOP) to be followed by the proper officer for carrying out the physical verification of the persons who have been granted a deemed GST registration is outlined below.

4.2 The proper officer shall conduct physical verification of the principal place of business and wherever possible, additional place of business, indicated in GST registration **FORM REG-01** of the concerned registrant. During the physical verification, the officer, among other things, would also verify the following details:

- (a) In case the applicant intends to carry out manufacturing activity, whether capital goods, if required for the said manufacturing activity, have been installed.
- (b) Electricity connection, bills paid in the relevant period.
- (c) Size of the premises – whether it is commensurate with the activity to be carried out by the applicant.
- (d) Whether premises is self-owned or is rented and documents relating ownership/registered lease of the said property. In case of doubt, enquiry may also be made from the landlord/owner of the property in case of rented/leased premises.
- (e) No. of employees already employed and record of their employment.
- (f) Aadhaar and PAN of the applicant and its proprietor, partners, Karta, Directors as the case may be and the authorised signatories.
- (g) Bank's letter for up to date KYC.

4.3 In addition to the physical verification conducted, the proper officer, in the interest of revenue, would carry out the preliminary financial verification of the registrants by seeking the following documents and carrying out its scrutiny:

- (a) ITRs of the company/LLP from the date of incorporation or for last three financial years, whichever is less. ITRs of proprietor, partners, Karta, etc. may be taken in other cases.
- (b) The status of activity from the date of registration of all the bank account(s) linked to registration; the same may be taken through a letter/undertaking from the applicant. Phone number declared/linked to each of the bank accounts may also be obtained.
- (c) Quantum of capital employed/proposed to be employed.
- (d) Out of the amount mentioned at (c) above:
 - (i) Own Funds:
 - (ii) Loan Funds: (indicate the names, complete address, PAN and amount borrowed from each such lender separately):

- (e) In case of own funds, also check the audited balance sheet for previous financial year, where available, in addition to the Income Tax Returns mentioned in (a) above.
 - (f) In case of loan funds check the proposal submitted to the Bank/FI for approval of the loan and the maximum permissible bank finance as per such proposal, where the amount is proposed to be borrowed from a Bank and/or FI.
5. Field formations are advised that in cases where the applicant has not opted for Aadhaar authentication or where such authentication has failed, there should not be any case where registration is granted on deemed approval basis. Suitable instructions may kindly be issued to the field formations under your charge.

C.B.I&C, Instruction No. 01/2023-GS dated 04-05-2023

Guidelines for Special All-India Drive against fake registrations— regarding

During the National Co-ordination Meeting of the State and Central GST officers held at New Delhi on 24th April 2023, the issue of unscrupulous elements misusing the identity of other persons to obtain fake/bogus registration under GST, with an intention to defraud the Government exchequer, was deliberated. Such fake/non-genuine registrations are being used to fraudulently pass on input tax credit to unscrupulous recipients by issuing invoices without any underlying supply of goods or services or both. This menace of fake registrations and issuance of bogus invoices for passing of fake ITC has become a serious problem, wherein fraudulent people engage in dubious and complex transactions, causing revenue loss to the government.

2. Various modus operandi of obtaining such fake registrations have been detected by Central and State Tax administrations. In some cases, forged documents, such as forged electricity bills, property tax receipts, rent agreements, etc. are being used as proof of principal place of business to obtain GST registration. In one of such recent cases detected by Gujarat State Tax authorities, it has been found that a few fraudsters have obtained fake GST registrations on the basis of PAN and Aadhaar number of persons from economically weaker sections without their knowledge. It was revealed that phone number on the Aadhaar cards of these persons were got fraudulently modified at the nearest Aadhaar Seva Centre, by taking these persons to the said Aadhaar Seva Centre by giving a nominal cash amount under guise of a government scheme and getting their Aadhaar Cards linked to a dummy mobile number by using their thumb impression.

3. In the National Co-ordination Meeting on 24th April 2023, it was discussed that while various system based and policy measures are being taken to address this problem of fake registration and fake input tax credit, there is a need of concerted and coordinated action on a mission mode by Central and State tax authorities to tackle this menace in a more systematic manner. It was agreed that a nation-wide effort in the form of a Special Drive should be launched on All-

India basis to detect such suspicious/fake registrations and to conduct requisite verification for timely remedial action to prevent any further revenue loss to the Government. It was decided that common guidelines may be issued to ensure uniformity in the action by the field formations and for effective coordination and monitoring of the action taken during this Special Drive. Accordingly, the following guidelines are issued for such concerted action on fake dealers/ fake billers in a mission mode:

- (i) Period of Special Drive: A Special All-India Drive may be launched by all Central and State Tax administrations during the period 16th May 2023 to 15th July 2023 to detect suspicious/fake GSTINs and to conduct requisite verification and further remedial action to weed out these fake billers from the GST eco-system and to safeguard Government revenue.
- (ii) Identification of fraudulent GSTINs: Based on detailed data analytics and risk parameters, GSTN will identify such fraudulent GSTINs for State and Central Tax authorities. GSTN will share the details of such identified suspicious GSTINs, jurisdiction wise, with the concerned State/Central Tax administration (through DGARM in case of Central Tax authorities) for initiating verification drive and conducting necessary action subsequently. Besides, field formations may also supplement this list by data analysis at their own end using various available analytical tools like BIFA, ADVAIT, NIC Prime, E-Way analytics, etc, as well as through human intelligence, Aadhar database, other local learnings and the experience gained through the past detections and modus operandi alerts. GSTN may separately provide a note to the field formations, regarding the tools available in BIFA which may be useful during this drive.
- (iii) Information Sharing Mechanism: Successful implementation of the Special Drive would require close coordination amongst the State Tax administrations, and between State and Central tax administrations. For this purpose, a nodal officer shall be appointed immediately by each of the Zonal CGST Zone and State to ensure seamless flow of data and for co-ordination with GSTN/DGARM and other Tax administrations. The name, designation, phone number/mobile number and E-mail Id of such Nodal officer(s) appointed by CGST Zones and States must be shared by the concerned tax authority with GST Council Secretariat within three days of issuance of this letter. GST Council Secretariat will compile the list of the Nodal officers after procuring the details from all the tax administrations and will make the compiled list available to all the tax administrations, as well as GSTN and DGARM immediately. The Nodal officer of the State/CGST Zone will ensure that the data received from GSTN/DGARM/other tax administrations is made available to the concerned jurisdictional formation within two days positively. The Nodal officer shall also ensure that any cooperation required by other jurisdictions under his control is promptly provided.

- (iv) Action to be taken by field formations: On receipt of data from GSTN/DGARM through the Nodal Officer, a time bound exercise of verification of the suspicious GSTINs shall be undertaken by the concerned jurisdictional tax officer(s). If, after detailed verification, it is found that the taxpayer is non-existent and fictitious, then the tax officer may immediately initiate action for suspension and cancellation of the registration of the said taxpayer in accordance with the provisions of section 29 of CGST Act, read with the rules thereof.

Further, the matter may also be examined for blocking of input tax credit in Electronic Credit Ledger as per the provisions of Rule 86A of CGST Rules without any delay. Additionally, the details of the recipients to whom the input tax credit has been passed by such non-existing taxpayer may be identified through the details furnished in FORM GSTR-1 by the said taxpayer. Where the recipient GSTIN pertains to the jurisdiction of the said tax authority itself, suitable action may be initiated for demand and recovery of the input tax credit wrongly availed by such recipient on the basis of invoice issued by the said non-existing supplier, without underlying supply of goods or services or both. In cases, where the recipient GSTIN pertains to a different tax jurisdiction, the details of the case along with the relevant documents/evidences, may be sent to the concerned tax authority, as early as possible, in the format enclosed as Annexure-B, through the Nodal Officer referred in para (ii) above.

Action may also be taken to identify the masterminds/beneficiaries behind such fake GSTIN for further action, where ever required, and also for recovery of Government dues and/ or provisional attachment of property/bank accounts, etc. as per provisions of section 83 of CGST Act. Further, during the investigation/ verification, if any linked suspicious GSTIN is detected, similar action may be taken/initiated in respect of the same.

- (v) Feedback and Reporting Mechanism: An action taken report will be provided by each of the State as well as CGST Zones to GST Council Secretariat on weekly basis on the first working day after completion of the week in the format enclosed as Annexure-A. If any novel modus operandi is detected during the verification/investigation, the same may also be indicated in the said action taken report. On conclusion of the drive, GSTIN-wise feedback on the result of verification of the shared suspicious GSTINs, will be provided by the field formations to GSTN/ DGARM, as per the format enclosed in Annexure-C.
- (vi) National Coordination Committee: A National Coordination Committee headed by Member [GST], CBIC and including Principal Chief Commissioners/Chief Commissioners Delhi and Bhopal CGST Zones and Chief Commissioners/Commissioners of State Tax of Gujarat, West Bengal and Telangana shall monitor the progress of this special drive. National Coordination Committee will meet periodically for this purpose. GST

Council Secretariat will act as the secretariat of this National Coordination Committee. The Committee will also be assisted by GSTN and Principal Commissioner, GST Policy Wing, CBIC.

4. GST Council Secretariat will compile the reports received from various formations and make it available to the National Coordination Committee immediately. The unique modus operandi found during this special drive will be compiled by GST Council Secretariat and presented before National Coordination Committee, which will be subsequently shared with Central and State Tax administrations across the country

C.B.I&C Instruction No. 03/2023-GST dated 14-06-2023

Guidelines for processing of applications for registration—regarding

Instances have come to notice regarding unscrupulous elements obtaining-fake/bogus registration under GST and defrauding the Government exchequer. Such fake/non-genuine registrations are being used to fraudulently pass on input tax credit to unscrupulous recipients by issuing invoices without any underlying supply of goods or services or both. This menace of fake registrations and issuance of bogus invoices for passing of fake ITC has become a serious problem, wherein fraudulent people engage in dubious and complex transactions, causing revenue loss to the government.

2. Various modus operandi of obtaining such fake registrations have been detected by Central and State Tax administrations. In some cases, identities of other persons like PAN, Aadhaar, etc. have been misused without their knowledge to obtain GST registration. Forged documents, such as forged electricity bills, property tax receipts, rent agreements, etc. are also being used as proof of principal place of business to obtain GST registration. In some cases, forged identities have been created by using same photo of a person on different Aadhaar cards under different names. In one of the cases detected recently, it has been found that a few fraudsters have obtained fake GST registrations on the basis of PAN and Aadhaar number of persons from economically weaker sections by fraudulently modifying the phone number on the Aadhaar cards of these persons by taking these persons to the Aadhaar Seva Kendra by giving a nominal cash amount under guise of a government scheme and getting their Aadhaar Cards linked to dummy mobile numbers by using their thumb impression.

3. To address this problem of fake registration and fake input tax credit, Instruction No.01/2023-GST dated 04.05.2023 has been issued for concerted and coordinated action on a mission mode by Central and State tax authorities in the form of a Special All-India Drive against fake registrations.

4. In this context, it is further felt that verification of applications for registration by the proper officers is one of the most crucial steps in the direction of preventing the menace of fake or bogus registrations. While numerous initiatives have been/are being undertaken on the policy and systems level, it is pertinent to

strengthen the process of scrutiny and verification of such applications for registration at the end of tax officers.

5. Accordingly, the following guidelines are issued for strengthening the process of verification of applications for registration at the end of tax officers in a uniform manner:

5.1 Immediately on receipt of the application for the registration in the Task-List of the concerned officer on ACES-GST application, the officer shall initiate the process of scrutiny and verification of the details filled by the applicant in the application for registration in FORM GST REG-01 and the documents uploaded by the applicant along with the said application.

5.2 FORM GST REG-01 prescribes a list of documents to be uploaded by the applicant in respect of photograph, constitution of business, principal place of business, bank account, etc. The proper officer shall carefully scrutinize the said documents to ensure that the documents are legible, complete and relevant. Further, the details or information furnished by the applicant in the application should also be carefully examined by the proper officer to check completeness of the same, to correlate and cross-verify the same with the uploaded documents and to check the authenticity of the applicant. The details of the address of principal and additional places of business and the corresponding documents uploaded with the application as proof of address may be closely scrutinised to verify completeness and correctness of address of such places of business. Further, to the extent possible, the authenticity of the documents furnished as proof of address may be cross-verified from the publicly available sources, such as websites of the concerned authorities such as land registry, electricity distribution companies, municipalities, and local bodies, etc.

5.3 In order to facilitate targeted approach in verification and processing of registration applications, the Directorate General of Analytics and Risk Management (DGARM), in coordination with GSTN, is conducting risk rating of the applications for registration in form of High, Medium and Low risk rating for each application for registration (ARN), based on data analytics and risk parameters, and making the same available to the CGST field formations in the form of Report Series 400 on DDM portal on regular basis. Accordingly, the proper officer shall check the said risk rating made available by the DGARM in respect of the concerned ARN and take the same into consideration while verifying and processing the said application. Special attention needs to be paid to the cases where "High" risk rating has been assigned to an ARN.

5.4 The proper officer may also check as to whether the registration(s) has been obtained on the same PAN earlier, either within the same State or other State(s). In such cases, the status of the said PAN as well as the compliance record of the said GSTINs may also be checked from the portal. The proper officer may also give due consideration and special attention to the cases involving *inter alia* the following circumstances: (i) where any registration obtained on the PAN of the applicant has been cancelled previously; (ii) where any registration obtained on the PAN of the applicant is suspended at the time of verification of a

new application of registration; (iii) whether any application for registration on the PAN of the applicant has been rejected previously; (iv) whether the place of business of the applicant appears to be risky based on local risk parameters; (v) whether the proof of address of place(s) of business *prima facie* appear to be suspicious/doubtful on the basis of scrutiny of the application and the documents.

5.5 Where the application is found to be deficient, either in terms of any information or any requisite document or where the proper officer requires any clarification with regard to any information provided in the application or documents furnished therewith or in respect of any other fact, he shall issue a notice to the applicant electronically in FORM GST REG-03 within the prescribed time limit.

5.6 Without prejudice to the facts of the case, the proper officer may seek clarification or information or document(s) *inter alia* in the following cases:

- (i) where any document is incomplete or not legible, the proper officer may seek complete or legible copy of the same.
- (ii) where the address of place of business does not match with the document uploaded by the applicant, or where such uploaded document does not appear to be a valid proof of the address of the said place of business, the proper officer may seek additional documents to confirm the address details.
- (iii) where the address of place of business is incomplete or vague, the proper officer may seek complete and unambiguous details of the address along with the corresponding documentary proof.
- (iv) where any GSTIN linked to the PAN of the applicant is found cancelled or suspended, the proper officer may seek clarification or reasons for the same from the applicant, if required.

5.7 The proper officer shall carefully examine the clarification, information or documents furnished by the applicant in FORM GST REG-04 in response to the notice issued in FORM GST REG-03. Where the proper officer is satisfied with the reply furnished by the applicant in FORM GST REG-04, he may approve the grant of registration to the applicant within the prescribed time period. However, where the proper officer is not satisfied with the clarification, information or documents furnished, he may, for reasons to be recorded in writing, reject such application and inform the applicant electronically in FORM GST REG-05 within the prescribed time period. Besides, where no reply is furnished by the applicant in response to the notice issued under in FORM GST REG-03, within the prescribed time period, the proper officer may, for reasons to be recorded in writing, reject such application and inform the applicant electronically in FORM GST REG-05.

5.8 The proper officer must ensure that the said notice in FORM GST REG-03, wherever required, is issued electronically within a period of seven working days from the date of submission of the application in cases where the applicant

has undergone authentication of Aadhaar number and within a period of thirty days in cases specified in proviso to sub-rule (1) of rule 9 of CGST Rules, 2017.

5.9 Where the applicant has either failed to undergo authentication of Aadhaar number or has not opted for authentication of Aadhaar number, the proper officer shall immediately initiate the process for physical verification of the place of business in accordance with provisions of rule 9 of CGST Rules read with rule 25 thereof.

5.10 In this regard, the concerned officer must also ensure that the physical verification report along with the other documents, including photographs, is uploaded on the system in FORM GST REG-30 sufficiently in advance of the prescribed time limit.

5.11 Further, even in cases where the applicant has undergone authentication of Aadhaar number, if the proper officer, based on the scrutiny of the application for registration and the uploaded documents, is of the opinion that physical verification of the place of business is essential to check the authenticity of the applicant, the proper officer may get such physical verification conducted in a time bound manner. Till the time a functionality for marking an application of registration for physical verification in Aadhaar authenticated cases is made available on the portal/ACES-GST application, the concerned Centralized Processing Centre (CPC) officer may, where ever considered essential, get physical verification of the place of business conducted through the jurisdictional officers of the concerned Division/Commissionerate. For this purpose, till the time a functionality is available on the portal/ACES-GST application, the concerned zones may devise a suitable mechanism at the local level so as to ensure that physical verification is conducted in a timely manner in respect of such essential cases and the concerned applications for registration are disposed of within the time limit prescribed in rule 9 of CGST Rules, 2017.

6. While processing the applications for registration, including in those cases where physical verification is to be conducted, it will be ensured by the proper officer that the application is either rejected or accepted or relevant query is raised within the prescribed time limit and no application for grant of registration is approved on deemed basis for want of timely action on the part of tax officers. Strict view may be taken where any gross negligence is observed on part of the concerned officer(s).

7. Further, where ever the registration is granted on deemed approval basis or where registration is granted by the proper officer in cases covered under the parameters referred in para 5.4 as well in cases where “High” risk rating has been assigned to an application for registration (ARN) in DGARM Report Series 400, and where physical verification of the place of business was not conducted before grant of such registration, the CPC officer shall communicate the details of such cases to the concerned jurisdictional Commissionerate immediately after registration and physical verification of the place of business shall be got conducted by the concerned Commissionerate within 15 days of such registration, in the manner prescribed in rule 25 of CGST Rules, 2017. Besides, the concerned Commis-

sionerate may get such physical verification of the place of business got conducted in other cases also, where ever required, based *inter alia* on various risk parameters and risk ratings as per tools available in ADVAIT/BIFA or as per reports provided by DGARM, so as to verify authenticity of such registrations. Wherever the registered person is found to be non-existent or fictitious, subsequent remedial action(s) may be taken without any delay.

8. The Principal Chief Commissioner/Chief Commissioner of the CGST Zones may closely supervise the status of processing of the applications of registration, including physical verifications, within their zones. Wherever it is noticed that the application for registration has been granted deemed approval, the reasons for the same may be got examined by the Principal Chief Commissioner/ Chief Commissioner for taking subsequent remedial action, if any, in a time bound manner

20. Case Laws

Section 30 of the Central Goods and Services Tax Act, 2017 — Revocation of cancellation of registration.

High Court orders revocation of cancellation of GST registration as tax, interest, late fee and penalty had been paid as directed by Court in earlier order - **GKV Sharma v Union of India [2022] 142 taxmann.com 115 (Orissa)**

The right to carry on trade or profession also cannot be curtailed:

The Hon'ble High Court of Madras in the case of *TVL. Suguna Cutpiece Centre v Appellate Deputy Commissioner (ST) (GST)*, reported in 2022 (61) G.S.T.L. 515 (Mad.), while allowing of identical cases of forty two writ petitions in the matter of revocation of cancellation registration held that “ the provisions of the Goods and Services Tax Act, 2017 cannot interpreted in such a manner, so as to debar an assessee, either from obtaining registration or reviving the lapsed/ cancelled registration as such an interpretation would be not only contrary to the Article 19(1)(g) of the Constitution of India but also in violation of Article 14 and Article 21 of the Constitution of India.” (Para 206)

Further, also held that “the provision of the GST enactments cannot be interpreted so as to deny the right to carry on Trade and Commerce to a citizen and subjects. The constitutional guarantee is unconditional and unequivocal and must be enforced regardless of the defect in the scheme of the GST enactments. The right to carry on trade or profession also cannot be curtailed. Only reasonable restriction can be imposed. To deny such rights would militate against their rights under Article 14, read with Article 19(1)(g) and Article 21 of the Constitution of India.” (Para 225)

Denial of registration of GST number, therefore, affects his right to livelihood:

The Hon'ble High Court of Uttarakhand in the case of *Vinod Kumar v Commissioner Uttarakhand State GST*, reported in [2022] 141 taxmann.com 503

(Uttarakhand), held that “it is apparent that the law made by the Parliament as well as Legislature with regard to the appeals is very strict, insofar as, that it does not provide an unlimited jurisdiction on the First Appellate Authority to extend the limitation beyond one month after the expiry of the prescribed limitation. In such case, the petitioner/appellant is put to hardship and is left without remedy. In such cases, the party concerned may face starvation because of denial of livelihood for want of GST registration. In this case, the petitioner/appellant is a semi-skilled labourer working as a painter doing painting on doors, windows of the houses. Now-a-days bills for any work executed for a private player or, even for the Government agency, are drawn on-line. In most cases, the production of the bill with the GST registration number. In the absence of GST registration number, a professional cannot raise a bill. So, if the petitioner is denied a GST registration number, it affects his chances of getting employment or executing works. Such denial of registration of GST number, therefore, affects his right to livelihood. If he is denied his right to livelihood because of the fact that his GST Registration number has been cancelled, and that he has no remedy to appeal, then it shall be violative of Article 21 of the Constitution as right to livelihood springs from the right to life as enshrined in Article 21 of the Constitution, and right to life of a citizen of this country. (Para-8)

Section 30 of the Central Goods and Services Tax Act, 2017 — Revocation of Cancellation of Registration

The High Court orders opening of GST portal for payment of tax and other dues and to enable filing of returns so as to consider application for revocation of cancelled registration - *Shree Hari Printers v Commissioner, Commercial Taxes & GST [2022] 142 taxmann.com 445 (Orissa)*

UNSIGNED ORDERS WILL BE NON-EXISTENT IN THE EYES OF LAW (In the case of M/s Ramani Suchit Malushte v Union of India reported in 2022-VIL-658(BOM).

The taxpayer was issued an order for cancellation of registration. The order was unsigned and communicated through common GST portal. The taxpayer preferred a writ petition before the High Court. The High Court observed that Rule 26 of Central Goods and Services Tax Rules, 2017 (CGST Rules) require that an order must be authenticated through digital signature certificate or e-signature or be verified by signature. In the absence of signature, the order did not have any effect in the eyes of law.

Odisha HC allows revival of GST registration cancelled for non-filing of returns for 6 consecutive months

The Hon’ble High Court of Orissa in the case of *Durga Raman Patnaik v Addl. Commissioner of GST (Appeals)*, reported in (2022) 143 taxmann.com 283 (Orissa) & 2022-TIOL-1318-HC-ORISSA-GST, wherein held that “Appellate Authority should have borne in mind the predicament faced by taxpayers on the introduction of new set of procedures by way of promulgation of the CGST Act and the OGST Act and rules framed thereunder and time required to get

acquainted. While set aside the Appellate Order upholds fundamental right to carry on business under Art 19(1)(g); allows revival of GST registration cancelled for non-filing of GSTRs for 6 consecutive months. Direction issued to opposite parties shall take suitable steps by instructing GST Network, New Delhi or any other agency responsible for maintaining the web portal to make suitable changes in the architecture of the GST Web Portal to enable the petitioner to file his returns and pay the tax/interest/penalty fine/fee.”

Section 22 of the Central Goods and Services Tax Act, 2017 — Registration — Persons Liable for

Applicant, a government company is required to be registered in state of Odisha for works contract services to be provided to East Coast Railway, Odisha as applicant is required to maintain suitable structures in terms of human and technical resources with sufficient degree of permanence at site of East Coast Railway, Odisha to effect supply of desired services as per terms and conditions of work order for new rail line project in Odisha - **Konkan Railway Corporation Ltd., In re (2022) 144 taxmann.com 29 (AAR-ODISHA)**

GST: Fraud committed by selling dealer cannot be ground for cancellation of GST registration of purchasing dealer more so when connivance of purchasing dealer in availing wrongful ITC was not established.

The Hon’ble High Court of Orissa in the case of *M/s Bright Star Plastic Industries v Addl. Commr. of Sales Tax (Appeal)*, reported in 2022 (57) G.S.T.L. 226 (Ori.), held that “attribute fraud in such circumstances to the Petitioner, as a purchasing dealer, the Department would have to satisfy a high threshold of showing that the purchaser indulged in the transactions with the full knowledge that the selling dealer was non-existent. The Department would have to show that somehow the purchasing dealer and selling dealer acted in connivance to defraud the revenue. This threshold has not been made in the present case. In other words, the Department has failed to show that the Petitioner as a purchasing dealer deliberately availed of the ITC in respect of the transactions with an entity knowing that such an entity was not in existence. For the aforementioned reasons, the impugned order of the LPO rejecting the Petitioner’s application for revocation of its cancellation of registration and the impugned appellate order dated 5th April, 2021 rejecting the Petitioner’s appeal are hereby set aside. The Department is now directed to restore the Petitioner’s registration forthwith by issuing appropriate orders/directions not later than one week from today. The Petitioner will correspondingly now be permitted to file all the return which it could not file on account of the cancellation of the registration.”

Dept. should accept revocation application of assessee after submission of GST returns and payment of taxes: HC

The Hon’ble High Court of Orissa in the case of *Bhagabati Prasad Kar v Superintendent, CGST & Central Excise*, reported in (2024) 14-Centax 385

(Ori.), held that the delay in Petitioner's invoking the proviso to Rule 23 of the Odisha Goods and Services Tax Rules (OGST Rules) is condoned and it is directed that subject to the Petitioner depositing all the taxes, interest, late fee, penalty etc. due and complying with other formalities, the Petitioner's application for revocation will be considered in accordance with law.

A copy of this order will be produced by the Petitioner before the proper officer, and subject to the Petitioner complying with the above conditions, the proper officer will open the portal to enable the Petitioner to file the GST return.

GST: Registration cannot be cancelled with retrospective effect mechanically; it can be cancelled only if proper officer deems it fit to do so.

The Hon'ble High Court of Delhi in the case of *Aryan Timber Store v State Tax Officer*, reported in (2024) 14 Centax 366 (Del.), held that Registration cannot be cancelled with retrospective effect mechanically - It can be cancelled only if proper officer deems it fit to do so - Such satisfaction could not be subjective but must be based on some objective criteria - Merely because assessee had not filed returns for some period does not mean that assessee's registration is required to be cancelled with retrospective date also covering period when returns were filed and assessee was compliant - Order of cancellation was to be modified to extent that same shall operate with effect from date when assessee first applied for cancellation of registration.

Chapter 9

Non-resident and Casual Taxable Person

Synopsis

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1. Meaning of Non-resident taxable person:

“Non-resident taxable person” means any person who occasionally undertakes transactions involving supply of goods or services or both, whether as principal or agent or in any other capacity, but who has no fixed place of business or residence in India.

A non-resident taxable person making supply in India has to compulsorily take registration. There is no threshold limit for registration. A non-resident taxable person cannot exercise the option to pay tax under composition levy. He has to apply for registration at least five days prior to commencing his business in India using a valid passport (and need not have a PAN number in India). A business entity incorporated or established outside India, has to submit the application for registration along with its tax identification number or unique number on the basis of which the entity is identified by the Government of that country or its permanent Account Number if available.

A non-resident taxable person has to make an advance deposit of tax in an amount equivalent to his estimated tax liability for the period for which the registration is sought.

1.1 Registration by non-resident taxable person

A non-resident taxable person is not required to apply in normal application for registration being filed by other taxpayers. A simplified **FORM GST REG-**

09 is required to be filled. A non-resident taxable person has to electronically submit an application, along with a self-attested copy of his valid passport, for registration, duly signed or verified through EVC, in **FORM GST REG-09**, at least five days prior to the commencement of business at the Common Portal either directly or through a Facilitation Centre notified by the Commissioner.

In case the non-resident taxable person is a business entity incorporated or established outside India, the application for registration shall be submitted along with its tax identification number or unique number on the basis of which the entity is identified by the Government of that country or its PAN, if available.

The application for registration made by a non-resident taxable person has to be signed by his authorized signatory who shall be a person resident in India having a valid PAN. On successful verification of PAN, mobile number and e-mail address the person applying for registration as a non-resident taxable person will be given a temporary reference number by the Common Portal for making the mandatory advance deposit of tax for an amount equivalent to the estimated tax liability of such person for the period for which the registration is sought. The registration certificate shall be issued electronically only after the said deposit appears in his electronic cash ledger. The amount deposited shall be credited to the electronic cash ledger of the Non-resident person.

The non-resident taxable person can make taxable supplies only after the issuance of the certificate of registration. The certificate of registration shall be valid for the period specified in the application for registration or ninety days from the effective date of registration, whichever is earlier.

In case the non-resident taxable person intends to extend the period of registration indicated in his application of registration, an application in **FORM GST REG-11** shall be submitted electronically through the Common Portal, either directly or through a Facilitation Centre notified by the Commissioner, before the end of the validity of registration granted to him. The validity period of ninety days can be extended by a further period not exceeding ninety days. The extension will be allowed only on payment of the amount of an additional amount of tax equivalent to the estimated tax liability for the period for which the extension is sought.

1.2 Entitlement of Input Tax Credit

Input tax credit shall not be available in respect of goods or services or both received by a non-resident taxable person except on goods imported by him. The taxes paid by a non-resident taxable person shall be available as credit to the respective recipients.

1.3 Returns by Non-resident taxable person

The non-resident taxable person shall furnish a return in **FORM GSTR-5** electronically through the Common Portal, either directly or through a Facilitation Centre notified by the Commissioner, including therein the details of outward supplies and inward supplies and shall pay the tax, interest, penalty, fees or any other amount payable under the Act or these rules within twenty days after

the end of a calendar month or within seven days after the last day of the validity period of registration, whichever is earlier.

1.4 Refund by Non-resident taxable person

The amount of advance tax deposited by a non-resident taxable person at the time of initial registration/extension of registration, will be refunded only after the person has furnished all the returns required in respect of the entire period for which the certificate of registration granted to him had remained in force. Refund can be applied in the Serial No. 13 of the **FORM GSTR-5**.

2. Casual taxable person

2.1 Meaning of casual taxable person:

“Casual taxable person” means a person who occasionally undertakes transactions involving supply of goods or services or both in the course or furtherance of business, whether as principal, agent or in any other capacity, in a State or a Union territory where he has no fixed place of business.

A casual taxable person (other than those making supply of specified handicraft goods) making taxable supply in India has to compulsorily take registration. There is no threshold limit for registration. Casual Taxable persons making supply of specified handicraft goods need to register only if their aggregate turnover crosses ₹ 20 Lakh (₹10 lakh for in case of Special Category States, other than the State of Jammu and Kashmir). A casual taxable person cannot exercise the option to pay tax under composition levy. He has to apply for registration at least five days prior to commencing his business in India.

A casual taxable person has to make an advance deposit of tax in an amount equivalent to his estimated tax liability for the period for which the registration is sought.

2.2 Registration by casual taxable person

A casual taxable person has to apply for registration at least five days prior to the commencement of business. There is no special form to register as a casual taxable person. The normal **FORM GST REG-01** which is used by other taxable persons can be used for obtaining registration by casual taxable person also. A casual taxable person, before applying for registration, should declare his Permanent Account Number, mobile number, e-mail address, State or Union territory in Part A of **FORM GST REG-01** on the common portal, either directly or through a Facilitation Centre notified by the Commissioner.

The Permanent Account Number shall be validated online by the common portal from the database maintained by the Central Board of Direct Taxes. The mobile number declared shall be verified through a one-time password sent to the said mobile number; and the e-mail address shall be verified through a separate one-time password sent to the said e-mail address. On successful verification of the permanent Account Number, mobile number and e-mail address, a temporary reference number shall be generated and communicated to the applicant on the said mobile number and e-mail address.

Using this reference number generated, the applicant shall electronically submit an application in Part B of **FORM GST REG-01**, duly signed or verified through electronic verification code, along with the documents specified in the said Form at the common portal, either directly or through a Facilitation Centre notified by the Commissioner.

The applicant will be given a temporary reference number by the Common Portal for making the mandatory advance deposit of tax for an amount equivalent to the estimated tax liability of such person for the period for which the registration is sought. The registration certificate shall be issued electronically only after the said deposit appears in his electronic cash ledger. The amount deposited shall be credited to the electronic cash ledger of casual taxable person. On depositing the amount, an acknowledgement shall be issued electronically to the applicant in **FORM GST REG-02**.

The casual taxable person can make taxable supplies only after the issuance of the certificate of registration. The certificate of registration shall be valid for the period specified in the application for registration or ninety days from the effective date of registration, whichever is earlier.

2.3 Extension of registration by casual taxable person

In case the casual taxable person intends to extend the period of registration indicated in his application of registration, an application in **FORM GST REG-11** shall be submitted electronically through the Common Portal, either directly or through a Facilitation Centre notified by the Commissioner, before the end of the validity of registration granted to him. The validity period of ninety days can be extended by a further period not exceeding ninety days. The extension will be allowed only on payment of the amount of an additional amount of tax equivalent to the estimated tax liability for the period for which the extension is sought.

3. Returns by casual taxable person

The casual taxable person is required to furnish the following returns electronically through the common portal, either directly or through a Facilitation Centre notified by the Commissioner:

- (a) **FORM GSTR-1** giving the details of outward supplies of goods or services to be filed on or before the tenth day of the following month.
- (b) **FORM GSTR-2** giving the details of inward supplies to be filed after tenth but before the fifteenth day of the following month.
- (c) **FORM GSTR-3** to be filed after fifteenth day but before the twentieth day of the following month.
- (d) **FORM GSTR-3B** to be filed but before the twentieth day of the following month.

It may be mentioned that presently only **FORM GSTR-1** and **FORM GSTR-3B** is required to be filed.

3.1 Special returns procedure for registered persons with turnover up to ₹1.5 crore

The Government has notified that the registered persons having aggregate turnover of up to ₹1.5 crore rupees in the preceding financial year or the current financial year, as the class of registered persons who shall follow the special procedure as detailed below for furnishing the details of outward supply of goods or services or both.

The special procedure or extension of the time limit for furnishing the details or return, as the case may be, under sub-section (2) of Section 38 (GSTR-2) and sub-section (1) of Section 39 (GSTR-3) of the Act, for the months of July, 2017 to March, 2018 shall be subsequently notified in the Official Gazette.

3.2 Special returns procedure for registered persons with turnover exceeding ₹1.5 crore

The Government has notified that the registered persons having aggregate turnover of more than ₹1.5 crore rupees in the preceding financial year or the current financial year shall furnish the details of outward supply of goods or services or both in **FORM GSTR-1** effected during the quarter as specified in Column (2) of the concerned Table till the time period as specified in the corresponding entry in Column (3) of the said Table.

The special procedure or extension of the time-limit for furnishing the details or return, as the case may be, under sub-section (2) of Section 38 (GSTR-2) and sub-section (1) of Section 39 (GSTR-3) of the Act, for the months of July, 2017 to March, 2018 shall be subsequently notified in the Official Gazette.

However, a casual tax person shall not be required to file any annual return as required by a normal registered taxpayer.

4. Refund by casual taxable person

The casual taxable person is eligible for the refund of any balance of the advance tax deposited by him after adjusting his tax liability. The balance advance tax deposit can be refunded only after all the returns have been furnished, in respect of the entire period for which the certificate of registration was granted to him had remained in force. The refund relating to balance in the electronic cash ledger has to be made in Serial No. 14 of the last **FORM GSTR-3** return required to be furnished by him (instead of **FORM GST RFD 01**).

5. Advance Ruling

GST Registration is requiring for Association if turnover exceeding threshold limit:

In Re: *IIT Madras Alumni Associations* reported in 2020 (42) G.S.T.L. 564 (A.A.R. - GST - T.N.)

The applicant IIT Madras Alumni Association, collecting money from its members or received as donation/grant etc. is used for providing various services such as conducting seminars, holding meetings, organizing events, publishing magazines and newsletters, maintaining websites, and technology infrastructure

for benefit of its members. In this connection filed an application to know whether collecting money by IIT from its members and receiving donations/grants/subsidies/budgetary support from IIT, Madras to defray expenses incurred towards administering the association and other expenses related to its engagement activities initiated by members themselves amounts to supply or not. Consequently, whether there is any liability to comply with GST law including registration and payment of tax.

Rulings:

(1) The activities undertaken by the applicant for its members as defined in their Memorandum of Association and Bye-laws, for which membership fee and other charges are collected, are covered under the definition of supply of services under Section 7 of CGST/TNGST Act, 2017.

(2) The applicant having their annual turnover above the prescribed threshold as per Section 22 of CGST/SGST Act is liable to be registered under the Act.

Chapter 10

Tax Invoice, Credit and Debit Notes

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Tax invoice is the transaction document relating to any type of commercial transaction of goods or services. All goods have to be supplied from a factory or warehouse under cover of Tax invoice duly signed by the assessee or his authorised agent. Similarly, all services have to be provided accompanied with Tax invoice. No supply goods/services supplied can take place without the support of a Tax invoice. Thus invoice is the pre-requisite of all transaction of goods or services.

Section 31 to 34 of the CGST Act, prescribes the various provisions of Tax invoice system as well as the utility of credit and debit notes relating to supply of goods and/or services. There is separate provisions has been incorporated as GST invoice Rules relating to Tax invoice, credit and debit notes shall be issued by the supplier for transaction of goods and services under GST System.

1. Provision of Tax Invoice - Section 31 of CGST Act, 2017

(1) A registered person supplying taxable goods shall, before or at the time of,—

- (a) removal of goods for supply to the recipient, where the supply involves movement of goods; or
- (b) delivery of goods or making available thereof to the recipient, in any other case,

issue a tax invoice showing the description, quantity and value of goods, the tax charged thereon and such other particulars as may be prescribed;

(2) A registered person supplying taxable services shall, before or after the provision of service within a prescribed period, issue a tax invoice, showing the description, value, tax charged thereon and such other particulars as may be prescribed.

2. Various Situations of issuance of Invoice

(3) (a) registered person may, within one month from the date of issuance of certificate of registration and issue a revised invoice against the invoice already issued during the period beginning with the effective date of registration till the date of issuance of certificate of registration to him;

(b) a registered person may not issue a tax invoice if the value of the goods or services or both supplied is less than two hundred rupees subject to such conditions and in such manner as may be prescribed;

(c) a registered person supplying exempted goods or services or both or paying tax under the provisions of Section 10 shall issue, instead of a tax invoice, a bill of supply containing such particulars and in such manner as may be prescribed:

Provided that the registered person may not issue a bill of supply if the value of the goods or services or both supplied is less than two hundred rupees subject to such conditions and in such manner as may be prescribed;

(d) a registered person shall, on receipt of advance payment with respect to any supply of goods or services or both, issue a receipt voucher or any other document, containing such particulars as may be prescribed, evidencing receipt of such payment;

(e) where, on receipt of advance payment with respect to any supply of goods or services or both the registered person issues a receipt voucher, but subsequently no supply is made and no tax invoice is issued in pursuance thereof, the said registered person may issue to the person who had made the payment, a refund voucher against such payment;

(f) a registered person who is liable to pay tax under sub-section (3) or sub-section (4) of Section 9 shall issue an invoice in respect of goods or services or both received by him from the supplier who is not registered on the date of receipt of goods or services or both; (a registered person may issue a consolidated invoice at the end of a month for supplies exceeds aggregate value of rupees five thousand in a day from any or all the suppliers)

(g) a registered person who is liable to pay tax under sub-section (3) or sub-section (4) of Section 9 shall issue a payment voucher at the time of making payment to the supplier.

(4) **In case of continuous supply of goods**, where successive statements of accounts or successive payments are involved, the invoice shall be issued before or at the time each such statement is issued or, as the case may be, each such payment is received.

(5) In case of continuous supply of services

- (a) where the due date of payment is ascertainable from the contract, the invoice shall be issued before or after the due date of payment;
- (b) where the due date of payment is not ascertainable from the contract, the invoice shall be issued before or at the time when the supplier of service receives the payment;
- (c) where the payment is linked to the completion of an event, the invoice shall be issued on or before the date of completion of that event.

(6) In a case where the supply of services ceases under a contract before the completion of the supply, the invoice shall be issued at the time when the supply ceases and such invoice shall be issued to the extent of the supply made before such cessation.

(7) Where the goods being sent or taken on approval for sale or return are removed before the supply takes place, the invoice shall be issued before or at the time of supply or six months from the date of removal, whichever is earlier.

Proviso to Section 31(2) of CGST Act (Tax invoice): Empower the Government to prescribed period and manner or exclusion from issuing tax

invoice for specified categories of services or any document which may be deemed to be a tax invoice for such services. Vide Notification No. 92/22-C.T., dated 22-02-2021.

The Finance (No. 2) Act, 2019: In section 31, a new section 31A has been inserted.

3. Facility of digital payment to recipient - Section 31A of CGST Act

The Government may, on the recommendations of the Council, prescribes a class of registered persons who shall provide prescribes modes of electronic payment to the recipient of supply of goods or services or both made by him and give option to such recipient to make payment accordingly, in such manner and subject to such conditions and restrictions, as may be prescribed.

Notified *vide* notification No. 1/2020-Central Tax dated 1.1.2020.

4. Prohibition of unauthorized collection of tax: (Tax not to be collected by unregistered taxable person) - Section 32 of CGST Act

A person who is not a registered person shall not collect in respect of any supply of goods or services or both any amount by way of tax under this Act. No registered person shall collect tax except in accordance with the provisions of this Act or the rules made thereunder.

5. Amount of tax to be indicated in tax invoice and other documents - Section 33 of CGST Act

Further, where any supply is made for a consideration, every person who is liable to pay tax for such supply shall prominently indicate in all documents relating to assessment, tax invoice and other like documents, the amount of tax which shall form part of the price at which such supply is made.

6. Provision of Credit and Debit Notes - Section 34 of CGST Act

(1) Where one or more tax invoice have been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to exceed the taxable value or tax payable in respect of such supply, or where the goods supplied are returned by the recipient, or where goods or services or both supplied are found to be deficient, the registered person, who has supplied such goods or services or both, may issue to the recipient one or more credit notes for supplies made in financial year containing such particulars as may be prescribed.

(2) Any registered person who issues a credit note in relation to a supply of goods or services or both shall declare the details of such credit note in the return for the month during which such credit note has been issued but not later than September following the end of the financial year in which such supply was made, or the date of furnishing of the relevant annual return, whichever is earlier, and the tax liability shall be adjusted in such manner as may be prescribed:

Provided that no reduction in output tax liability of the supplier shall be permitted, if the incidence of tax and interest on such supply has been passed on to any other person.

(3) Where one or more tax invoice have been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to be less than the taxable value or tax payable in respect of such supply, the registered person, who has supplied such goods or services or both, shall issue to the recipient one or more debit notes supplies made in a financial year containing such particulars as may be prescribed.

(4) Any registered person who issues a debit note in relation to a supply of goods or services or both shall declare the details of such debit note in the return for the month during which such debit note has been issued and the tax liability shall be adjusted in such manner as may be prescribed.

As per decision of 28th meeting of the GST Council, Registered persons may issue consolidated credit/debit notes in respect of multiple invoices in a financial year.

7. Good and Services Tax Invoice Rules

Rule 46 to 55 of CGST Rules, 2017, deals with the provision of Tax Invoice, Credit and Debit notes:

8. Tax invoice

Rule 46 of CGST Rules, specified that tax invoice shall be issued by the registered person containing the following information and particulars:—

- (a) name, address and Goods and Services Tax Identification Number of the supplier;
- (b) a consecutive serial number not exceeding sixteen characters, in one or multiple series, contains alphabets or numerals or special characters - hyphen or dash and slash symbolized as “and “/” respectively, and any combination thereof, unique for a financial year;
- (c) date of issue;
- (d) name, address and Goods and Services Tax Identification Number or Unique Identity Number, if registered, of the recipient;
- (e) name and address of the recipient and the address of delivery, along with the name of State and its code, if such recipient is un-registered and where the value of the taxable supply is less than fifty thousand rupees or more;
- (f) name and address of the recipient and the address of delivery, along with the name of State and its code, if such recipient is un-registered and where the value of the taxable supply is less than fifty thousand rupees and the recipient requests that such details be recorded in the tax invoice; “Provided that where any taxable service is supplied by or through an electronic commerce operator or by a supplier of online information and database access or retrieval services to a recipient who is un-registered, irrespective of the value of such supply, a tax invoice issued by the registered person shall contain the **name of the state of the recipient and the same shall be deemed to be the address on record of the recipient.**

- (g) Harmonized System of Nomenclature code for goods or services;
- (h) description of goods or services;
- (i) quantity in case of goods and unit or Unique Quantity Code thereof;
- (j) total value of supply of goods or services or both;
- (k) taxable value of the supply of goods or services or both taking into account discount or abatement, if any;
- (l) rate of tax (Central tax, State tax, Integrated tax, Union territory tax or cess);
- (m) amount of tax charged in respect of taxable goods or services (Central tax, State tax, Integrated tax, Union territory tax or cess);
- (n) place of supply along with the name of the State, in the case of a supply in the course of inter-State trade or commerce;
- (o) address of delivery where the same is different from the place of supply;
- (p) whether the tax is payable on reverse charge basis; and
- (q) signature or digital signature of the supplier or his authorised representative.

9. Quick Response (QR) Code on B2C invoices

The Government, on the recommendations of the Council, hereby notifies that an invoice issued by a registered person, whose aggregate turnover in a financial year exceeds five hundred crore rupees, to an unregistered person (hereinafter referred to as B2C invoice), shall have Quick Response (QR) code:

Provided that where such registered person makes a Dynamic Quick Response (QR) code available to the recipient through a digital display, such B2C invoice issued by such registered person containing cross-reference of the payment using a Dynamic Quick Response (QR) code, shall be deemed to be having Quick Response (QR) code.

This notification shall come into force from the 1st day of April, 2020 Vide Notification No. 72/2019- Central Tax, dated 13th December 2019.

Further, the effective date has been extended to 1st October 2020 vide Notification No. 14/2020-CT, dated 21.3.2020.

CBIC clarifies the implementation of requirement of Dynamic QR Code on B2C invoices deferred to 1st December 2020 vide Notification No. 71/2020-Central Tax, dated 30-09-2020.

Dynamic Quick Response (QR) Code on B2C invoices

C.B.I&C, Circular No. 165/21/2021-GST, dated 17-11-2021

Clarification in respect of applicability of Dynamic Quick Response (QR) Code on B2C invoices and compliance of notification 14/2020-Central Tax dated 21st March, 2020 - Reg.

Various references have been received from trade and industry seeking further clarification on applicability of Dynamic Quick Response (QR) Code on

B2C (Registered person to Customer) invoices for compliance of Notification 14/2020-Central Tax, dated 21st March, 2020 as amended. It has been represented that in some cases where, though the service recipient is located outside India and place of supply of the service is in India as per IGST Act 2017, the payment is received by the service provider located in India not in foreign exchange, but through other modes approved by RBI. In such cases, the supplier will not be fulfilling the condition specified in S. No. 4 of the Circular No. 156/12/2021 dated 21st June 2021, and accordingly, will be required to have dynamic QR code on the invoice. It has been also represented that relaxation from dynamic QR code on the invoices in such cases should be available if the payment is received through any RBI approved mode of payment, and not necessarily in foreign exchange.

2. The issues have been examined and in order to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under section 168(1) of the CGST Act, 2017, hereby clarifies the issues hereafter.

3. It is observed that from the present wording of S. No. 4 of Circular No. 156/12/2021 dated 21st June 2021, doubt arises whether the relaxation from the requirement of dynamic QR code on the invoices would be available to such supplier, who receives payments from the recipient located outside India through RBI approved modes of payment, but not in foreign exchange. It is mentioned that the intention of clarification as per S. No. 4 in the said circular was not to deny relaxation in those cases, where the payment is received by the supplier as per any RBI approved mode, other than foreign exchange.

4. Accordingly, to clarify the matter further, the Entry at S. No. 4 of the Circular No. 156/12/2021-GST dated 21st June, 2021 is substituted as below:

| | |
|---|--|
| 4. "In cases, where receiver of services is located outside India, and payment is being received by the supplier of services, through RBI approved modes of payment, but as per provisions of the IGST Act 2017, the place of supply of such services is in India, then such supply of services is not considered as export of services as per the IGST Act 2017; whether in such cases, the Dynamic QR Code is required on the invoice issued, for such supply of services, to such recipient located outside India?" | No. Wherever an invoice is issued to a recipient located outside India, for supply of services, for which the place of supply is in India, as per the provisions of IGST Act 2017, and the payment is received by the supplier, in convertible foreign exchange or in Indian Rupees wherever permitted by the RBI, such invoice may be issued without having a Dynamic QR Code, as such dynamic QR code cannot be used by the recipient located outside India for making payment to the supplier." |
|---|--|

Circular No. 156/12/2021-GST, dated 21.06.2021 stands modified to this extent.

10. Revised/supplementary Invoice

In case of a supplier shall issue any revised/supplementary invoice indicate prominently on the top of the invoice as additional declaration.

11. Export Invoice

In the case of the export of goods or services, the invoice shall carry an endorsement “SUPPLY MEANT FOR EXPORT ON PAYMENT OF INTEGRATED TAX” or “SUPPLY MEANT FOR EXPORT UNDER BOND OR LETTER OF UNDERTAKING WITHOUT PAYMENT OF INTEGRATED TAX”, as the case may be, and shall, in lieu of the details specified in clause (e) contain the following details, namely:—

- (a) name and address of the recipient;
- (b) address of delivery; and
- (c) name of the country of destination:

Provided also that a registered person, other than the supplier engaged in making supply of services by way of admission to exhibition of cinematograph films in multiplex screens, may not issue a tax invoice in accordance with the provisions of clause (b) of sub-section (3) of section 31 subject to the following conditions, namely,—

- (a) the recipient is not a registered person; and
- (b) the recipient does not require such invoice, and

shall issue a consolidated tax invoice for such supplies at the close of each day in respect of all such supplies.

Provided also that the signature or digital signature of the supplier or his authorised representative shall not be required in the case of issuance of an electronic invoice in accordance with the provisions of the Information Technology Act, 2000 (21 of 2000).

12. Invoice-cum-bill of supply - Rule 46A of CGST Rules

Notwithstanding anything contained in rule 46 or rule 49 or rule 54, where a registered person is supplying taxable as well as exempted goods or services or both to an unregistered person, a single-invoice-cum-bill of supply, may be issued for all such supplies.

Provided that the said single “invoice-cum-bill of supply” shall contain the particulars as specified under rule 46 or rule 54, as the case may be, and rule 49.

13. Tax Invoice

Proviso inserted in Rule 46, Rule 49, sub-rule (2) of Rule 54 and sub-rule (4) of Rule 54 to state that signature or digital signature of the supplier or his authorised representative shall not be required in the case of issuance of an electronic invoice, electronic bill of supply, electronic ISD invoice or Credit Note, tax invoice by insurer or a banking company or a financial institution or a NBFC or GTA for transportation of goods or invoice including ticket for

passenger transportation service when respectively they are issued in accordance with provisions of the Information Technology Act, 2000 (*21 of 2000*).

Notification No. 74/2018-C.T., dated 31-12-2018.

14. Time limit for issuing tax invoice - Rule 47 of CGST Rules, 2017

Rule 46 of the CGST Rules, 2017 specified that in the case of the taxable supply of services, shall be issued within a period of thirty days from the date of supply of service:

Provided that where the supplier of services is an insurer or a banking company or a financial institution, including a non-banking financial company, the period within which the invoice or any document in lieu thereof is to be issued shall be forty five days from the date of the supply of service:

Provided further that an insurer or a banking company or a financial institution including a non-banking financial company, or a telecom operator, or any or any other class of supplier of services as may be notified by the Government on the recommendations of the Council, making taxable supplies of services between distinct persons as specified in Section 25, may issue the invoice before or at the time such supplier records the same in his books of account or before the expiry of the quarter during which the supply was made.

15. Manner of Issuing Invoice - Rule 48 of CGST Rules, 2017

(1) The invoice shall be prepared in triplicate, in case of supply of goods, in the following manner:—

- (a) the original copy being marked as ORIGINAL FOR RECIPIENT;
- (b) the duplicate copy being marked as DUPLICATE FOR TRANSPORTER; and
- (c) the triplicate copy being marked as TRIPPLICATE FOR SUPPLIER.

(2) The invoice shall be prepared in duplicate, in the case of the supply of services, in the following manner:—

- (a) the original copy being marked as ORIGINAL FOR RECEIPIENT; and
- (b) the duplicate copy being marked as DUPLICATE FOR SUPPLIER.

(3) The serial number of invoices issued during a tax period shall be furnished electronically through the Common Portal in **FORM GSTR-1**.

16. Bill of Supply - Rule 49 of CGST Rules, 2017

A bill of supply shall be issued by the supplier in case of exempted goods or services containing the details of particulars like Tax invoices except the rate of duty/tax amount, it shall be digitally signed by the supplier or his authorised representative.

- (a) name, address and Goods and Services Tax Identification Number of the supplier;
- (b) a consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters - hyphen or dash and slash symbolized as “-” and “/” respectively, and any combination thereof, unique for a financial year;

- (c) date of its issue;
- (d) name, address and Goods and Services Tax Identification Number or Unique Identity Number, if registered, of the recipient;
- (e) Harmonized System of Nomenclature Code for goods or services;
- (f) description of goods or services or both;
- (g) value of supply of goods or services or both taking into account discount or abatement, if any; and
- (h) signature or digital signature of the supplier or his authorised representative:

Provided that the provisos to rule 46 shall, *mutatis mutandis*, apply to the bill of supply issued under this rule:

Provided further that any tax invoice or any other similar document issued under any other Act for the time being in force in respect of any non-taxable supply shall be treated as a bill of supply for the purposes of the Act.

Provided also that the signature or digital signature of the supplier or his authorised representative shall not be required in the case of issuance of an electronic bill of supply in accordance with the provisions of the Information Technology Act, 2000 (21 of 2000).

Provided also that the Government may, by notification, on the recommendations of the Council, and subject to such conditions and restrictions as mentioned therein, specify that the bill of supply shall have Quick Response (QR) code.

17. Receipt voucher - Rule 50 of CGST Rules

The registered person on receipt of advance payment of goods and services or both shall issue receipt voucher and receipt voucher shall contain the following particulars, namely,—

- (a) name, address and Goods and Services Tax Identification Number of the supplier;
- (b) a consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters hyphen or dash and slash symbolized as “-” and “/” respectively, and any combination thereof, unique for a financial year;
- (c) date of its issue;
- (d) name, address and Goods and Services Tax Identification Number or Unique Identity Number, if registered, of the recipient;
- (e) description of goods or services;
- (f) amount of advance taken;
- (g) rate of tax (Central tax, State tax, Integrated tax, Union territory tax or cess);
- (h) amount of tax charged in respect of taxable goods or services (Central tax, State tax, Integrated tax, Union territory tax or cess);

- (i) place of supply along with the name of State and its code, in case of a supply in the course of inter-State trade or commerce;
- (j) whether the tax is payable on reverse charge basis; and
- (k) signature or digital signature of the supplier or his authorised representative:

Provided that where at the time of receipt of advance, -

- (i) the rate of tax is not determinable, the tax shall be paid at the rate of eighteen per cent.;
- (ii) the nature of supply is not determinable, the same shall be treated as inter-State supply.

18. Refund Voucher - Rule 51 of CGST Rules, 2017

When no supply is made against advance payment then a registered person shall issue a refund voucher and refund voucher shall contain the following particulars, namely:—

- (a) name, address and Goods and Services Tax Identification Number of the supplier;
- (b) a consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters hyphen or dash and slash symbolized as “-” and “/” respectively, and any combination thereof, unique for a financial year;
- (c) date of its issue;
- (d) name, address and Goods and Services Tax Identification Number or Unique Identity Number, if registered, of the recipient;
- (e) number and date of receipt voucher issued in accordance with the provisions of Rule 50;
- (f) description of goods or services in respect of which refund is made;
- (g) amount of refund made;
- (h) rate of tax (Central tax, State tax, Integrated tax, Union territory tax or cess);
- (i) amount of tax paid in respect of such goods or services (Central tax, State tax, Integrated tax, Union territory tax or cess);
- (j) whether the tax is payable on reverse charge basis; and
- (k) signature or digital signature of the supplier or his authorised representative.

19. Payment Voucher - Rule 52 of CGST Rules, 2017

When the registered person receives supply services from non-registered person, shall pay tax on reverse charge basis and shall issue a payment voucher to the non-registered person and payment voucher shall contain the following particulars, namely:—

- (a) name, address and Goods and Services Tax Identification Number of the supplier if registered;
- (b) a consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters - hyphen or dash and slash symbolized as “_” and “/” respectively, and any combination thereof, unique for a financial year;
- (c) date of its issue;
- (d) name, address and Goods and Services Tax Identification Number of the recipient;
- (e) description of goods or services;
- (f) amount paid;
- (g) rate of tax (Central tax, State tax, Integrated tax, Union territory tax or cess);
- (h) amount of tax payable in respect of taxable goods or services (Central tax, State tax, Integrated tax, Union territory tax or cess);
- (i) place of supply along with the name of State and its code, in case of a supply in the course of inter-State trade or commerce; and
- (j) signature or digital signature of the supplier or his authorised representative.

20. Revised tax invoice, Debit Note and credit Note - Rule 53 of CGST Rules, 2017

Tax invoice includes revised tax invoice under Section 31 of the CGST Act, shall contains the following particulars, namely -

- (a) the word “Revised Invoice”, wherever applicable, indicated prominently;
- (b) name, address and Goods and Services Tax Identification Number of the supplier;
- (c) * * * *
- (d) a consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters - hyphen or dash and slash symbolized as “_” and “/” respectively, and any combination thereof, unique for a financial year;
- (e) date of issue of the document;
- (f) name, address and Goods and Services Tax Identification Number or Unique Identity Number, if registered, of the recipient;
- (g) name and address of the recipient and the address of delivery, along with the name of State and its code, if such recipient is un-registered;
- (h) serial number and date of the corresponding tax invoice or, as the case may be, bill of supply; and
- (i) * * * *
- (j) signature or digital signature of the supplier or his authorised representative.

| |
|-----------------------------|
| Credit or Debit Note |
|-----------------------------|

Rule 53(1A) of CGST Rules, A credit or debit note referred to in section 34 shall contain the following particulars, namely:—

- (a) name, address and Goods and Services Tax Identification Number of the supplier;
- (b) nature of the document;
- (c) a consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters hyphen or dash and slash symbolized as “-“ and “/“ respectively, and any combination thereof, unique for a financial year;
- (d) date of issue of the document;
- (e) name, address and Goods and Services Tax Identification Number or Unique Identity Number, if registered, of the recipient;
- (f) name and address of the recipient and the address of delivery, along with the name of State and its code, if such recipient is un-registered;
- (g) serial number(s) and date(s) of the corresponding tax invoice(s) or, as the case may be, bill(s) of supply;
- (h) value of taxable supply of goods or services, rate of tax and the amount of the tax credited or, as the case may be, debited to the recipient; and
- (i) Signature or digital signature of the supplier or his authorised representative.

2. Every registered person who has been granted registration with effect from a date earlier than the date of issuance of certificate of registration to him, may issue revised tax invoices in respect of taxable supplies effected during the period starting from the effective date of registration till the date of the issuance of the certificate of registration:

Provided that the registered person may issue a consolidated revised tax invoice in respect of all taxable supplies made to a recipient who is not registered under the Act during such period:

Provided further that in the case of inter-State supplies, where the value of a supply does not exceed two lakh and fifty thousand rupees, a consolidated revised invoice may be issued separately in respect of all the recipients located in a State, who are not registered under the Act.

3. Any invoice or debit note issued in pursuance of any tax payable in accordance with the provisions of Section 74 or Section 129 or Section 130 shall prominently contain the words “**INPUT TAX CREDIT NOT ADMISSIBLE**”.

21. Tax invoice in special cases - Rule 54 of CGST Rules, 2017

A tax invoice issued by an Input Service Distributor shall contain the following details:—

- (a) name, address and Goods and Services Tax Identification Number of the Input Service Distributor;

- (b) a consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters hyphen or dash and slash symbolized as - “-”, “/” respectively, and any combination thereof, unique for a financial year;
- (c) date of its issue;
- (d) name, address and Goods and Services Tax Identification Number of the recipient to whom the credit is distributed;
- (e) amount of the credit distributed; and
- (f) signature or digital signature of the Input Service Distributor or his authorized representative:

Provided that where the Input Service Distributor is an office of a banking company or a financial institution, including a non-banking financial company, a tax invoice shall include any document in lieu thereof, by whatever name called, whether or not serially numbered but containing the information as mentioned above.

(1A) (a) A registered person, having the same PAN and State code as an Input Service Distributor, may issue an invoice or, as the case may be, a credit or debit note to transfer the credit of common input services to the Input Service Distributor, which shall contain the following details:—

- (i) name, address and Goods and Services Tax Identification Number of the registered person having the same PAN and same State code as the Input Service Distributor;
- (ii) a consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters - hyphen or dash and slash symbolized as “-” and “/” respectively, and any combination thereof, unique for a financial year;
- (iii) date of its issue;
- (iv) Goods and Services Tax Identification Number of supplier of common service and original invoice number whose credit is sought to be transferred to the Input Service Distributor;
- (v) name, address and Goods and Services Tax Identification Number of the Input Service Distributor;
- (vi) taxable value, rate and amount of the credit to be transferred; and
- (vii) signature or digital signature of the registered person or his authorised representative.

(b) The taxable value in the invoice issued under clause (a) shall be the same as the value of the common services.

2. Where the supplier of taxable service is an insurer or a banking company or a financial institution, including a non-banking financial company, the said supplier shall issue a tax invoice or any other document in lieu thereof, by whatever name called, whether issued or made available, physically or

electronically whether or not serially numbered, and whether or not containing the address of the recipient of taxable service but containing other information as mentioned for tax invoice under rule 46.

Provided that the signature or digital signature of the supplier or his authorised representative shall not be required in the case of issuance of a consolidated tax invoice or any other document in lieu thereof in accordance with the provisions of the Information Technology Act, 2000 (21 of 2000).

3. Where the supplier of taxable service is a goods transport agency supplying services in relation to transportation of goods by road in a goods carriage, the said supplier shall issue a tax invoice or any other document in lieu thereof, by whatever name called, containing the gross weight of the consignment, name of the consigner and the consignee, registration number of goods carriage in which the goods are transported, details of goods transported, details of place of origin and destination, Goods and Services Tax Identification Number of the person liable for paying tax whether as consigner, consignee or goods transport agency, and also containing other information as mentioned for tax invoice under Rule 46.

4. Where the supplier of taxable service is supplying passenger transportation service, a tax invoice shall include ticket in any form, by whatever name called, whether or not serially numbered, and whether or not containing the address of the recipient of service but containing other information as mentioned for tax invoice under Rule 46.

Provided that the signature or digital signature of the supplier or his authorised representative shall not be required in the case of issuance of ticket in accordance with the provisions of the Information Technology Act, 2000 (21 of 2000).

(4A) A registered person supplying services by way of admission to exhibition of cinematograph films in multiplex screens shall be required to issue an electronic ticket and the said electronic ticket shall be deemed to be a tax invoice for all purposes of the Act, even if such ticket does not contain the details of the recipient of service but contains the other information as mentioned under rule 46:

Provided that the supplier of such service in a screen other than multiplex screens may, at his option, follow the above procedure.

5. The provisions of sub-rule (2) or sub-rule (4) shall apply, *mutatis mutandis*, to the documents issued under rule 49 or rule 50 or rule 51 or rule 52 or rule 53.

22. Transportation of goods without issue of invoice - Rule 55 of CGST Rules, 2017

- (a) supply of liquid gas where the quantity at the time of removal from the place of business of the supplier is not known,
- (b) transportation of goods for job work,

- (c) transportation of goods for reasons other than by way of supply, or
- (d) such other supplies as may be notified by the Board, the consigner may issue a delivery challan, serially numbered not exceeding sixteen characters, in one or multiple series, in lieu of invoice at the time of removal of goods for transportation, containing the following details, namely:—
 - (i) date and number of the delivery challan;
 - (ii) name, address and Goods and Services Tax Identification Number of the consigner, if registered;
 - (iii) name, address and Goods and Services Tax Identification Number or Unique Identity Number of the consignee, if registered;
 - (iv) Harmonized System of Nomenclature code and description of goods;
 - (v) quantity (provisional, where the exact quantity being supplied is not known);
 - (vi) taxable value;
 - (vii) tax rate and tax amount - Central tax, State tax, Integrated tax, Union territory tax or cess, where the transportation is for supply to the consignee;
 - (viii) place of supply, in case of inter-State movement; and
 - (ix) signature.

2. The delivery challan shall be prepared in triplicate, in case of supply of goods, in the following manner, namely:—

- (a) the original copy being marked as ORIGINAL FOR CONSIGNEE;
- (b) the duplicate copy being marked as DUPLICATE FOR TRANSPORTER; and
- (c) the triplicate copy being marked as TRIPPLICATE FOR CONSIGNER.

3. Where goods are being transported on a delivery challan in lieu of invoice, the same shall be declared as specified in Rule 138.

4. Where the goods being transported for the purpose of supply to the recipient but the tax invoice could not be issued at the time of removal of goods for the purpose of supply, the supplier shall issue a tax invoice after delivery of goods.

5. Where the goods are being transported in a semi knocked down or completely knocked down condition or in batches or lots—

- (a) the supplier shall issue the complete invoice before dispatch of the first consignment;
- (b) the supplier shall issue a delivery challan for each of the subsequent consignments, giving reference of the invoice;
- (c) each consignment shall be accompanied by copies of the corresponding delivery challan along with a duly certified copy of the invoice; and
- (d) the original copy of the invoice shall be sent along with the last consignment.

23. Tax Invoice or bill of supply to accompany for transport of goods - Rule 55A CGST Rules, 2017

The person-in-charge of the conveyance shall carry a copy of the tax invoice or the bill of supply issued in accordance with the provisions of rules 46, 46A or 49 in a case where such person is not required to carry an e-way bill under these rules.

24. Provisions of Credit and Debit Notes

The term credit and debit notes are oldest concept, generally used in day to day business for accounting purposes. These two documents used as easy negotiation instrument to rectify any mistake in amount or any deficiency after issuance of invoice for commercial transaction. The adjustment of short or excess value or amount that has occurred in tax invoice is being rectified by credit note and debit note.

Therefore, the provisions of credit and debit notes have been rightly incorporated under GST laws for smooth operation of business transaction to rectify any mistake in value or amount with issuance of Tax invoice on supplies of goods and services. Section 34 of the CGST Act, 2017 has specified the provisions of credit note and debit note.

25. Requirement of Credit Note

A supplier of goods or services or both is mandatorily required to issue a tax invoice. However, during the course of trade or commerce, after the invoice has been issued there could be situation like:

- (i) The supplier has erroneously declared a value which is more than the actual value of the goods or services provided.
- (ii) The supplier has erroneously declared a higher tax rate than what is applicable for the kind of the goods or services or both supplied.
- (iii) The quantity received by the recipient is less than what has been declared in the tax invoice.
- (iv) The quality of the goods or services or both supplied is not to the satisfaction of the recipient thereby necessitating a partial or total reimbursement on the invoice value.
- (v) Any other similar reasons.

In order to regularize these kinds of situations the supplier is allowed to issue what is called as credit note to the recipient. Once the credit note has been issued the tax liability of the supplier will reduce. Therefore, the issuance of credit note by supplier is required to settle the correct transaction between supplier and purchaser in the GST regime.

26. Meaning of Credit Note

Section 34(1) of CGST Act, 2017 has defined the meaning of credit note and specified that where one or more tax invoices have been issued for supply of any goods or services or both and the taxable value or tax payable in respect of such supply, or where the goods supplied are returned by the recipient, or where goods

or services or both supplied are found to be deficient, the registered person, who has supplied such goods or services or both, may issue to the recipient one or more credit notes for supplies made in a financial year, what is called as a credit note containing the prescribed particulars.

27. Format and particulars of Credit Note

There is no prescribed format but credit note issued by a supplier must contain the following particulars, namely:

- (a) name, address and Goods and Services Tax Identification Number of the supplier;
- (b) nature of the document;
- (c) a consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters hyphen or dash and slash symbolized as “-” and “/” respectively, and any combination thereof, unique for a financial year;
- (d) date of issue;
- (e) name, address and Goods and Services Tax Identification Number or Unique Identity Number, if registered, of the recipient;
- (f) name and address of the recipient and the address of delivery, along with the name of State and its code, if such recipient is unregistered;
- (g) serial number and date of the corresponding tax invoice or, as the case may be, bill of supply;
- (h) value of taxable supply of goods or services, rate of tax and the amount of the tax credited to the recipient; and
- (i) signature or digital signature of the supplier or his authorised representative.

28. Principles of Adjustment of tax liability

Section 34(2) of CGST Act, 2017 has prescribed that any registered who issues a credit note in relation to a supply of goods or services or both shall declare the details of such credit note in the return for the month during which such credit note has been issued but not later than September following the end of the financial year in which such supply was made, or the date of furnishing of the relevant annual return, whichever is earlier. In other words, the output tax liability cannot be reduced in cases where credit note has been issued after 30th September.

Provided that no reduction in output tax liability of the supplier shall be permitted, if the incidence of tax and interest on such supply has been passed on to any other person.

The output tax liability of the supplier gets reduced once the credit note is issued tax liability shall be adjusted. The details of the credit note relating to outward supply furnished by the supplier for a tax period shall, be matched:

- (a) with the corresponding reduction in the claim for input tax credit by the recipient in his valid return for the same tax period or any subsequent tax period; and
- (b) for duplication of claims for reduction in output tax liability.

The claim for reduction in output tax liability by the supplier that matches with the corresponding reduction in the claim for input tax credit by the recipient shall be finally accepted and communicated to the supplier. The reduction in output tax liability of the supplier shall not be permitted, if the incidence of tax and interest on such supply has been passed on to any other person.

Where the reduction of output tax liability in respect of outward supplies exceeds the corresponding reduction in the claim for input tax credit or the corresponding credit note is not declared by the recipient in his valid returns, the discrepancy shall be communicated to both such persons. Whereas, the duplication of claims for reduction in output tax liability shall be communicated to the supplier.

The amount in respect of which any discrepancy is communicated and which is not rectified by the recipient in his valid return for the month in which discrepancy is communicated shall be added to the output tax liability of the supplier in his return for the month succeeding the month in which the discrepancy is communicated.

The amount in respect of any reduction in output tax liability that is found to be on account of duplication of claims shall be added to the output tax liability of the supplier in his return for the month in which such duplication is communicated.

29. Preservation of Credit Note

The records of the credit have to be retained until the expiry of 72 months from the due date of furnishing of annual return for the year pertaining to such accounts and records. Where such accounts and documents are maintained manually, it should be kept at every related place of business mentioned in the certificate of registration and shall be accessible at every related place of business where such accounts and documents are maintained digitally.

30. Requirement of Debit Note

A supplier of goods or services or both is mandatorily required to issue a tax invoice. However, during the course of trade or commerce, after the invoice has been issued there could be situations like:

- (a) The supplier has erroneously declared a value which is less than the actual value of the goods or services or both provided.
- (b) The supplier has erroneously declared a lower tax rate than what is applicable for the kind of the goods or services or both supplied.
- (c) The quantity received by the recipient is more than what has been declared in the tax invoice.
- (d) Any other similar reasons.

In order to regularize these kinds of situations the supplier is allowed to issue what is called as debit note to the recipient. The note also includes supplementary invoice. Therefore, the requirement of issuance of debit note is to settle the correct transaction between supplier and buyer in the GST regime.

31. Meaning of Debit Note

Section 34(3) of CGST Act, 2017 has defined the meaning of debit note and specified that where one or more tax invoice have been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to be less than the taxable value or tax payable in respect of such supply, the registered person, who has supplied such goods or services or both, shall issue to the recipient one or more debit notes for supplies made in a financial year a debit note containing the prescribed particulars.

32. Format and particulars of Debit Note

There is no prescribed format but debit note issued by a supplier must contain the following particulars, namely:

- (a) name, address and Goods and Services Tax Identification Number of the supplier;
- (b) nature of the document;
- (c) a consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters hyphen or dash and slash symbolized as “-“ and “/” respectively, and any combination thereof, unique for a financial year;
- (d) date of issue;
- (e) name, address and Goods and Services Tax Identification Number or Unique Identity Number, if registered, of the recipient;
- (f) name and address of the recipient and the address of delivery, along with the name of State and its code, if such recipient is unregistered;
- (g) serial number and date of the corresponding tax invoice or, as the case may be, bill of supply;
- (h) value of taxable supply of goods or services, rate of tax and the amount of the tax debited to the recipient; and
- (i) signature or digital signature of the supplier or his authorised representative.

33. Principles of Adjustment of tax liability

Section 34(4) of CGST Act, 2017 has prescribed that any registered who issues a debit note in relation to a supply of goods or services or both shall declare the details of such debit note in the return for the month during which such debit note has been issued and the tax liability shall be adjusted in such manner as may be prescribed. The treatment of a debit note or a supplementary invoice would be identical to the treatment of a tax invoice as far as returns and payment are concerned.

34. Preservation of Debit Note

The preservation of records of the debit note or a supplementary invoice have to be retained until the expiry of 72 months from the due date of furnishing of annual return for the year pertaining to such accounts and records. Where such accounts and documents are maintained manually, it should be kept at every related place of business mentioned in the certificate of registration and shall be accessible at every related place of business where such accounts and documents are maintained digitally.

In short, the credit and debit note plays an important role in the GST regime. The credit note is a convenient and legal method by which the value of the goods or services in the original tax invoice can be amended or revised. The issuance of the credit note will easily allow the supplier to decrease his tax liability in his returns without requiring him to undertake any difficult process of refunds. Similarly, the debit note or a supplementary invoice is a convenient and legal method by which the value of the goods or services in the original tax invoice can be enhanced. The issuance of the debit note will easily allow the supplier to pay his enhanced tax liability in his returns without requiring him to undertake any other difficult process.

35. Consolidated Credit/Debit Notes

Amended provisions: CGST Amendment Act, 2018

Issuance of credit and debit note in respect of multiple invoices: A registered person to issue consolidated credit/debit notes as prescribed under Section 34 of the CGST Act in respect of multiple invoices issued in a financial year without linking the same to individual invoices.

36. Electronic Invoicing System

The GST Council in its 37th meeting has approved introduction of ‘E-invoicing’ or ‘electronic invoicing’ in a phased manner for reporting of Business to business (B2B) invoices to GST system from 1st January 2020 on a trial basis or voluntary basis. In the absence of standard e-invoice, the same has to be finalized after consultation with trade/industry bodies as well as ICAI after making available of draft in public domain.

37. Brief about e-invoice

E-invoicing is a system of generation of invoices for B2B transaction from a common GST portal for the whole country, which is authenticated electronically by GSTN for the use by taxpayers on supply of goods and services or both. It is pertinent to mention that taxpayers are using various accounting software such as Tally, ERP, Busy, SAP etc. for generating their invoices electronically and to store information, which may not be adopted by the GST system due to difference in their formats. Hence, there is need of standardize format in which electronic data of an invoice will be shared with others to ensure there is interoperability of the data. The adoption of standards will no way impact the way user would see the physical (printed) invoice or electronic (ex PDF version) invoice. All these software would adopt the new e-invoice standard wherein they

would re-align their data access and retrieve in the standard format. However, users of the software would not find any change since they would continue to see the physical or electronic (PDF/Excel) output of the invoices in the same manner as it existed before incorporation of e-invoice standard in the software. Thus the taxpayers would continue to use their own accounting system or excel based tools or any such tool for creating the electronic invoice as they are using today.

To facilitate small taxpayers adopt e-invoice system, GSTN has empanelled eight accounting & billing software which provide basic accounting and billing system free of cost to small taxpayers. Those small taxpayers, who do not have accounting software today, can use one of the empanelled software products, which come in flavors, online (cloud based) as well as offline (installed on the computer system of the user).

38. Documents are to be reported to GST System

E-invoice covers other documents that will be required to be reported to IRP by the creator of the document:

- (i) Invoice by Supplier,
- (ii) Credit Note by Supplier,
- (iii) Debit Note by Recipient,
- (iv) Any other document as required by law to be reported by the creator of the document.

39. Workflow involved

The flow of the e-invoice generation, registration and receipt of confirmation can be logically divided into two major parts:

- (a) The first part being the interaction between the business (supplier in case of invoice) and Invoice Registration Portal (IRP).
- (b) The second part is the interaction between the IRP and the GST/E-Way Bill System and the Buyer.

40. Flow of activities from Supplier:

Step 1: The supplier's (seller's) software should be capable to generate a JSON of the final invoice that is ready to be uploaded to the IRP. The IRP will only take JSON of the e-invoice. Seller should have a utility that will output invoice data in JSON format, either from his accounting or billing software or his ERP or excel/word document or even a mobile app. Those who do not use any accounting software or IT tool to generate the invoice, will be provided an offline tool to key-in data of invoice and then submit the same. The small and medium size taxpayers (having annual turnover below ₹1.50 crores) can avail accounting and billing system being offered by GSTN free of cost.

Step 2: Seller has to generate the unique Invoice Reference Number (IRN). This is an optional step. The seller can also generate this and upload along with invoice data. Seller has to use Supplier GSTIN, Supplier's invoice number and financial year to generate IRN (hash generation algorithm will be prescribed by GSTN in the e-invoice standard).

Step 3: Seller has to upload the JSON of the e-invoice (along with the hash, if generated) into the IRP. The JSON may be uploaded directly on the IRP or through GSPs or through third party provided Apps.

Step 4: The IRP will also generate the hash and validate the hash of the uploaded JSON, if uploaded by the supplier. The IRP will check the hash from the Central Registry of GST System to ensure that the same invoice from the same supplier pertaining to same Financial Year is not being uploaded again. On receipt of confirmation from Central Registry, IRP will add its signature on the Invoice Data as well as a QR code to the JSON. The QR code will contain GSTIN of seller and buyer, Invoice number, invoice date, number of line items, HSN of major commodity contained in the invoice as per value, hash etc. The hash computed by IRP will become the IRN (Invoice Reference Number) of the e-invoice. This shall be unique to each invoice and hence be the unique identity for each invoice for the entire financial year in the entire GST System for a taxpayer. GST System will create a central registry where hash sent by all IRPs will be kept to ensure uniqueness of the same.

Step 5: This is the stage involve sharing the uploaded data with GST and e-way bill system, it will be to share e-invoice data along with IRN(same as that has been returned by the IRP to the seller) to the GST System as well as to E-Way Bill System. The GST System will update the ANX-1 (for outward supplies) of the seller and ANX-2 (for inward supplies) of the buyer, which in turn will determine tax liability and ITC.

E-way bill system will create Part-A of e-way bill using this data to which only vehicle number will have to be attached in Part-B of the E-way bill. Buyer has an option to accept or reject the transaction. The signing of e-invoice by seller is not mandatory since the invoices with an IRN number will be considered as a valid tax invoice for GST purposes.

41. Direct Invoice Generation on IRP (Invoice Registration Portal)

There is provision of direct creation/generation of e-invoice from GST portal and no provision of use of any other government portal is not envisaged under proposal of e-invoicing. Invoices will continue to be generated using an accounting/billing software has been adopted by the taxpayers.

Small taxpayers can use one of the eight free accounting/billing software listed by GSTN. GSTN will provide Offline Tool where data of an invoice, generated on paper can be entered which in turn will create JSON file for uploading on the IRP. All accounting and billing software companies are being separately asked to adopt the e-invoice standard so that their users can generate the JSON from the software and uploaded the same on the IRP.

42. Features of e-invoice system:

The features of e-invoice system are summarized as under:

43. Unique Invoice Reference Number (IRN)

The unique IRN will be based on the computation of hash of GSTIN of generator of document (invoice or credit note etc.), Year and Document number

like invoice number. This hash will be as published in the e-invoice standard and unique for this combination. This way hash will always be the same irrespective of the registrar who processes it. The hash could also be generated by the taxpayers based on above algorithm. The providers of accounting and billing software are being separately asked to incorporate this feature in their product. One can pre-generate and print it on the invoice book, however, the same will not make the invoice valid unless it is registered on the portal along with invoice details. Only unique invoices from a taxpayer will be accepted and registered by the registrar.

44. Digital Signing by e-invoice Registration Portal

The invoice data will be uploaded on the IRP (Invoice Registration Portal), which will also generate the hash in order to verify it and then digitally sign it with the private key of the IRP. In case the taxpayer submits hash also along with invoice data, the same will be validated by IRN system. The IRP will sign the e-invoice along with hash and the e-invoice signed by the IRP will be a valid e-invoice and used by GST/E-Way Bill system.

45. QR Code

The IRP will also generate a QR code containing the unique IRN (hash) along with some important parameters of invoice and digital signature so that it can be verified on the central portal as well as by an offline App. This will be helpful for tax officers checking the invoice on the roadside where Internet may not be available all the time. The web user will get a printable form with all details including QR code. The QR code will consist of the following e-invoice parameters:

- (a) GSTIN of supplier,
- (b) GSTIN of Recipient,
- (c) Invoice number as given by Supplier,
- (d) Date of generation of invoice,
- (e) Invoice value (taxable value and gross tax),
- (f) Number of line items,
- (g) HSN Code of main item (the line item having highest taxable value),
- (h) Unique Invoice Reference Number (hash).

46. The offline app

The offline app will be provided on the IRP for anyone to download to authenticate the QR code of the invoice offline and its basic details. However, to see the whole invoice, one will have to connect to the portal and verify and see the details online. The facility to download entire invoice will be provided to tax officers, the way it is currently available under E-way Bill system.

47. Multiple Registrars for IRN system

Multiple registrars (IPRs) will be put in place to ensure 24x7 operations without any break. To start with, NIC will be the first Registrar. Based on experience of the trial more registrars will be added.

48. Standardization of Invoice

A technical group constituted by GST Council Secretariat has drafted standards for e-invoice after having industry consultation. The e-invoice scheme and template, as approved by the GST Council, are available at <https://www.gstn.org/e-invoice/>.

49. Creation of E-invoice

Mode for getting invoice registered: Multiple modes will be made available so that taxpayer can use the best mode based on their need. The modes are envisaged under proposed system for e-invoicing, through the IRP (Invoice Registration Portal) is listed as under:

- (a) Web based,
- (b) API based,
- (c) SMS based,
- (d) mobile app based,
- (e) offline tool based and
- (f) GSP based.

50. API mode

Using API mode, the big tax payers and accounting software providers can interface their system and pull the IRN after passing the relevant invoice information in JSON format. API request will handle one invoice request at time to generate the IRN. This mode will also be used for bulk requirement (user can pass the request one after the other and get the IRN response within fraction of second) as well. The e-way Bill system provides the same methodology.

51. Printing of Invoice

The taxpayers can continue to print their paper invoice as they are doing today including logo and other information. E-invoice scheme only mandates what will be reported in electronic format to IRP.

52. E-Invoice and Tax department

The e-invoice system being implemented by Tax Departments across the globe consists of two important parts namely,

- (a) Generation of invoice in a standard format so that invoice generated on one system can be read by another system.
- (b) Reporting of e-invoice to a central system.

The basic aim behind adoption of e-invoice system by tax departments is ability to pre-populate the return and to reduce the reconciliation problems. Huge increase in technology sophistication, increased penetration of Internet along with availability of computer system at reasonable cost has made this journey possible and hence more than 60 countries are in the process of adopting the e-invoice.

GST Council has given the responsibility to design the standard of e-invoice and update the same time to time to GSTN which is the custodian of Returns and invoices contained in the same. Adoption of e-invoice by GST System is not only part of Tax reform but also a Business reform as it make the e-invoices completely inter-operable eliminating transcription and other errors.

53. Benefits on e-invoicing System

Better taxpayer services:

- One time reporting on B2B invoice data in the form it is generated to reduce reporting in multiple formats (one for GSTR-1 and the other E-way Bill).
- To generate Sales and purchases register (ANX-1 and ANX-2) from this data to keep the Return (RET-1 etc.) ready for filing under New Return, E-way Bill can also be generated using e-invoice data.
- It will become part of the business process of the taxpayer.
- Substantial reduction in input credit verification issues as same data will get reported to tax department as well to buyer in his inward supply (purchase) register.
- On receipt of information through GST System as buyer can do reconciliation with his Purchase Order and accept/reject in time under New Return.

54. Reduction of tax evasion

- Complete trail of B2B invoices
- System level matching of input credit and output tax

55. Efficiency in tax administration:

- Elimination of fake invoices

Generation of e-invoice will be the responsibility of the taxpayer who will be required to report the same to Invoice Registration Portal (IRP) of GST, which in turn will generate a unique Invoice Reference Number (IRN) and digitally sign the e-invoice and also generate a QR Code. The QR Code will contain vital parameters of the e-invoice and return the same to the taxpayer who generated the document in first place. The IRP will also send the signed e-invoice to the recipient of the document on the e-mail provided in the e-invoice. Therefore, once invoice which will be uploaded by supplier on GST system for authentication will be further shared with corresponding buyer on his mail id mentioned on e-invoice, hence buyer can do reconciliation with his purchase order and accept/reject on real time under New Return. System level matching will be done for input credit and output tax. E-way bill will also be created through e-invoicing data only vehicle number needs to be uploaded. E-invoicing is a complete system of not only sales/purchase accounting but also generation of monthly returns under GST including E-way Bill for movement of goods across the country.

56. E-invoicing procedure

E-Invoicing procedure of issuing invoices by specified class of registered person w.e.f. October 1, 2020.

- **B2B e-invoicing**

For B2B e-invoicing, following notifications have been issued:

- Notification No. 68/2019-Central Tax dated December 13, 2019
- Notification No. 69/2019-Central Tax dated December 13, 2019
- Notification No. 70/2019-Central Tax dated December 13, 2019

Notification No. 68/2019- Central Tax dated December 13, 2019: Insertion of Rule 48(4)

A new sub-rule (4) is inserted to Rule 48 of the CGST Rules, 2017 (“CGST Rules”), to provide enabling powers to the Government to notify such class of registered persons who are required to generate and issue e-invoice, in the following manner:

“(4) The invoice shall be prepared by such class of registered persons as may be notified by the Government, on the recommendations of the Council, by including such particulars contained in **FORM GST INV-01** after obtaining an Invoice Reference Number by uploading information contained therein on the Common Goods and Services Tax Electronic Portal in such manner and subject to such conditions and restrictions as may be specified in the notification.

(5) Every invoice issued by a person to whom sub-rule (4) applies in any manner other than the manner specified in the said sub-rule shall not be treated as an invoice.

(6) The provisions of sub-rules (1) and (2) shall not apply to an invoice prepared in the manner specified in sub-rule (4).”

Notification No. 69/2019-Central Tax dated December 13, 2019: Notifies common portal for e-invoicing

Notifies following as the Common Goods and Services Tax Electronic Portal for the purpose of preparation of the invoice in terms of above Rule 48 (4) of the CGST Rules, namely:—

- (i) <http://www.einvoice1.gst.gov.in>; (ii) <http://www.einvoice2.gst.gov.in>;
- (iii) <http://www.einvoice3.gst.gov.in>; (iv) <http://www.einvoice4.gst.gov.in>;
- (v) <http://www.einvoice5.gst.gov.in>; (vi) <http://www.einvoice6.gst.gov.in>;
- (vii) <http://www.einvoice7.gst.gov.in>; (viii) <http://www.einvoice8.gst.gov.in>;
- (ix) <http://www.einvoice9.gst.gov.in>; (x) <http://www.einvoice10.gst.gov.in>.

The above portals shall be made operational w.e.f. January 1, 2020.

Notification No. 70/2019-Central Tax dated December 13, 2019: Mandatory e-invoicing for specified B2B invoices

Notifies that e-invoicing shall be mandatory in the case of B2B supplies made by registered persons whose aggregate turnover in a financial year exceeds ₹100 crore w.e.f. April 1, 2020.

57. B2C QR Quick Response Code

The CBIC vide *Notification No. 31/2019-Central Tax dated June 28, 2019* had inserted Sixth proviso to Rule 46 of the CGST Rules, stating that government may specify that the tax invoice shall have Quick Response Code (“QR Code”). Pursuant to this, the following notifications have been issued for QR Code:

Notification No. 71/2019 and Notification No. 72/2019-Central Tax both dated December 13, 2019

Notification No. 71/2019-Central Tax dated December 13, 2019: Effective date for QR code

Appoints **April 1, 2020** as the date from which above *Notification No. 31/2019-Central Tax dated June 28, 2019* shall be effective.

Notification No. 72/2019- Central Tax dated December 13, 2019: Mandatory QR code for specified B2C invoices

Notifies that QR Code shall be mandatory in the case where invoice is issued by a registered person, whose aggregate turnover in a financial year exceeds ₹500 crore, to an unregistered person (“**B2C invoice**”), w.e.f. April 1, 2020.

However, where such registered person makes a Dynamic QR Code available to the recipient through a digital display, such B2C invoice issued by such registered person containing cross-refernce of the payment using a Dynamic QR Code, shall be deemed to be having QR Code.

58. CBIC Defers introduction of E-invoicing & QR code to 1st October, 2020

The Central Board of Indirect Taxes & Customs (CBIC) has deferred the application of **Notification No. 70/2019-Central Tax dated December 13, 2019** which sought to notify the class of registered person required to issue e-invoice from the earlier April 1, 2020 to October 1, 2020 now vide **Notification No. 13/2020 – Central Tax dated March 21, 2020**.

CBIC has also deferred the application of **Notification No. 72/2019-Central tax dated December 13, 2019** which sought to notify the class of registered person required to issue invoice having QR code from the earlier April 1, 2020 to October 1, 2020 now vide **Notification No. 14/2020-Central Tax dated March 21, 2020**.

59. Revised Format/Schema for E-Invoicing

C.B.I&C issued Revised Format/Schema for E-Invoicing in FORM GST INV-01 for Taxpayers having Turnover above ₹500 crore w.e.f. 1st October 2020.

CBIC vide **Notification No. 60/2020 & 61/2020-Central Tax both dated July 30, 2020**, has made amendment in the CGST Rules, 2017 by issuing **the revised Format/Schema for E-Invoice under GST in Form GST INV-01** for the taxpayers whose **aggregate turnover in a financial year exceeds Five hundred crore rupees**, as a class of registered person who shall prepare an

invoice and other prescribed documents, in terms of sub-rule (4) of rule 48 of the CGST rules in respect of the supply of goods or services or both to a registered person.

Further, Special Economic Zone (SEZ) units are excluded from generating the E-Invoice in Form GSTR INV 01.

Note: The revised Format/Schema for E-Invoice shall be effective from October 01, 2020.

E-Invoicing from 1st October 2020

C.B.I & C issued Revised Format/Schema for E-Invoicing in FORM GST INV-01 for Taxpayers having Turnover above ₹500 crore w.e.f. 1st October 2020.

CBIC vide Notification No. 60/2020 & 61/2020 - Central Tax both dated July 30, 2020, has made amendment in the CGST Rules, 2017 by issuing **the revised Format/Schema for E-Invoice under GST in Form GST INV - 01** for the taxpayers whose **aggregate turnover in a financial year exceeds Five hundred crore rupees**, as a class of registered person who shall prepare an invoice and other prescribed documents, in terms of sub-rule (4) of rule 48 of the CGST rules in respect of the supply of goods or services or both to a registered person.

Further, Special Economic Zone (SEZ) units are excluded from generating the E-Invoice in Form GSTR INV 01.

Note: The revised Format/Schema for E-Invoice shall be effective from October 01, 2020.

60. Turnover for E-invoice

CBIC notifies registered person, other than a Special Economic Zone unit and those referred to in sub-rules (2), (3), (4) and (4A) of rule 54 of the said rules, whose aggregate turnover in any preceding financial year from 2017-18 onwards exceeds Five hundred crore rupees, as a class of registered person who shall prepare invoice and other prescribed documents, in terms of sub-rule (4) of Rule 48 of the said rules in respect of supply of goods or services or both to a registered person **or for exports.**(Notification No. 70/2020-Central Tax, dated 30-09-2020.)

61. The summary of E-Invoice Implementation Schedule

E-invoicing is being implemented in a phased manner since October, 2020. The history of E-invoice implementation is as follows:—

| S. No. | Notification | Turnover in Crores (₹) | Effective Date |
|--------|-------------------------------|------------------------|-------------------|
| 1 | 61/2020-C.T., dated 30-7-2020 | 500 | 1st October, 2022 |
| 2 | 88/2020-C.T.,dated 10-11-2020 | 100 | 1st January, 2021 |
| 3 | 05/2021-C.Tax.,dated 8-3-2021 | 50 | 1st April, 2021 |
| 4 | 01/2022-C.T., dated 24-2-2022 | 20 | 1st April, 2022 |
| 5 | 17/2022-C.T., dated 1-8-2022 | 10 | 1st October, 2022 |

62. E-Invoicing under GST

E-invoicing is a system of generation of invoices for B2B transaction from a common GST portal for the whole country, which is authenticated electronically by GSTN for the use by taxpayers on supply of goods and services or both. Registered persons will continue to create their GST invoices on their own Accounting/Billing/ERP Systems. These invoices will now be reported to '*Invoice Registration Portal (IRP)*'. On reporting, IRP returns the e-invoice with a unique '*Invoice Reference Number (IRN)*' after digitally signing the e-invoice and adding a QR Code. Then, the invoice can be issued to the receiver (along with QR Code). A GST invoice will be valid only with a valid IRN.

63. e-invoice Background

The GST Council, in its 37th meeting held on 20th September, 2019, approved introduction of electronic invoice ('e-invoice') in GST in a phased manner. Accordingly, steps have been initiated to introduce 'e-invoicing' for reporting of Business to Business (B2B) invoices, beginning from 1st January, 2020 on voluntary basis.

GST Council, in its 39th meeting, held on 14th March, 2020, further recommended certain classes of registered persons to be exempt from issuing e-invoices and the date for implementation of e-invoicing to be extended to 01.10.2020 for certain category of taxpayers.

As per Notification (Central Tax) No. 61/2020 dated 30th July 2020, the reporting has been mandated for taxpayers having annual aggregate turnover of ₹500 Crore and above in a financial year.

As per latest notification, e-invoicing will be mandatory w.e.f. 1st October, 2020, for notified classes of registered persons (those having aggregate annual turnover at PAN level more than ₹500 Crores).

64. Exempted from issuing e-invoices

The following classes of registered persons have been exempted from issuing e-invoices:

- (a) Special Economic Zone Units.
- (b) Insurer or a banking company or a financial institution, including a non-banking financial company.
- (c) Goods transport agency supplying services in relation to transportation of goods by road in a goods carriage.
- (d) Suppliers of passenger transportation service.
- (e) Suppliers of services by way of admission to exhibition of cinematograph films in multiplex screens.

65. The legal provisions governing e-invoice

| CGST Act, 2017 | CGST Rules, 2017 | Notifications Issued | Website |
|--|--|---|---|
| <ul style="list-style-type: none"> ➤ Section-2 (6) ➤ Section-2 (66) ➤ Section-31 ➤ Section-16(2) (a) | <ul style="list-style-type: none"> ➤ Rule- 46 ➤ Rule-48 ➤ Rule-54 | <p>No. 31/2019-C.T, dated 28.06.2019</p> <p>No. 68 to 70- C.T, dated 13.12.2019.</p> <p>No.2/2020-C.T, dated 01.01.2020</p> <p>No.13/2020-C.T, dated 21-3-2020(in suppression of 70/2019-C.T, dated 13-12-2019</p> <p>No. 60 to 61-C.T, dated 30-07-2020.</p> <p>No.61/2020-C.T, dated 30-07-2020</p> | <ul style="list-style-type: none"> ➤ https://einvoicel.gov.in |

66. Definition and formula of “Aggregate Turnover”

Section 2(6) of the CGST Act, 2017 defines “aggregate turnover” means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-State supplies of persons having the same Permanent Account Number, to be computed on all India basis but excludes central tax, State tax, Union territory tax, integrated tax and cess;

Formula

The formula for calculation of aggregate turnover is-

Aggregate turnover = Value of [all taxable supplies +exempted supplies +NIL rated supplies + Zero rates supplies + Non GST supplies] - [Taxes and compensation cess + inward supplies + supplies under reverse charge] of a person having the same PAN across all his business entities in India.

67. Definition of Invoice

Section 2(66) of the CGST Act, 2017 defines “invoice” or “tax invoice” means the tax invoice referred to in section 31;

68. Export Invoice

A registered person supplying taxable goods shall, before or at the time of,— Section 31(1) of CGST Act.

- (a) removal of goods for supply to the recipient, where the supply involves movement of goods; or
- (b) delivery of goods or making available thereof to the recipient, in any other case, issue a tax invoice showing the description, quantity and

value of goods, the tax charged thereon and such other particulars as may be prescribed:

Provided that the Government may, on the recommendations of the Council, by notification, specify the categories of goods or supplies in respect of which a tax invoice shall be issued, within such time and in such manner as may be prescribed.

69. Mandatory HSN Code

Vide Notification No.78/2020-C.T., dated 15-10-2020 the Central Government made it mandatory for the registered person to indicate HSN code in the invoice as detailed below:

- Aggregate turnover in the preceding financial year-up to ₹ 5 crores- Numbers of digits of HSN Code is 4.
- Aggregate turnover in the preceding financial year is more than ₹ 5 crores – number of digits of HSN Code is 6.

Provided that a registered person having aggregate turnover up to five crores rupees in the previous financial year may not mention the number of digits of HSN Code, as specified in the corresponding entry in column (3) of the said Table in a tax invoice issued by him under the said rules in respect of supplies made to unregistered persons.

70. Rules of Tax Invoice - Rule 46 of the CGST Rules

Subject to rule 54, a tax invoice referred to in section 31 shall be issued by the registered person:

Provided also that the Government may, by notification, on the recommendations of the Council, and subject to such conditions and restrictions as mentioned therein, specify that the tax invoice shall have Quick Response (QR) code.

71. Manner of issuing invoice - Rule 48 of CGST Rules

(4) The invoice shall be prepared by such class of registered persons as may be notified by the Government, on the recommendations of the Council, by including such particulars contained in **FORM GST INV-01** after obtaining an Invoice Reference Number by uploading information contained therein on the Common Goods and Services Tax Electronic Portal in such manner and subject to such conditions and restrictions as may be specified in the notification.

(5) Every invoice issued by a person to whom sub-rule (4) applies in any manner other than the manner specified in the said sub-rule shall not be treated as an invoice.

(6) The provisions of sub-rules (1) and (2) shall not apply to an invoice prepared in the manner specified in sub-rule (4).

72. Tax invoice in Special case - Rule 54 of CGST Rules

The registered persons, other than those referred in sub-rules (2),(3),(4) and (4A) of rule 54 of the said rules, whose aggregate turnover in a financial year

exceeds ₹500 Cr., as a class of registered person who shall prepare invoice in terms of sub-rule(4) of rule 48 of the said rules in respect of supply of goods or services or both to a registered person with effect from the 1st October 2020.

73. e-invoice – Advantages

E-invoice has many advantages for businesses such as Auto-reporting of invoices into GST return, auto-generation of e-way bill (where required).

e-invoicing will also facilitate standardization and inter-operability leading to reduction of disputes among transacting parties, improve payment cycles, reduction of processing costs and thereby greatly improving overall business efficiency.

74. Benefits of e-invoice

| Area | Outcome |
|--|--|
| Automation of reporting documents for various compliances in GST | <ul style="list-style-type: none"> ➤ One time reporting of B2B invoice data in the e-invoice form will reduce the reporting of the same in multiple forms (GSTR-1, e-way bill etc.). ➤ e-way bill can also be generated using e-invoice data. GSTR-1 can also be auto-populated with the e-invoice data. ➤ It will become part of the business process of the taxpayer. ➤ Substantial reduction in transcription errors as same data will get reported to tax department as well as to buyer to prepare his inward supplies (purchase) register. ➤ On receipt of information through GST System, buyer can do reconciliation with his Purchase Order. |
| Reduction of tax evasion | <ul style="list-style-type: none"> ➤ Complete trail of B2B invoices. ➤ System-level matching of input credit and output tax. |
| Fraud mitigation | <ul style="list-style-type: none"> ➤ Elimination of fake invoices. |

75. Documents are presently covered under e-invoicing

E-invoice covers the following documents:

- (i) B2B Invoices.
- (ii) Invoices issued for Exports.
- (iii) Credit Notes.
- (iv) Debit Notes.

The above documents issued by notified class of registered persons are currently covered under e-invoice. Though different documents are covered, for ease of reference and understanding the system is referred as ‘e-invoicing’.

76. e-invoice – Schema (Standard format)

Presently, businesses are using various accounting/billing software, each generating and storing invoices in their own electronic formats. These different formats are neither understood by GST System nor among the systems of suppliers and receivers. For example, an invoice generated by SAP system cannot be read by a machine which is using ‘Tally’ system, unless a connector is used. With more than 300 accounting/billing software products, there is no way to have connectors for all.

In this scenario, ‘e-invoicing’ aims at machine-readability and uniform interpretation. To ensure this complete ‘inter-operability’ of e-invoices across the entire GST eco-system, an invoice standard is a must. By this, e-invoices generated by one software can be read by any other software, thereby eliminating the need of fresh/manual data entry.

Since, there was no such standard for e-invoice in the country, as a first step, a standard/format for e-invoice has been finalized after detailed consultations with Trade/Industry Bodies (*CII, PHD, FICCI, ASSOCHAM etc.*), as well as Institute of Chartered Accountants of India (ICAI). Though it is based on international standard (UBL/PEPPOL), it has been customized to cater to Indian business practices and requirements.

The Schema/Format was notified as ***Form GST INV-1***.

77. e-invoice – Process

‘E-invoicing’ is not generation of invoice by a Government portal. Taxpayers will continue to create their GST invoices on their own Accounting/Billing/ERP Systems. These invoices will now be reported to ‘Invoice Registration Portal (IRP)’. On reporting, IRP will generate a unique ‘Invoice Reference Number (IRN)’, digitally sign it and return the e-invoice. A GST invoice will be valid only with a valid IRN.

IRP will also generate a QR code containing the unique IRN along with certain other key particulars. The QR code (which can be printed on invoice) enables offline verification of the fact whether the e-invoice has been reported on the IRP or not (*using Mobile App etc.*).

E-invoice schema only mandates what particulars shall be reported in electronic format to IRP so as to receive signed e-invoice from IRP. On successful reporting of invoice in JSON format to IRP, the supplier receives a signed JSON from the IRP which also includes data of a QR code. This payload can be converted to readable format and populated into a PDF file also. If the taxpayer desires, he can print it as paper invoice, as he is doing today, by also placing entity logo and other information, as needed. The PDF as well as the printed invoice will have to have the QR Code.

78. Workflow-Process

The flow of the e-invoice generation, registration and receipt of confirmation can be logically divided into two major parts:

- (a) The first part being the interaction between the business (supplier in case of invoice) and Invoice Registration Portal (IRP).
- (b) The second part is the interaction between the IRP and the GST/E-Way Bill System and the Buyer.

79. Flow from Supplier to IRP

Step 1: is the generation of the invoice by the seller in his own accounting or billing system (*it can be any software utility that generates invoice including those using excel or MS-Word*). The invoice must conform to the e-invoice schema (standard format notified) and have the mandatory parameters. The optional parameters can be according to the business need of the supplier. The supplier's (seller's) software should be capable to generate a JSON of the final invoice that is ready to be uploaded to the IRP. The IRP will only take JSON of the e-invoice. In case the taxpayer's billing software/ERP does not have capability to generate JSON of e-invoice as per notified Format, she should either ask the software provider to provide the same or take this service from others who are providing this as service.

Steps 2 and 3: To upload and push the e-invoice JSON to the IRP by the seller. The JSON may be uploaded directly on the IRP or also through GSPs or through third party, if software is available for the same.

Step 4: The IRP will generate Invoice Reference Number (IRN), based on Supplier's GSTIN, Document Type, Document Number and Financial Year and check the same from the Central Registry of GST System to ensure that the same document (invoice etc.) from the same supplier pertaining to same Financial Year is not being uploaded again. In computer science language, IRN is called hash.

On receipt of confirmation from Central Registry, IRP will add its signature on the Invoice Data as well as a QR code to the JSON. The QR code will contain GSTINs of seller and buyer, Invoice number, invoice date, number of line items, HSN of major commodity contained in the invoice as per value, hash etc. ***The hash computed by IRP will become the IRN (Invoice Reference Number) of the e-invoice.*** This shall be unique to each invoice and hence be the unique identity for each invoice for the entire financial year in the entire GST System for a taxpayer. GST System will create a central registry where hashes sent by all IRPs will be kept to ensure uniqueness of the same. Currently, GST System uses similar logic to ensure uniqueness of each B2B invoice which is uploaded as part of GSTR1.

In case the same document has been uploaded earlier, the IRP will reject it with an error code, back to the supplier.

Step 5 will involve returning the digitally signed JSON with IRN back to the seller along with a QR code.

Step 6 will involve sharing the uploaded data of document (invoice etc.) with GST and e-way bill system.

80. Flow from IRP to GST System/E-Way Bill System & Buyer:

The following diagram shows how e-Invoice data would be consumed by GST System for generation of e-way bill or populating relevant parts GST Returns, stated in Step-6 above.

Step 6(a) will be to send the signed and authenticated e-invoice data along with IRN (same as that has been returned by the IRP to the seller) to the GST System as well as to E-Way Bill System.

Step 6(b) The GST System will update GSTR-1.

Step 6(c) The e-invoice schema includes parameters e.g. ‘Transporter ID’ and ‘Vehicle Number’, etc. that are required for creating and generating e-way bills. These can be entered if available with seller, at the time of generation of e-invoice so that e-way bill can be created using this data without any further requirement of data entry by the user. The e-invoice reporting software already allows reporting of e-invoice and generation of e-way bill with same data.

81. e-invoice – Salient Features**82. Unique Invoice Reference Number (IRN)**

The unique IRN will be based on the computation of hash of GSTIN of generator of document (invoice or credit note or debit note), Financial Year, Document Type and Document number like invoice number. This hash will be as published in the e-invoice standard and unique for this combination. This way hash will always be the same irrespective of the registrar who processes it.

To ensure de-duplication, the registrar will be required to send the hash to Central Registry of GST System to confirm whether the same has been reported already. In case, it has been reported by another registrar (*as and when more registrars/IRPs are added*) and the Central Registry already has the same IRN, then the registrar will reject the registration and inform the sender by sending appropriate error code. Only unique invoices from a taxpayer will be accepted and registered by the registrar.

83. Digital Signing of e-invoice by Invoice Registration Portal (IRP)

After the invoice data will be uploaded on the IRP (Invoice Registration Portal), the IRP will generate the hash (as the IRN) and then digitally sign it with the private key of the IRP. The IRP will sign the complete e-invoice JSON payload (that includes the IRN/hash). Thereafter, this e-invoice signed by the IRP will be a valid e-invoice for the seller and can be used by the seller for his business transactions.

84. QR Code with key particulars: QR Code

The IRP will also generate a QR code containing the unique IRN (hash) along with some important parameters of invoice and digital signature so that it can be verified on the central portal as well as by a Mobile App. This will be helpful for tax officers to verify the authenticity of invoice during road checks when Internet connectivity may not be available all the time.

The QR code will consist of the following key particulars of e-invoice.

- (a) GSTIN of Supplier,
- (b) GSTIN of Recipient,
- (c) Invoice number as given by Supplier,
- (d) Date of generation of invoice,
- (e) Invoice value (taxable value and gross tax),
- (f) Number of line items,
- (g) HSN Code of main item (the line item having highest taxable value),
- (h) Unique IRN (Invoice Reference Number/hash)

A Mobile App will be provided for anyone to authenticate the QR code of the e-invoice and verify its basic details, in due course. The facility to view the e-invoice will be provided to buyers and tax officers, on the GST System.

85. Multiple Registrars for IRN system

Multiple registrars (IPRs) will be put in place to ensure 24x7 operations without any break. To start with, NIC will be the first Registrar. Based on experience of the trial more registrars will be added.

86. Standardization of e-invoice

A technical group constituted by the GST Council Secretariat has drafted standards for e-invoice after having industry consultation. The e-invoice schema/template is since notified as **Form GST-INV-1**.

87. Multiple Modes for reporting e-invoice

Multiple modes will be made available so that taxpayer can use the best mode based on his/her need. The modes are envisaged under proposed system for e-invoicing, through the IRP (Invoice Registration Portal) is listed as under:

- (a) Web based,
- (b) API based,
- (c) SMS based and
- (d) GSP based.

Using API mode, the applicable taxpayers and their ERP/internal IT services/accounting software providers can interface their systems and get the signed e-invoice from IRP - after passing the relevant invoice information in JSON format. APIs will also handle multiple requests for invoices registration and to generate the IRN. This mode can also be used for multiple invoices as well. The e-way bill system provides the same methodology.

88. Printing of e-Invoice

The supplier receives a signed JSON from the IRP. This payload can be received, converted to readable format and populated into a PDF file also. If the taxpayer desires, he can print it as paper invoice, as he is doing today, by also placing entity logo and other information, as needed. E-invoice schema only

mandates what will be reported in electronic format to IRP and to receive the corresponding signed e-invoices from the IRP. While printing, QR code should also be printed.

89. Cancellation of e-invoice

The seller can initiate cancellation of IRN of the e-invoice already reported, if that invoice is required to be cancelled by him/her. The cancellation of an invoice will be done as per procedure given under accounting standards. The cancellation will be allowed within specified time after generation of IRN.

The cancellation of e-invoice will be done by using the 'Cancel IRN' API (published on the e-invoice sandbox portal). The API will be a POST API and will require the IRN that is to be cancelled as the key parameter of the payload. Please refer the e-invoice sandbox for more details on the specifications and how to exchange and handle the payload and responses, respectively. The invoice number of cancelled invoice can't be used again.

90. Amendment of e-invoice already reported:

Amendment of e-invoice already uploaded on IRP will be done **only** on GST portal. Any amended e-invoice, if reported to IRP, will get rejected as its IRN (unique hash) will already be existing in the IRP system. Hence, amendment of invoices will not be possible through the IRP.

Declaration by registered persons for not preparing e-invoice

SEZ Units, Insurers, Banking companies, NBFC, GTA, Suppliers of passenger transportation service, Suppliers of services by way of admission at multiples, & OIDAR service provider, where AATO exceeds the notified limit (for E-Invoice), need to declare following on their invoices:

"I/We hereby declare that though our aggregate turnover in any preceding financial year from 2017-18 onwards is more than the aggregate turnover notified under sub-rule (4) of rule 48, we are not required to prepare an invoice (E-Invoice) in terms of the provisions of the said –sub-rule."

[Notification No. 14/2022-CT, dated 05.07.2022]

The GST e-invoice system issued an Update on September 11, 2023, mandating 2-Factor Authentication for all taxpayers with Aggregate Annual Turnover ("AATO") exceeding ₹20 Cr, effective from November 1, 2023.

The GST e-invoice system issued an Update on September 11, 2023, indicating that, as per the directives of the GST Authority, a 30-day time limit for reporting invoices from the date of their issuance is now mandatory for e-invoice portals. This requirement applies to taxpayers with an Aggregate Annual Turnover ("AATO") equal to or exceeding 100 crores and will be effective from November 1, 2023.

It is to update you that it has been decided by the GST Authority to impose a time limit of 30 days for reporting of invoices from date of invoice, on e-invoice portals. This time limit is applicable for taxpayers with AATO greater than or equal to 100 crores. Hence, the taxpayers in this category will not be allowed to report invoices older than 30 days on the date of reporting.

Please note that this restriction will apply to the all document types for which IRNs are to be generated. Thus, the Credit/Debit note will also have to be reported within 30 days of issue from date of issue. For example, if an invoice has a date of November 1, 2023, it cannot be reported after November 30, 2023.

This validation will come into effect from November 1, 2023.

MERA BILL MERA ADHIKAAR SCHEME

As per the direction from the Government, the GSTN has developed and launched a mobile application (available on iOS and Android platforms) and also a web portal for the “**Mera Bill Mera Adhikaar**” scheme.

2. This scheme will be implemented from 1st September, 2023 initially in the States of Gujarat, Assam, Haryana and UTs of Puducherry and Daman & Diu and Dadra & Nagar Haveli, as per the policy decision of the Government.

3. Mobile Application and Web Portal:

- The mobile application is available for download on both iOS and Android platforms and links are given below.
 - (a) **Android Link:** <https://play.google.com/store/apps/details?id=com.gstn.msma>
 - (b) **iOS Link:** <https://apps.apple.com/in/app/mera-bill-mera-adhikaar/id6450875616>
 - (c) **The web portal can be accessed at:** <https://web.merabill.gst.gov.in>

4. **User Manual:** For ease of use and to guide taxpayers through the process of participating in the scheme via the mobile application or web portal, a detailed user manual is available at the link below for your reference:

- User Manual Download Link: https://tutorial.gst.gov.in/downloads/news/mbma_user_manual_18_august_2023_final.pdf

5. Please ensure that you download the mobile application only from the Google Play store and Apple App store and access the web portal through the official link provided above to avoid any spurious application of a fraudulent entity.

6. Please refer to the Policy Document for MBMA related policy matters with reference to broad guidelines for its implementation.

E-Invoice Verifier App by GSTN

The E-Invoice Verifier App developed by GSTN, has been introduced which offers a convenient solution for verifying e-Invoices and other related details. GSTN understands the importance of efficient and accurate e-invoice verification, and this app aims to simplify the process for your convenience.

2. E-Invoice Verifier App - Key Features and Benefits:

- (i) QR Code Verification: The app allows users to scan the QR code on an e-Invoice and authenticate the embedded value within the code. This helps in identifying the accuracy and authenticity of the e-Invoice.
- (ii) User-Friendly Interface: The app provides a user-friendly interface with intuitive navigation, making it easy for users to navigate through the app's features and functionalities.
- (iii) Comprehensive Coverage: The app supports verification of e-Invoices reported across all six IRPs, ensuring comprehensive coverage and convenience.
- (iv) Non-Login Based: The app operates on a non-login basis, meaning users are not required to create an account or provide sensitive personal information to access its functionalities. This simplifies the user experience and makes it more convenient for users.

3. How to use the e-Invoice Verifier App:

- (i) Download the App: Visit the Google Play Store and search for "E-Invoice QR Code Verifier." Download and install the app on your mobile device free of charge. The iOS version will be available shortly.
- (ii) QR Code Scanning: Utilise the app to scan the QR codes on your e-Invoices. The app will authenticate the information embedded in the code and one can compare it with information printed on the invoice.

4. GSTN emphasizes that the e-Invoice Verifier App does not require any user login or authentication process. Anyone can freely scan QR codes and view the available information.

5. For more detailed information please see the FAQs in the app. This comprehensive FAQ document will provide you with additional guidance on using the app and resolving any queries you may have.

6. GSTN is dedicated to enhancing your experience with the E-Invoice Verifier App and providing a process of seamless e-Invoice verification. GSTN is also working towards launching Version 2 with the Search IRN functionality, which will further streamline your e-Invoice verification.

Time limit for Reporting Invoices on the IRP Portal

It is to inform you that it has been decided by the Government to impose a time limit on reporting old invoices on the e-invoice IRP portals for taxpayers with AATO greater than or equal to 100 crores.

2. To ensure timely compliance, taxpayers in this category will not be allowed to report invoices older than 7 days on the date of reporting.

3. Please note that this restriction will only apply to the document type invoice, and there will be no time restriction on reporting debit/credit notes.

4. For example, if an invoice has a date of April 1, 2023, it cannot be reported after April 8, 2023. The validation system built into the invoice registration portal will disallow the user from reporting the invoice after the 7-day window. Hence, it is essential for taxpayers to ensure that they report the invoice within the 7-day window provided by the new time limit.

5. It is further to clarify that there will be no such reporting restriction on taxpayers with AATO less than 100 crores, as of now.

6. In order to provide sufficient time for taxpayers to comply with this requirement, which may require changes to your systems, we propose to implement it from 01.05.2023 onwards.

HSN Code Reporting in e-Invoice on IRPs Portal

We would like to bring to your attention notification no. 78/2020 – Central Tax dated 15th October 2020. As per the above-said notification, it is now mandatory for taxpayers to report a minimum of six-digit valid HSN code for their outward supplies having AATO of more than 5 crores in any previous financial year.

2. We would like to inform you that this requirement has already been implemented in the GST system, and we are now in the process of implementing the same at IRPs portal in collaboration with our IRP partners including NIC. It is further suggested that in case wherever valid six digit HSN code is not available, a corresponding valid eight digit HSN code be reported instead of artificially creating six digit HSN code.

3. We understand that this requirement may require changes to your systems as well. We would like to assure you that we intend to provide sufficient time for taxpayers and IRP partners to make the necessary changes to comply with this requirement.

4. We will communicate the exact date of implementation to you shortly.

GSTN launches e-invoice registration services with private IRPs

In another step towards further digitization of the business process flow, GSTN has launched the e-invoice registration services through multiple private IRPs at the recommendation of the GST Council. Four private companies viz. Clear Tax, Cygnet, E&Y and IRIS Business Ltd were empaneled by GSTN for providing these e-invoice registration services to all GST taxpayers of the country. The details of the existing and new IPRs is available at <https://einvoice.gst.gov.in/einvoice/dashboard>

The taxpayers now have a choice of more than one IRP (earlier being the only single portal of NIC), which they can use to register their e-invoices. This adds significant capacity and redundancy to the single e-invoice registration portal which existed earlier.

The end-to-end flow of a digitally signed e-invoice between sellers and buyers by integration with the GST system will lead to ease of compliance for the taxpayers. It will also lead to facilitation of auto-drafting and auto-populating of invoice details in the GST returns which would lead to increased accuracy, correctness of reporting of supplies and availing of ITC by the recipients of the supply.

Chapter 11

Accounts and Records

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1. Introduction

The books of accounts and records are the vital documents of any business entity. On the basis of the said documents the statutory auditor/chartered accountant audit/verify the transaction of a business entity. Accordingly, the balance sheet of a business entity is being arranged at the end of each financial year. The balance sheet reflects the summary of books of accounts and records of a business entity and duly certified by C.A. It is mandatory requirement to submit the copy of balance sheet to the ROC, on MCA online and submit to excise audit/CERA team to verify the authenticity of all transaction of a business entity.

2. Statutory Provisions for maintenance of Accounts and Records

Section 35 of the CGST Act, 2017 has incorporated the various forms of books of accounts and records to be maintained by a registered person. The major features of the CGST Act, 2017 relating to accounts and records are as follows:

(1) Every registered person shall keep and maintain, at his principal place of business, as mentioned in the certificate of registration, a true and correct account of—

- (a) production or manufacture of goods;
- (b) inward and outward supply of goods or services or both;
- (c) stock of goods;
- (d) input tax credit availed;
- (e) output tax payable and paid; and
- (f) such other particulars as may be prescribed:

Provided that where more than one place of business is specified in the certificate of registration, the accounts relating to each place of business shall be kept at such places of business and maintain such accounts and other particulars in electronic form in such manner as may be prescribed.

(2) Every owner or operator of warehouse or godown or any other place used for storage of goods and every transporter, irrespective of whether he is a registered person or not, shall maintain records of the consigner, consignee and other relevant details of the goods in such manner as may be prescribed.

(3) The Commissioner may notify a class of taxable persons to maintain additional accounts or documents for such purpose as may be specified therein.

(4) Where the Commissioner considers that any class of taxable persons is not in a position to keep and maintain accounts in accordance with the provisions of this section, he may, for reasons to be recorded in writing, permit such class of taxable persons to maintain accounts in such manner as may be prescribed.

(5) Every registered person whose turnover during a financial year exceeds the prescribed limit shall get his accounts audited by a chartered accountant or a cost accountant and other records and shall submit a copy of the audited annual accounts, the reconciliation statement under sub-section (2) of Section 44 and such other documents in such form and manner as may be prescribed. (*Non-applicability of GST Audit to departments of the Government subject to audit of CAG.*)

(6) Subject to the provisions of clause (h) of sub-section (5) of Section 17, where the registered person fails to account for the goods or services or both in accordance with the provisions of sub-section (1), the proper officer shall determine the amount of tax payable on the goods or services or both that are not accounted for, as if such goods or services or both had been supplied by such person and the provisions of Section 73 under Section 74, as the case may be, shall, mutatis mutandis, apply for determination of such tax.

3. GST Rules on maintenance of accounts and records

On the basis of CGST Act, 2017, the provision of accounts and records has been incorporated in the CGST Rules; these rules are summarized as under:

Maintenance of accounts by registered persons: Rule 56 of the CGST Rules has prescribed the provision of accounts and records are summarized as under:

- (1) Every registered person shall keep and maintain, a true and correct account of the goods or services imported or exported or of supplies attracting payment of tax on reverse charge along with relevant documents including invoices, bills of supply, delivery challans, credit notes, debit notes, receipt vouchers, payment vouchers, refund vouchers.
- (2) Every registered person, other than a person paying tax under Section 10(opted composition scheme), shall maintain accounts of stock in respect of each commodity received and supplied by him, and such accounts shall contain particulars of the opening balance, receipt, supply, goods lost, stolen, destroyed, written off or disposed of by way of gift or free sample and balance of stock including raw materials, finished goods, scrap and wastage thereof.
- (3) Every registered person shall keep and maintain a separate account of advances received, paid and adjustments made thereto.

- (4) Every registered person, other than a person paying tax under Section 10 (opted composition scheme), shall keep and maintain an account, containing the details of tax payable [including tax payable in accordance with the provisions of sub-section (3) and sub-section (4) of Section 9 of the Act], tax collected and paid, input tax, input tax credit claimed, together with a register of tax invoice, credit notes, debit notes, delivery challan issued or received during any tax period.
- (5) Every registered person shall keep the particulars of—
 - (a) names and complete addresses of suppliers from whom he has received the goods or services chargeable to tax under the Act;
 - (b) names and complete addresses of the persons to whom he has supplied the goods or services, where require under this provision;
 - (c) the complete addresses of the premises where the goods are stored by him, including goods stored during transit along with the particulars of the stock stored therein.
- (6) If any taxable goods are found to be stored at any place(s) other than those declared under sub-rule (6) without the cover of any valid documents, the proper officer shall determine the amount of tax payable on such goods as if such goods have been supplied by the registered person.
- (7) Every registered person shall keep the books of account at the principal place of business and at every related place(s) of business mentioned in his certificate of registration and such books of account shall include any electronic form of data stored on any electronic device.
- (8) Any entry in registers, accounts and documents shall not be erased, effaced or overwritten, and all incorrect entries shall be scored out under attestation and thereafter correct entry shall be recorded, and where the registers and other documents are maintained electronically, a log of every entry edited or deleted shall be maintained.
- (9) Each volume of books of account maintained by the registered person shall be serially numbered.
- (10) Unless proved otherwise, if any documents, registers, or any books of account belonging to a registered person are found at any premises other than those mentioned in the certificate of registration, they shall be presumed to be maintained by the said registered person.
- (11) Every agent referred to in clause (5) of Section 2 of the Act shall maintain accounts depicting the
 - (a) Particulars of authorization received by him from each principal to receive or supply goods or services on behalf of such principal separately;
 - (b) particulars including description, value and quantity (wherever applicable) of goods or services received on behalf of every principal;

- (c) particulars including description, value and quantity (wherever applicable) of goods or services supplied on behalf of every principal;
 - (d) details of accounts furnished to every principal; and
 - (e) tax paid on receipts or on supply of goods or services effected on behalf of every principal.
- (12) Every registered person manufacturing goods shall maintain monthly production accounts, showing the quantitative details of raw materials or services used in the manufacture and quantitative details of the goods so manufactured including the waste and by products thereof.
- (13) Every registered person supplying services shall maintain the accounts showing the quantitative details of goods used in the provision of each service, details of input services utilized and the services supplied.
- (14) Every registered person executing works contract shall keep separate accounts for each works contract showing—
- (a) the names and addresses of the persons on whose behalf the works contract is executed;
 - (b) description, value and quantity (wherever applicable) of goods or services received for the execution of works contract;
 - (c) description, value and quantity (wherever applicable) of goods or services utilized in the execution of each works contract;
 - (d) the details of payment received in respect of each works contract; and
 - (e) the names and addresses of suppliers from whom he has received goods or services.
- (15) The records under these rules may be maintained in electronic form and the record so maintained shall be authenticated by means of a digital signature.
- (16) Accounts maintained by the registered person together with all invoices, bills of supply, credit and debit notes, and delivery challans relating to stocks, deliveries, inward supply and outward supply shall be preserved for the period as provided in Section 36 of the Act and shall be kept at every related place of business mentioned in the certificate of registration.
- (17) Any person having custody over the goods in the capacity of a carrier or a clearing and forwarding agent for delivery or dispatch thereof to a recipient on behalf of any registered person shall maintain true and correct records in respect of such goods handled by him on behalf of the such registered person and shall produce the details thereof as and when required by the proper officer.
- (18) Every registered person shall, on demand, produce the books of accounts which he is required to maintain under any law in force.

4. Generation and maintenance of electronic records - Rule 57 of the CGST Rules, 2017

(1) Proper electronic back-up of records shall be maintained and preserved in such manner that, in the event of destruction of such records due to accidents or natural causes, the information can be restored within reasonable period of time.

(2) The registered person maintaining electronic records shall produce, on demand, the relevant records or documents, duly authenticated by him, in hard copy or in any electronically readable format.

(3) where the accounts and records are stored electronically by any registered person he shall, on demand, provide the details of such files, passwords of such files and explanation for codes used, where necessary for access and any other information which is required for such access along with a sample copy in print form of the information stored in such files.

5. Records to be maintained by owner or operator of godown or warehouse and transporters - Rule 58 of the CGST Rules

(1) Every person required to maintain records and accounts in accordance with the provisions of sub-section (2) of Section 35, if not already registered under the Act, shall submit the details regarding his business electronically on the Common Portal in **FORM GST ENR-01**, either directly or through a Facilitation Centre notified by the Commissioner and, upon validation of the details furnished, a unique enrolment number shall be generated and communicated to the said person.

(1A) For the purposes of Chapter XVI of these rules, a transporter who is registered in more than one State or Union Territory having the same Permanent Account Number, he may apply for a unique common enrolment number by submitting the detail in **FORM GST ENR-02** using any one of his Goods and Services Tax Identification Numbers, and upon validation of the details furnished, a unique common enrolment number shall be generated and communicated to the said transporter:

Provided that where the said transporter has obtained a unique common enrolment number, he shall not be eligible to use any of the Goods and Services Tax Identification Numbers for the purposes of the said Chapter XVI.

(2) The person enrolled under sub-rule (1) as aforesaid in any other State or Union territory shall be deemed to be enrolled in the State or Union Territory.

(3) Every person who is enrolled under sub-rule (1) shall, where required, amend the details furnished in **FORM GST ENR-01** electronically on the Common Portal either directly or through a Facilitation Centre notified by the Commissioner.

(4) Subject to the provisions of Rule 56,—

- (a) any person engaged in the business of transporting goods shall maintain records of goods transported, delivered and goods stored in transit by

him along with Goods and Services Tax Identification Number of the registered consigner and consignee for each of his branches.

- (b) every owner or operator of a warehouse or godown shall maintain books of accounts, with respect to the period for which particular goods remain in the warehouse, including the particulars relating to dispatch, movement, receipt, and disposal of such goods.

(5) The owner or the operator of the godown shall store the goods in such manner that they can be identified item-wise and owner-wise and shall facilitate any physical verification or inspection by the proper officer on demand.

6. Retention of Books of Accounts and Records

Section 36 of the GST Act, 2017 has provided that every registered person required to keep and maintain books of account or other records in accordance with the provisions of sub-section (1) of Section 35 shall retain them until the expiry of 72 months from the due date of furnishing of annual return for the year pertaining to such accounts and records.

Provided that a registered person, who is a party to an appeal or revision or any other proceedings before any Appellate Authority or Revisional Authority or Appellate Tribunal or Court, whether filed by him or by the Commissioner, or is under investigation for an offence under Chapter XIX, shall retain the books of account and other records pertaining to the subject-matter of such appeal or revision or proceedings or investigation for a period of one year after final disposal of such appeal or revision or proceedings or investigation, or for the period specified above, whichever is later.

Chapter 12

Returns under GST

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1. Introduction

Return means summary of information or statement in prescribed format in nutshell, pertaining to a particular tax period. Every registered person, other than an Input Service Distributor, a non-resident taxable person and a person paying

tax under the provision of Section 10 or Section 51 or Section 52, shall furnish, electronically the details of outward goods or services and shall verify, validate, modify or delete, if required the details of outward supplies and credit or debit notes and also shall furnish the details of inward supplies of taxable goods or services or both on which the tax is payable on reverse charge basis and inward supplies of goods or services or both taxable under Integrated Goods and Services Tax on which tax is payable. Section 37 to Section 45 of the CGST Act, 2017 specified the provision of GST returns.

2. Furnishing details of outward supplies (GSTR-1)

Every registered person, other than an Input Service Distributor, a non-resident taxable person and a person paying tax under the provisions of section 10 or section 51 or section 52, shall furnish, electronically subject to such conditions and restrictions and in such form and manner as may be prescribed, the details of outward supplies of goods or services or both effected during a tax period on or before the tenth day of the month succeeding the said tax period and such details ²[shall, subject to such conditions and restrictions, within such time and in such manner as may be prescribed, be communicated to the recipient of the said supplies]

Provided further that the Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing such details for such class of taxable persons as may be specified therein:

Provided further that any extension of time limit notified by the Commissioner of State tax or Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.

(2) Omitted.

(3) Any registered person, who has furnished the details under sub-section (1) for any tax period shall, upon discovery of any error or omission therein, rectify such error or omission in such manner as may be prescribed, and shall pay the tax and interest, if any, in case there is a short payment of tax on account of such error or omission, in the return to be furnished for such tax period:

Provided that no rectification of error or omission in respect of the details furnished under sub-section (1) shall be allowed after the thirtieth day of November following the end of the financial year to which such details pertain, or furnishing of the relevant annual return, whichever is earlier.

Provided further that the rectification of error or omission in respect of the details furnished under sub-section (1) shall be allowed after furnishing of the return under section 39 for the month of September, 2018 till the due date for furnishing the details under subsection (1) for the month of March, 2019 or for the quarter January, 2019 to March, 2019

(4) A registered person shall not be allowed to furnish the details of outward supplies under sub-section (1) for a tax period, if the details of outward supplies for any of the previous tax periods has not been furnished by him:

Provided that the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow a registered person or a class of registered persons to furnish the details of outward supplies under sub-section (1), even if he has not furnished the details of outward supplies for one or more previous tax periods]

Explanation.—For the purposes of this Chapter, the expression "details of outward supplies" shall include details of invoices, debit notes, credit notes and revised invoices issued in relation to outward supplies made during any tax period.

(5) A registered person shall not be allowed to furnish the details of outward supplies under sub-section (1) for a tax period after the expiry of a period of three years from the due date of furnishing the said details:

Provided that the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow a registered person or a class of registered persons to furnish the details of outward supplies for a tax period under sub-section (1), even after the expiry of the said period of three years from the due date of furnishing the said details." (Vide Finance Act, 2023 clause 142).with effect from 01.01.2023 Notified vide Notification No.48/2023-CT dated 29.09.2023

3. Furnishing details of inward supplies and input tax credit - Section 38 of CGST Act

The details of outward supplies furnished by the registered persons under sub-section (1) of section 37 and of such other supplies as may be prescribed, and an auto-generated statement containing the details of input tax credit shall be made available electronically to the recipients of such supplies in such form and manner, within such time, and subject to such conditions and restrictions as may be prescribed.

- (2) The auto-generated statement under sub-section (1) shall consist of—
 - (a) details of inward supplies in respect of which credit of input tax may be available to the recipient; and
 - (b) details of supplies in respect of which such credit cannot be availed, whether wholly or partly, by the recipient, on account of the details of the said supplies being furnished under sub-section (1) of section 37,—
 - (i) by any registered person within such period of taking registration as may be prescribed; or
 - (ii) by any registered person, who has defaulted in payment of tax and where such default has continued for such period as may be prescribed; or
 - (iii) by any registered person, the output tax payable by whom in accordance with the statement of outward supplies furnished by him under the said sub-section during such period, as may be prescribed,

exceeds the output tax paid by him during the said period by such limit as may be prescribed; or

- (iv) by any registered person who, during such period as may be prescribed, has availed credit of input tax of an amount that exceeds the credit that can be availed by him in accordance with clause (a), by such limit as may be prescribed; or
- (v) by any registered person, who has defaulted in discharging his tax liability in accordance with the provisions of sub-section (12) of section 49 subject to such conditions and restrictions as may be prescribed; or
- (vi) by such other class of persons as may be prescribed.

4. Furnishing of monthly returns: (GSTR-3B) - Section 39 of CGST Act

Section 39 of GST Act, prescribed every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52 shall, for every calendar month or part thereof, furnish, a return, electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars, in such form and manner, and within such time, as may be prescribed:

Provided that the Government may, on the recommendations of the Council, notify certain class of registered persons who shall furnish a return for every quarter or part thereof, subject to such conditions and restrictions as may be prescribed therein.

(2) A registered person paying tax under the provisions of section 10, shall, for each financial year or part thereof, furnish a return, electronically, of turnover in the State or Union territory, inward supplies of goods or services or both, tax payable, tax paid and such other particulars in such form and manner, and within such time, as may be prescribed.

(3) Every registered person required to deduct tax at source under the provisions of section 51 shall furnish, in such form and manner as may be prescribed, a return, electronically, for the month in which such deductions have been made within ten days after the end of such month.

(4) Every taxable person registered as an Input Service Distributor shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, within thirteen days after the end of such month.

(5) Every registered non-resident taxable person shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, within thirteen days after the end of a calendar month or within seven days after the last day of the period of registration specified under sub-section (1) of section 27, whichever is earlier.

(6) The Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing the returns under this section for such class of registered persons as may be specified therein:

Provided that any extension of time limit notified by the Commissioner of State tax or Union territory tax shall be deemed to be notified by the Commissioner.

(7) Every registered person who is required to furnish a return under sub-section (1), other than the person referred to in the proviso thereto, or sub-section (3) or sub-section (5), shall pay to the Government the tax due as per such return not later than the last date on which he is required to furnish such return:

Provided that every registered person furnishing return under the proviso to sub-section (1) shall pay to the Government, in such form and manner, and within such time, as may be prescribed,—

- (a) an amount equal to the tax due taking into account inward and outward supplies of goods or services or both, input tax credit availed, tax payable and such other particulars during a month; or
- (b) in lieu of the amount referred to in clause (a), an amount determined in such manner and subject to such conditions and restrictions as may be prescribed]

Provided further that every registered person furnishing return under sub-section (2) shall pay to the Government, the tax due taking into account turnover in the State or Union territory, inward supplies of goods or services or both, tax payable, and such other particulars during a quarter, in such form and manner, and within such time, as may be prescribed.

(8) Every registered person who is required to furnish a return under sub-section (1) or sub-section (2) shall furnish a return for every tax period whether or not any supplies of goods or services or both have been made during such tax period.

(9) Where any registered person after furnishing a return under sub-section (1) or sub-section (2) or sub-section (3) or subsection (4) or sub-section (5) discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars in the return to be furnished for the month or quarter during which such omission or incorrect particulars ⁶[in such form and manner as may be prescribed], subject to payment of interest under this Act:

Provided that no such rectification of any omission or incorrect particulars shall be allowed after the thirtieth day of November following the end of the financial year to which such details pertain or the actual date of furnishing of relevant annual return, whichever is earlier.

(10) A registered person shall not be allowed to furnish a return for a tax period if the return for any of the previous tax periods or the details of outward supplies under sub-section (1) of section 37 for the said tax period has not been furnished by him:

Provided that the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow a registered person or a class of registered persons to furnish the return, even if he has not furnished the returns for one or more previous tax periods or has not furnished the details of outward supplies under sub-section (1) of section 37 for the said tax period.

(11) A registered person shall not be allowed to furnish a return for a tax period after the expiry of a period of three years from the due date of furnishing the said return:

Provided that the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow a registered person or a class of registered persons to furnish the return for a tax period, even after the expiry of the said period of three years from the due date of furnishing the said return. (vide Finance Act,2023 – Clause-143), W.e.f. 01.10.2023 Notified vide Notification No.48/2023-CT dated 29.09.2023.

Sequential filing of GSTR-1 & filing of GSTR-1 before GSTR-3B on GST Portal- Advisory

1. The Central Government has amended Section 37 & Section 39 of Central Goods & Service Tax Act (CGST), 2017 vide Notification No. 18/2022– Central Tax dated 28th September, 2022 with effect from 01 October, 2022. According to section 37(4) of CGST, Act, a taxpayers shall not be allowed to file GSTR-1 if previous GSTR-1 is not filed and as per sec 39(10) a taxpayer shall not be allowed to file GSTR-3B if GSTR-1 for the same tax period is not filed.

2. Section 37(4) & 39(10) of Central Goods & Service Tax Act, 2017 are reproduced below:

Section 37(4): A registered person shall not be allowed to furnish the details of outward supplies under sub-section (1) for a tax period, if the details of outward supplies for any of the previous tax periods has not been furnished by him:

Section 39(10) : A registered person shall not be allowed to furnish a return for a tax period if the return for any of the previous tax periods or the details of outward supplies under sub-section (1) of section 37 for the said tax period has not been furnished by him:

3. These changes are being implemented prospectively and will be operational on GST Portal from 01st November, 2022. Accordingly, from October-2022 tax period onwards, the filing of previous period GSTR-1 will be mandatory before filing current period GSTR-1.

Illustration: Filing of October, 2022 period GSTR-1 will be mandatory before filing GSTR-1 of November, 2022 period.

4. Further, from October, 2022 tax period onwards, filing of GSTR-1 will also be mandatory before filing GSTR-3B.

5. Mandatory for furnishing correct returns

Illustration: Taxpayer will not be allowed to file GSTR-3B for October, 2022 period if GSTR-1 of October, 2022 period is not filed.

5. Mandatory for furnishing correct returns

Mandatory furnishing of correct and proper information of inter-State supplies and amount of ineligible/blocked Input Tax Credit and reversal thereof in return in FORM GSTR-3B and statement in FORM GSTR-1.

- **FORM GSTR-3B** is getting auto-generated on the portal by way of auto-population of Input Tax Credit (ITC) FROM GSTR-3B (auto-generated inward supply statement and auto-population of liabilities from GSTR-1 (Outward supply statement), with an editing facility to the registered person.
- Furnishing of information regarding ITC availed, reversal thereof and ineligible ITC in Table 4(B)(1) – under Section 17(5) &4(B)(2)-16(2)(b) within 180 days payment of consideration of GSTR-3B.
- Net ITC available in Table 4 (C) shall be credited to Electronic Credit ledger (ECL) which is as per the formula $(4A-[4B (1) + 4B (2)])$ of the registered person.

ITC not available, on account of limitation of time period u/s 16(4) of CGST Act, 2017 or where the recipient of an intra-State supply is located in a different State/UT than that of place of supply may be reported by the registered person in Table 4D(2) of GSTR-3B. (This will not be auto populated from GSTR-2B.)

Vide Circular No. 170/02/2022-GST dated 06.07.22

6. Special procedure for making payment of 35% as tax liability in first two months notified

The Central Government, on the recommendations of the Council, hereby notifies the registered persons, notified under proviso to sub-section (1) of section 39 of the said Act, who have opted to furnish a return for every quarter or part thereof, as the class of persons who may, in first month or second month or both months of the quarter, follow the special procedure such that the said persons may pay the tax due under proviso to sub-section (7) of section 39 of the said Act, by way of making a deposit of an amount in the electronic cash ledger equivalent to,—

- (i) thirty-five per cent of the tax liability paid by debiting the electronic cash ledger in the return for the preceding quarter where the return is furnished quarterly; or
- (ii) the tax liability paid by debiting the electronic cash ledger in the return for the last month of the immediately preceding quarter where the return is furnished monthly;

Provided that no such amount may be required to be deposited—

- (a) for the first month of the quarter, where the balance in the electronic cash ledger or electronic credit ledger is adequate for the tax liability for the said month or where there is nil tax liability;

- (b) for the second month of the quarter, where the balance in the electronic cash ledger or electronic credit ledger is adequate for the cumulative tax liability for the first and the second month of the quarter or where there is nil tax liability:

Provided further that registered person shall not be eligible for the said special procedure unless he has furnished the return for a complete tax period proceeding such month.

Explanation.—For the purpose of this notification, the expression “a complete tax period” means a tax period in which the person is registered from the first day of the tax period till the last day of the tax period. This notification shall come into force w.e.f. 1st day of January 2021. [Notification No. 85/2020-C.T., dated 10-11-2020.

As per Press Release by Ministry of Finance posted on 22-01-2020

Filing of GSTR-3B returns in a staggered manner:

The taxpayers having annual turnover below ₹5 crore in previous financial year for the following States last date of filing GSTR-3B returns as 22nd of the month without late fees.

(Chhattisgarh, Madhya Pradesh, Gujarat, Daman and Diu, Dadra and Nagar Haveli, Maharashtra, Karnataka, Goa, Lakshadweep, Kerala, Tamil Nadu, Puducherry, Andaman and Nicobar Islands, Telangana and Andhra Pradesh.

The taxpayers having annual turnover below ₹5 crore in previous financial year for the following States last date of filing GSTR-3B returns as 24th of the month without late fees.

(Jammu and Kashmir, Laddakh, Himachal Pradesh, Punjab, Chandigarh, Uttarakhand, Haryana, Delhi, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand and Odisha.

7. First return after registration

Section 40 of the CGST Act, 2017 has specified that every registered person who has made outward supplies in the period between the date on which he became liable to registration till the date on which registration has been granted shall declare the same in the first return furnished by him after grant of registration.

8. Claim of input tax credit under self-assessment

Section 41 of the CGST Act, 2017 has specified that every registered person shall assess his return under self-assessment procedure and entitled to take the credit of eligible Input Tax Credit and such amount shall be credited on a provisional basis to his electronic credit ledger. The credit shall be utilised only for payment of self-assessed output tax as per the return.

Matching, reversal and reclaim of input tax credit - (Omitted)

Matching, reversal and claim of reduction in output tax liability - (omitted)

Section 43A. Procedure for furnishing return and availing input tax credit. – Omitted.

Removal of clauses for two-way communication of ITC mismatches and that of new returns.

9. Removal of Section 42 and 43 of CGST Act, 2017

The GST law prescribes for two-way communication process between the suppliers and recipient, hence the Government has removed Section 42 and 43. Section 43A is part of the CGST Act, 2017 but has not been notified till date. This provision had been enacted when the new GST returns were in the pipeline. However, the idea of the new returns was scrapped. Therefore, Section 43A is now removed from the GST law.

(Section 107 of the Finance Act, 2022-vide Notification No. 18/2022-Central Tax, dated 28.09.2022)

10. Annual Return

Section 44 of the CGST Act, 2017 has specified that every registered person shall furnish an annual return for every financial year electronically except the following registered person:

- (a) Registered person paying tax under Section 10 or Section 51 or Section 52 of the CGST Act,
- (b) An Input Service Distributor;
- (c) A casual taxable person and
- (d) A non-resident taxable person,

shall furnish an annual return electronically in **FORM GSTR-9** through the common portal either directly or through a Facilitation Centre for the financial year by 31st day of December of following the end of such financial year

Provided that the Commissioner may, on the recommendations of the Council, by notification, exempt any class of registered persons from filing annual return under this section:

Provided further that nothing contained in this section shall apply to any department of the Central Government or a State Government or a local authority, whose books of account are subject to audit by the Comptroller and Auditor-General of India or an auditor appointed for auditing the accounts of local authorities under any law for the time being in force

The above cited proviso to section 44 has been inserted vide the Finance (No. 2) Act, 2019. Notified vide Notification No.1/2020-Central Tax dated 1.1.2020.

Rule 80 (3)

“Provided that every registered person whose aggregate turnover during the financial year 2018-2019 exceeds five crore rupees shall get his accounts

audited as specified under sub-section (5) of section 35 and he shall furnish a copy of audited annual accounts and a reconciliation statement, duly certified, in FORM GSTR-9C for the financial year 2018-2019, electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner.”.

(Inserted Vide Notification No. 16/20-Central Tax, dated 23.03.2020)

Section 44 of the CGST Act is being substituted so as to remove the mandatory requirement of furnishing a reconciliation statement duly audited by specified professional and to provide for filing of the annual return on self-certification basis. It further provides for the Commissioner to exempt a class of taxpayers from the requirement of filing the annual return. (Vide Notification No. 31/2021-Central Tax, dated 30.07.2021)

By this amendment substitute Section 44 of the CGST Act so as to remove the mandatory requirement filing of reconciliation of financial statement in GSTR-9C duly certified by Chartered or Cost Accountant in place self-certification of such reconciliation statement for Annual Return.

Section 44 (2) has been inserted vide Finance Act, 2023 – Clause 144)

(2) A registered person shall not be allowed to furnish an annual return under sub-section (1) for a financial year after the expiry of a period of three years from the due date of furnishing the said annual return:

Provided that the Government may, on the recommendations of the Council, by notification, and subject to such conditions and restrictions as may be specified therein, allow a registered person or a class of registered persons to furnish an annual return for a financial year under sub-section (1), even after the expiry of the said period of three years from the due date of furnishing the said annual return.” With effect from 01.10.2023 Notified vide Notification No.48/2023-CT dated 29.09.2023.

11. Contents of Annual Return

Annual Return is a statement contains details of outward supply and taxes paid thereon. It also consists of details of inward supply and input tax credits claimed, refund claimed in the financial year in respect of which such annual return is filed. It also includes the transaction pertaining to the said financial year in respect of which the effect has been taken in the intervening period of next financial year. It consolidates the information furnished in the monthly/quarterly returns during the year. Annual Return for the financial year 2017-2018 is pertaining to the period July2017 to March2018. (i.e. for 9 months only)

12. Manner of filing of Annual Return

Rule 80 of the CGST Rules provides that every registered person shall furnish an annual return electronically through the common portal either directly or through a Facilitation Centre in the following manners:

(1) Form GSTR-9 - Every registered person paying tax monthly and filing monthly GSTR-1/GSTR-3B shall furnish Annual Return in Form GSTR-9.

(2) **Form GSTR-9A** - Every person registered under Composition Scheme (as per Section 10 of the CGST Act) and filing returns quarterly shall furnish Annual Return in Form GSTR -9A.

(3) **Form GSTR-9B** - Every electronic commerce operator required to collect tax at source under Section 52 shall furnish Annual Return in Form GSTR-9B.

(4) **Form GSTR-9C**- Every registered person whose aggregate turnover during a financial year exceeds ₹2 Crores shall get his accounts audited as specified under sub-section (5) of Section 35 of the CGST Act and shall furnish a copy of audited annual accounts and a reconciliation statement, duly certified by C.A. or Cost Accountant in Form GSTR -9C. The same has been Notified by CBIC vide its Notification No. 49/2018-C.T., dated 13-9-2018.

It is to be noted that if a person is having different GSTNs, then each such GSTNs would be considered as distinct persons. Thus annual return has to be filed separately for each registration number by the registered person.

13. Structure of the Annual Return

The Annual Return comprising of 6 parts with 19 tables, which requires registered person have to furnish summary of outward supplies, details of tax paid, inward supplies, details of ITC availed, utilised, particulars of demands, refunds and HSN wise summary of outward supplies. The details of information relating to the Annual Return are summarized as under:

1. Part I of return contains the basic details such as financial year, GSTIN number and legal name of taxpayers.
2. Part II of return having table 4 and 5, taxpayers have to submit details of advances, inward and outward supplies on which tax is payable as declared in returns filed during the financial year in table 4 and in table 5 taxpayers have to submit details of outward supplies on which tax is not payable as declared in returns filed during the financial year.
3. So the Table 4 contains supplies made to unregistered persons (B2B), supplies made to registered persons (B2B), Zero rated supplies on payment of tax, supply to SEZs on payment of tax, Deemed Exports, Credit Notes and Debit Notes and each against Taxable Value, Central Tax, State Tax/UT Tax, Integrated tax and Cess wherever is applicable.
4. Table 5 contains supplies relating to Zero rated without payment of tax, supply to SEZs without payment of tax. Supplies tax paid on RCM, Exempted Supply, Nil Rated Supply, Non-GST Supply, Credit Notes and Debit Notes and each against Taxable Value, Central Tax, State tax/UT Tax, Integrated Tax and Cess wherever is applicable. Lastly total turnover (including advances).
5. For the purpose of reconciliation the following details would be auto populated from the respective returns:

- (i) **GSTR-3B:** Only ITC from table 4A in GSTR-3B is auto populated in table 6A of annual return.
- (ii) **GSTR-1:** No details are auto populated.
- (iii) **GSTR-2A:** Table 4 and 5 (i.e. Inward supplies received from registered person other than RCM and their debit/credit notes) of GSTR 2A are auto populated in table 8A of Annual return.

6. Part III, having tables 6, 7 and 8 of details of ITC as declared in returns filed during the financial year.

7. Table 6 contains details of ITC availed as declared in returns filed during the financial year as per GSTR-3B and ITC of Inputs, Input Services, Capital goods including ITC received from ISD, details of ITC claimed, Transition credit through TRAN-I & TRAN-II and total ITC.

8. Table 7 contains details of ITC Reversed and Ineligible ITC as declared in returns filed during the financial year as per Rule 37, Rule 39, Rule 42, Rule 43, as per Section 17(5), **TRAN-I Credit, TRAN-II credit, total ITC reversed and Net ITC.**

9. Table 8 information relating to other ITC and reversal, it is purely auto populated and total ITC lapsed in current financial year.

10. Part IV with table 9 require information of details of tax paid as declared in returns filed during the financial year separately IGST, CGST, SGST/UTGST, Cess, Interest, Late fee and penalty.

11. Part V having tables 10, 11, 12, 13 and 14 requires particulars of the transactions for the previous Financial year declared in returns of April to September of current Financial year or upto date of filing of annual return of previous Financial year whichever is earlier. Table 10 relating to net of debit notes, table 11 relating to net of credit notes, table 12 reversal of ITC and table 13 ITC availed in previous Financial year. Table 14 requires information on differential tax paid on account of net of debit and credit notes.

12. Part VI consisting of tables 15, 16, 17, 18 and 19 of the Annual Return. Table 15 relating to particulars of demand and refunds information, total tax paid and demand pending till date. Table 16 needs information on supplies received from composition taxpayers, deemed supply under Section 143 and goods sent on approved basis. Table 17 requires HSN wise summary of outward supplies and table 18 requires HSN wise summary of Inward supplies. Table 19 seeks information for submission on late fee payable and paid both Central Tax and State Tax if annual return is filed after the due date.

Annual Return in FORM GSTR-9 for the Financial Year-2022-2023

| Tables No | Nature of information to be furnished | Nature of reporting |
|-----------|---|---------------------|
| 4A to 4G | Taxable Outward Supply, Tax on advances & RCM | Mandatory |
| 4I to 4L | Credit Note, Debit Note, Amendments with respect to 4B to 4E supplies | Mandatory |
| 5A to 5C | Zero rated Supply without payment of Tax, supplies on which Tax to be discharged by recipient | Mandatory |
| 5D to 5F | Exempted, Nil Rated & Non-GST supply [Exempted & Nil Rated can be clubbed in 5D] Non-GST to be shown separately. | Mandatory |
| 5H to 5K | Credit Note, Debit Note with respect to 5A to 5F supplies [can be clubbed in 5A to 5F] | Optional |
| 6A | Auto populated ITC based on 3B | |
| 6B to 6D | ITC on Inward Supplies for Forward Charge & Reverse Charge[Input and input services can be clubbed in input and capital goods to be shown separately] | Mandatory |
| 6E | Import of Goods | Mandatory |
| 6F to 6M | Other ITC | Mandatory |
| 7A to 7E | ITC Reversed due to Rule 37,39,42,43, [Sec.17(5)] [Can be clubbed with other reversal) | Clubbed in Table 7H |
| 7F & 7G | ITC Reversal due to TRAN-1&TRAN-2 | Mandatory |
| 8A to 8K | ITC Related information | Mandatory |
| 9 | Details of Tax payable & Tax paid | Mandatory |
| 10, 11 | Outward Liability Pertaining to FY-2022-23 shown / reduced in FY-2023-2024 till Nov'2023 | Mandatory |
| 12, 13 | ITC Pertaining to FY-2022-23 reversed /shown in FY 2023-24 till 30 th Nov,2023 | Optional |
| 15&16 | Information of Demands & Refunds, Inward supplies | Optional |
| 17 | HSN for outward supply TO>5cr, at 6 digit level for all supplies TO <5cr, 4 digit level for B2B Supplies only. | Mandatory |
| 18 | HSN for Inward Supply | Optional |

| Reconciliation in FORM GSTR-9C for the Financial Year-2022-2023 | | |
|--|---|---------------------|
| Tables No | Nature of information to be furnished | Nature of reporting |
| 5A | Turnover as per Audited Books of Account | Mandatory |
| 5B to 5O | Adjustments related to Turnover | |
| 7A to 7F | Reconciliation from Total Turnover to Taxable Turnover | Mandatory |
| 9A to 9Q | Reconciliation of Tax Paid | Mandatory |
| 12A to 12D | Reconciliation of ITC between Books of Account vs. GSTR-9 | Mandatory |
| 14 | Expense head with ITC Reconciliation | Mandatory |

Updated vide Notification No.38/2023-Central Tax dated 04-08-2023

Amendments in GSTR-9- Annual Return

Table -17 – HSN for Outward Supplies

It shall be mandatory to report HSN code at Six digits level for taxpayers having annual turnover in the preceding year above ₹5 crore and at four digits for all B2B supplies for taxpayers having annual turnover in the preceding year upto ₹5 Crore in filing Form GSTR-9 for the Financial Year 2021-2022 and onwards.

Table -18 – HSN for Inward Supplies

Registered person shall have an option to not fill table 18 for FY 2021-2022 onwards.

Notification No.14/2022 C.T., dated 05.07.2022

* * *

Implementation of mandatory mentioning of HSN codes in GSTR-1

As per Notification No. 78/2020 – Central Tax dated 15th October, 2020, it is mandatory for the taxpayers to report minimum 4 digit or 6 digit of HSN Code in table-12 of GSTR-I on the basis of their Aggregate Annual Turnover (AATO) in the preceding Financial Year. To facilitate the taxpayers, these changes are being implemented in a phase-wise manner on GST Portal.

Part I & Part II of Phase 1 has already been implemented from 01st April 2022 & 01st August 2022 respectively and is currently live on GST Portal. From 01st November, 2022, Phase-2 would be implemented on GST Portal and the taxpayers with up to ₹5 crore turnover would be required to report 4-digit HSN codes in their GSTR-1.

14. Changes carried out in the formats/instructions

Headings in the forms to be amended to specify that the return in **FORM GSTR -9** and **FORM GSTR -9A** would be in respect of supplies etc. ‘made during the year’ and not ‘as declared in returns filed during the year’;

All returns in **FORM GSTR- 1** and **FORM GSTR- 3B** have to be filed prior to filing Annual Return and Audit Report in **FORM GSTR -9** and **FORM GSTR -9C**; Annual Return and Audit Report for FY 2017-18

All returns in **FORM GSTR- 4** to be filed before filing of **FORM GSTR -9A**; HSN code to be declared only for those inward supplies whose value independently accounts for 10% or more of the total value of inward supplies;

Additional payments, if any, required to be paid can be done through **FORM GST DRC - 03** only in cash No ITC can be availed through **FORM GSTR-9** and **FORM GSTR-9C**;

All invoices pertaining to previous FY would be auto-populated in Table 8A of **FORM GSTR- 9**; Value of “non-GST supply” shall also include the value of “no supply” and may be reported in Table 5D, 5E and 5F of **FORM GSTR-9**;

Verification by taxpayer who is uploading reconciliation statement would be included in **FORM GSTR-9C**.

Notification No.74/2018-C.T., dated 31-12-2018

Clarification on filing of Annual Return (FORM GSTR-9)

The last date for filing of Annual return in **FORM GSTR-9** is 30th June 2019. The trade and industry have raised certain queries with respect to filing of this Annual return which are being clarified as follows:

- (a) Information contained in **FORM GSTR-2A** as on 01.05.2019 shall be auto-populated in Table 8A of **FORM GSTR-9**.
- (b) Input tax credit on inward supplies shall be declared from April 2018 to March 2019 in Table 8C of **FORM GSTR-9**.
- (c) Particulars of the transactions for FY 2017-18 declared in returns between April 2018 to March 2019 shall be declared in Pt. V of **FORM GSTR-9**. Such particulars may contain details of amendments furnished in Table 10 and Table 11 of **FORM GSTR-1**.
- (d) It may be noted that irrespective of when the supply was declared in **FORM GSTR-1**, the principle of declaring a supply in Pt. II or Pt. V is essentially driven by when tax was paid through **FORM GSTR-3B** in respect of such supplies. If the tax on such supply was paid through **FORM GSTR-3B** between July 2017 to March 2018 then such supply shall be declared in Pt. II and if the tax was paid through **FORM GSTR-3B** between April 2018 to March 2019 then such supply shall be declared in Pt. V of **FORM GSTR-9**.
- (e) Any additional outward supply which was not declared by the registered person in **FORM GSTR-1** and **FORM GSTR-3B** shall be declared in Pt.II of the **FORM GSTR-9**. Such additional liability shall be computed in Pt.IV and the gap between the “tax payable” and “Paid through cash” column of **FORM GSTR-9** shall be paid through **FORM DRC-03**.
- (f) Many taxpayers have reported a mismatch between auto-populated data and the actual entry in their books of accounts or returns. One common

challenge reported by taxpayer is in Table 4 of **FORM GSTR-9** where details may have been missed in **FORM GSTR-1** but tax was already paid in **FORM GSTR-3B** and therefore taxpayers see a mismatch between auto-populated data and data in **FORM GSTR-3B**. It may be noted that auto-population is a functionality provided to taxpayers for facilitation purposes, taxpayers shall report the data as per their books of account or returns filed during the financial year.

- (g) Many taxpayers have represented that Table 8 has no row to fill in credit of IGST paid at the time of import of goods but availed in the return of April 2018 to March 2019. Due to this, there are apprehensions that credit which was availed between April 2018 to March 2019 but not reported in the annual return may lapse. For this particular entry, taxpayers are advised to fill in their entire credit availed on import of goods from July 2017 to March 2019 in Table 6(E) of **FORM GSTR-9** itself.
- (h) Payments made through **FORM DRC-03** for any supplies relating to period between July 2017 to March 2018 will not be accounted for in **FORM GSTR-9** but shall be reported during reconciliation in **FORM GSTR-9C**.

2. All the taxpayers are requested to file their Annual Return (**FORM GSTR-9**) at the earliest to avoid last minute rush.

C.B.I & C. Press Release No.100/2019, dated 4-6-2019

**LAST DATE OF CLAIMING ITC FY-2021-2022 AND LAST DATE
TO AMEND INVOICE WITH REGARD TO GSTR-9**

Effect given in GSTR 9 for 30th November 2022 (Last Date to Claim ITC for FY 21-22 and Last Date to Amend Invoice Pertaining to FY 21-22) vide Notification No. 22/2022-Central Tax, dated 15th November, 2022. MINISTRY OF FINANCE (Department of Revenue) (CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS) New Delhi Notification No. 22/2022-Central

15. Auto-populated Form GSTR-3B

GSTN has introduced auto-populated Form GSTR-3B in PDF format, for benefit of the taxpayers. The auto-populated PDF of Form GSTR-3B will consist of:

- Liabilities in Table 3.1(a, b, c and e) and Table 3.2 from Form GSTR-1
- Liability in Table 3.1(d) and Input Tax Credit (ITC) in Table 4 from auto-drafted ITC Statement from Form GSTR-2B.

This facility is made available in Form GSTR-3B dashboard from October 2020 tax period onwards.

This facility will become available for taxpayers who are registered as Normal taxpayer, SEZ Developer, SEZ unit and casual taxpayer.

The system generated PDF will be made available on GSTR-3B dashboard. Taxpayers will be able to access their Form GSTR-3B (PDF) through: Login to GST Portal > Returns Dashboard> Select Return period > GSTR-3B>System Generated-3B.

16. Auto-population of e-invoice details into GSTR-1

Upon successful generation of IRN, details of e-invoices will be auto-populated in respective tables of GSTR-1. Details of e-invoices can be downloaded as excel file.

For October 2020, the e-invoice details would be processed incrementally from 13th November 2020. The processing of details of e-invoices/IRNs generated till 31st October 2020 is expected to take up to 10 days.

The processing of documents, dated in October 2020, has no effect on filing of GSTR-1 for October. The taxpayers are advised not to wait for auto-population but file GSTR-1 for October, on their own (if not filed already).

Taxpayers are requested to verify the documents present in excel and may share feedback on GST Self Service portal, on below aspects:

- All documents reported to IRP are present in excel
- Status of each e-invoice/IRN is correct
- All the details of document are populated correctly

For November 2020, e-invoices generated will be auto-populated into GSTR-1 in incremental manner and the process for whole month will be completed by 2nd Dec 2020 (i.e. on T+2 basis).

CBIC Circular Important points for the Registered Person

1. C.B.I.& C., vide Circular No. 26/2017, dated 29-12-2017 has clarified that such transactions can be disclosed in the GSTR-1 of the subsequent months and liability thereon can be paid in along with other liability of GSTR-3B of the subsequent month. However, where such transactions have been omitted to be disclosed in the GSTR-1 pertaining to the period upto March2018 and is reported for the first time in the GSTR-1 of the subsequent period (April2018 till the date of filing of Annual Return), it is also required to be disclosed in the Annual Return of 2017-2018.

2. Goods sent to job worker on delivery challan are not in the nature of supply provided the goods are received back within the stipulated time period. There is no requirement of disclosure of such removal in the Annual Return. If the goods are not received back within specified time period, it will be treated as supply and tax has to be paid by the principal. Such cases have to be furnished in the table 4 and table 16B of the Annual Return.

3. There is no requirement under GST law to match the profit and loss account with annual return. However, the total turnover comprising of taxable supplies, exempt supplies, non GST supplies etc. are required to be disclosed in Annual Return.

4. The detail of outward supply in the Annual Return is to be taken from the GSTR-1. The difference between GSTR-1 and GSTR-3B has to be adjusted in the respective return in which mistake has occurred. There is no mechanism to disclose such mismatch in the Annual Return.

5. Credit note issued to B2B supplies need to be disclosed in Table 4-I of Annual Return, whereas credit note issued to unregistered person i.e. B2C need to be reduced from the supplies and show net amount in table 4(a) of Annual Return.

6. The taxpayers shall provide the correct break-up of input tax credit, irrespective of the incorrect disclosure in FORM GSTR-3B. The form only provides for validation of gross credit as per Form GSTR-3B filed and the credit break-up provided in the Annual Return.

7. The Annual Return form provides for reporting of credits which have been availed in the GST returns filed for financial year 2017-2018. Hence, only those credits which have been availed in the same financial year should be considered as part of input tax credit in the table 6C and 6D. However, as the RCM credit has been availed after completion of financial year, it may have to be disclosed in the table 13 of part V.

8. The Annual Return requires furnishing of actual reversals made in Form GSTR-3B for the financial year 2017-18. If any reversals made during financial year 2018-19 with regard to financial year 2017-18 would be required to be reported as part of the Annual Return for financial year 2018-19.

9. As per 16(4) of the CGST Act, a registered person shall not be entitled to take input tax credit in respect of any invoice or debit note or any unavailed input tax credit pertaining to financial year 2017-18 would lapse after due date of furnishing of the return under Section 39 for the month of September following end of financial year or furnishing of the relevant Annual Return whichever is earlier.

17. Last date of filing the Annual Return

Every registered person is required to furnish Annual Return on or before 31st day of December following the end of such financial year irrespective of their turnover. For the Financial year 2017-2018 Annual Return to be filed on or before 31st December 2018 containing all the details for the period July 2017 to March 2018 and further extended till 31st January, 2020. For the Financial 2018-2019 Annual return filing extended till 31st March, 2020.

Taxpayers having turnover of less than ₹2 crores exempted from filing Annual Return in FORM-9, for the FY-2022-23 vide Notification No.32/2023-CT dated 31.07.2023

18. Consequences of not filing the Annual Return (Late fees)

In case any registered person fails to furnish the Annual Return within due date then he has to face the following consequences:

- (i) A notice shall be issued under Section 46 of the CGST Act, requiring him to furnish such return within 15 days.
- (ii) He shall be liable to pay late fee non filing/delay filing of Annual Return under Section 47(2) of the CGST Act, ₹100 for every day during which such failure continues subject to a maximum of an amount calculated @

0.25% of his turnover in the State or union territory. Thus it is ₹100 for CGST & ₹100 for SGST/UTGST, total of late fee is ₹200 per day.

- (iii) He shall be liable to pay general penalty of ₹25000/- for contravention of Section 125 of the Act.

19. Final Return

Section 45 of the CGST Act, 2017 has very registered person who is required to furnish a return under sub-section (1) of section 39 and whose registration has been cancelled shall furnish a final return within three months of the date of cancellation or date of order of cancellation, whichever is later, in such form and manner as may be prescribed.

20. Key Features of GST Returns

(1) There is Common E-Return for CGST, SGST, IGST and UTGST shall be filed through GSTN Portal.

(2) Every registered person is required to file a return for the prescribed tax period. A return needs to be filed even if there is no business activity (i.e. Nil Return).

(3) GSTN portal would be made available which will be common for all assessee.

(4) The GST returns to be filed only through electronic modes.

(5) There are eight different types of returns are proposed for assessee depending on their nature of business viz. GSTR-1 to GSTR-11.

(6) There will be different frequency for filing of returns for different class of taxpayers, which are ranging from 10th to 28th of subsequent month/quarter.

(7) There will be different frequency for filing returns for different class of taxpayers, after payment of due tax either prior to or at the time of filing return otherwise it would be treated as an invalid return.

(8) There are three returns for each taxpayer. Normal/Regular taxpayers (including casual taxpayers) would have to file GSTR-1 (details of outward supplies), GSTR-2 (details of inward supplies) and GSTR-3 (monthly Return) for each registration.

(9) There will be a return for each Registration. Normal/Regular taxpayers with multiple registrations (for business verticals) within a state would have to file GSTR-1, GSTR-2 and GSTR-3 for each of the registrations separately. The last date of filing GSTR-1, GSTR-2 and GSTR-3 would be 10th, 15th and 20th day respectively of the succeeding month for all monthly filers.

(10) Compounding taxpayers would have to file a quarterly return called GSTR-4. The last date of filing GSTR-4 by compound taxpayers would be 18th day of the first month of the succeeding quarter.

(11) Taxpayers otherwise eligible for the compounding scheme can opt against the compounding and file monthly returns and thereby make their supplies for ITC in hands of the purchasers.

(12) Casual/Non-Resident Taxpayers (other than foreigners) would have to file GSTR-1, GSTR-2 and GSTR-3 returns for the period for which they have obtained registration. The registration of Casual/Non-Resident taxpayers will be done in the same manner as that of Normal/Regular taxpayers.

(13) A dealer registered under composition scheme of GST is required to furnish GSTR-4 by 18th of the month succeeding the quarter.

(14) Non-resident Taxpayers (foreigners) would be required to file GSTR-5 return for the period for which they have obtained registration within a period of seven days after the date of expiry of registration. In case registration period is for more than one month, monthly return(s) would be filed and thereafter return for remaining period would be filed within a period of seven days as stated earlier.

(15) Final invoice level inward supply information pertaining to the tax period separately for goods and services on which the ITC is being claimed. This will be auto-populated on the basis of GSTR-1 filed by the Counterparty Supplier of the taxpayer. The same may be modified i.e. added or deleted by the Taxpayers while filing the ISD return. Input Service Distributor return (GSTR-6) would be 15th day of the succeeding month.

(16) The details of GSTIN of the supplier along with the invoices against which the Tax has been deducted. This will also contain the details of tax deducted against each major head i.e. CGST, SGST and IGST. The last date of filing of TDS (Tax Deducted at Source) return (GSTR-7) by Tax Deductor would be 10th day of the succeeding month.

(17) All normal/regular taxpayers on based on financial records will be filed Annual return (GSTR-8). The last date of filing GSTR-8 would be 31st December following the end of the financial year for which it is filed.

(18) The filing of return would be only through online mode although the facility of offline generation and preparation of returns would be provided. The returns prepared in offline mode would have to be uploaded.

(19) The monthly return would be separate returns for the outward supplies, inward supplies and a consolidated return based on these two returns. Besides that, there would be separate returns for the Input Service Distributors, non-resident taxpayers (foreigners) and Tax Deductors.

(20) There would be no revision of returns. If any changes to done in subsequent returns.

(21) A registered Tax payer shall file GST return at GST Common portal either by himself or through his authorised representative.

(22) HSN code (4-digit) for goods and Accounting Codes for Services will be mandatory initially for all taxpayers with turnover in the preceding financial year above ₹5 crore.

(23) All the normal taxpayers would be required to submit Annual Return. A separate reconciliation statement, duly certified by a Chartered Accountant, will

have to file by those taxpayers who are required to get their accounts audited under Section 44AB of Income Tax Act, 1961.

(24) Consolidated statement of purchases and supplies based on monthly returns filed by the taxpayers can be made available to taxpayers by GSTN common portal as a facilitation measure for enabling him to prepare annual return.

(25) After the GST return will be uploaded onto the GSTN Common portal, the portal will automatically acknowledge the receipt of the return filed by the tax payers and assigned acknowledgement number after due verification.

(26) Once a return is acknowledged, forward that GST return to tax authorities of Central and appropriate State Government through the established IT interface.

(27) In case of failure by the taxpayer to submit periodic returns, a defaulter list will be generated by the IT system by comparing the return filers with the registrant database. Such defaulter list will be provided to the respective GST Authorities for necessary enforcement and follow up action. GST Law may also provide for imposition of automatic late fee for non-filers and late filers which can also be in-built in the notices.

RULES FOR FURNISHING VARIOUS RETURNS

Rule 59 to 82 of the CGST Rules, has prescribed the various Form and the manner of finishing details of returns under GST regime. The returns mechanism under GST include electronic filing of returns, uploading of invoice level information and auto-population of information relating to input tax credit (ITC) from returns of supplier to that of recipient, invoice-level information matching and auto-reversal of input tax credit in case of mismatch. The returns mechanism is designed to assist the taxpayer to file returns and avail ITC.

Under GST, a regular taxpayers needs to furnish monthly returns and one annual return. There are separate returns for a taxpayer registered under the composition scheme, non-resident taxpayer, taxpayer registered as an input Service Distributor, a person liable to deduct or collect the tax and a person granted Unique Identification Number. A taxpayer is not required to file all types of returns. In fact, taxpayers are required to file returns depending on the activities they under take.

21. Form and manner of furnishing details of outward supplies: w.e.f. 1st day of January, 2021

(1) Rule 59 (1) of the CGST Rules, 2017 prescribes that every registered person, other than a person referred to in section 14 of the IGST Act, 2017, required to furnish the details of outward supplies of goods or services or both under section 37, shall furnish such details in FORM GSTR-1 for the month or the quarter, as the case may be, electronically through the common portal, either directly or through a Facilitation Centre as may be notified by the Commissioner.

(2) The registered persons required to furnish return for every quarter under proviso to sub-section (1) of section 39 may furnish the details of such outward

supplies of goods or services or both to a registered person, as he may consider necessary, for the first and second months of a quarter, up to a cumulative value of fifty lakh rupees in each of the months,- using invoice furnishing facility (IFF) electronically on the common portal, duly authenticated in the manner prescribed under Rule 26, from the 1st day of the month succeeding such month till the 13th day of the said month.

Provided that a registered person may furnish such details, for the month of April, 2021, using IFF from the 1st day of May, 2021 till the 28th day of May, 2021.

Provided further that a registered person may furnish such details, for the month of May, 2021, using IFF from the 1st day of June, 2021 till the 28th day of June, 2021

(3) The details of outward supplies furnished using the IFF, for the first and second months of a quarter, shall not be furnished in FORM GSTR-1 for the said quarter.

(4) The details of outward supplies of goods or services or both furnished in FORM GSTR-1 shall include the—

(a) invoice wise details of all—

- (i) inter-State and intra-State supplies made to the registered persons; and
- (ii) inter-State supplies with invoice value more than two and a half lakh rupees made to the unregistered persons;

(b) Consolidated details of all—

- (i) intra-State supplies made to unregistered persons for each rate of tax; and
- (ii) State wise inter-State supplies with invoice value upto two and a half lakh rupees made to unregistered persons for each rate of tax;

(c) debit and credit notes, if any, issued during the month for invoices issued previously.

(5) The details of outward supplies of goods or services or both furnished using the IFF shall include the—

(a) invoice wise details of inter-State and intra-State supplies made to the registered persons;

(b) debit and credit notes, if any, issued during the month for such invoices issued previously.

(6) Notwithstanding anything contained in this rule,—

(a) a registered person shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in FORM GSTR-1, if he has not furnished the return in FORM GSTR-3B for preceding two months,

- (b) a registered person, required to furnish return for every quarter under the proviso to subsection (1) of section 39, shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in FORM GSTR-1 or using the invoice furnishing facility, if he has not furnished the return in FORM GSTR-3B for preceding tax period;
- (c) Omitted
- (d) a registered person, to whom an intimation has been issued on the common portal under the provisions of sub-rule (1) of rule 88C in respect of a tax period, shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in FORM GSTR-1 or using the invoice furnishing facility for a subsequent tax period, unless he has either deposited the amount specified in the said intimation or has furnished a reply explaining the reasons for any amount remaining unpaid, as required under the provisions of sub-rule (2) of rule 88C.
- (e) a registered person, to whom an intimation has been issued on the common portal under the provisions of sub-rule (1) of rule 88D in respect of a tax period or periods, shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in FORM GSTR-1 or using the invoice furnishing facility for a subsequent tax period, unless he has either paid the amount equal to the excess input tax credit as specified in the said intimation or has furnished a reply explaining the reasons in respect of the amount of excess input tax credit that still remains to be paid, as required under the provisions of sub-rule (2) of rule 88D;
- (f) a registered person shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in FORM GSTR-1 or using the invoice furnishing facility, if he has not furnished the details of the bank account as per the provisions of rule 10A.” Vide Notification No. 38/2023-Central Tax dated 04.08.2023

22. Form and manner of furnishing details of inward supplies: w.e.f.1st day of January, 2021

Rule 60(1) prescribes the details of outward supplies furnished by the supplier in FORM GSTR-1 or using the IFF shall be made available electronically to the concerned registered persons (recipients) in Part A of FORM GSTR-2A, in FORM GSTR-4A and in FORM GSTR-6A through the common portal, as the case may be.

(2) The details of invoices furnished by an non-resident taxable person in his return in FORM GSTR-5 under Rule 63 shall be made available to the recipient of credit in Part A of FORM GSTR-2A electronically through the common portal.

(3) The details of invoices furnished by an Input Service Distributor in his return in FORM GSTR-6 under rule 65 shall be made available to the recipient of credit in Part B of FORM GSTR-2A electronically through the common portal.

(4) The details of tax deducted at source furnished by the deductor under sub-section (3) of section 39 in FORM GSTR-7 shall be available to the deductor in Part C of FORM GSTR-2A electronically through the common portal.

(5) The details of tax collected at source furnished by an e-commerce operator under section 52 in FORM GSTR-8 shall be made available to the concerned person in Part C of FORM GSTR-2A electronically through the common portal.

(6) The details of the integrated tax paid on the import of goods or goods brought in domestic Tariff Area from Special Economic Zone unit or a Special Economic Zone developer on a bill of entry shall be made available in Part D of FORM GSTR-2A electronically through the common portal.

(7) An auto-drafted statement containing the details of input tax credit shall be made available to the registered person in FORM GSTR-2B, for every month, electronically through the common portal, and shall consist of—

- (i) the details of outward supplies furnished by his supplier, other than a supplier required to furnish return for every quarter under proviso to sub-section (1) of section 39, in FORM GSTR-1, between the day immediately after the due date of furnishing of FORM GSTR-1 for the previous month to the due date of furnishing of FORM GSTR-1 for the month;
- (ii) the details of invoices furnished by a non-resident taxable person in FORM GSTR-5 and details of invoices furnished by an Input Service Distributor in his return in FORM GSTR-6 and details of outward supplies furnished by his supplier, required to furnish return for every quarter under proviso to sub-section (1) of section 39, in FORM GSTR-1 or using the IFF, as the case may be,—
 - (a) for the first month of the quarter, between the day immediately after the due date of furnishing of FORM GSTR-01 for the preceding quarter to the due date of furnishing details using the IFF for the first month of the quarter;
 - (b) for the second month of the quarter, between the day immediately after the due date of furnishing details using the IFF for the first month of the quarter to the due date of furnishing details using the IFF for the second month of the quarter;
 - (c) for the third month of the quarter, between the day immediately after the due date of furnishing of details using the IFF for the second month of the quarter to the quarter;
- (iii) the details of the integrated tax paid on the import of goods or goods brought in the domestic Tariff Area from Special Economic Zone unit or a Special Economic Zone developer on a bill of entry in the month.

(8) The Statement in FORM GSTR-2B for every month shall be made available to the registered person,—

- (i) for the first and second month of a quarter, a day after the due date of furnishing of details of outward supplies for the said month, in the IFF by

- a registered person required to furnish return for every quarter under proviso to sub-section (1) of section 39, or in FORM GSTR-1 by a registered person, other than those required to furnish return for every quarter under proviso to sub-section (1) of section 39, whichever is later;
- (ii) in the third month of the quarter, a day after the due date of furnishing of details of outward supplies for the said month, in FORM GSTR-1 by a registered person required to furnish return for every quarter under proviso to sub-section (1) of section 39.

23. Form and manner of furnishing of return:

Rule (61) (1) of the CGST Rules 2017 prescribes that every registered person other than a person referred to in section 14 of the IGST Act, 2017 or an Input Service Distributor or a non-resident taxable person or a person paying tax under section 10 or section 51 or, as the case may be, under section 52 shall furnish a return FORM GSTR-3B, electronically through the common portal on or before the 12th Day of the month succeeding such month and for the class of registered persons in the manner as provided below Table:

| S. No | Class of registered persons | Due Date |
|----------|--|--|
| (1) | (2) | (3) |
| 1. | Registered persons whose principal place of business is in the States of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands or Lakshadweep. | 22nd day of the month succeeding such quarter. |
| 2. | Registered persons whose principal place of business is in the States of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha, Union territories of Jammu and Kashmir, Ladakh, Chandigarh or Delhi. | 24th day of the month succeeding such quarter. |

(2) Every registered person required to furnish return, under sub-rule (1) shall, subject to the provisions of section 49, discharge his liability toward tax, interest, penalty, fees or any other amount payable under the Act by debiting the electronic cash ledger or electronic credit ledger and include the details in the return in **FORM GSTR-3B**.

(3) Every registered person required to furnish return, every quarter, shall pay the tax due, for each of the first two months of the quarter, by depositing the said amount in **FORM GST PMT-06**, by the 25th day of the month succeeding such month:

Provided that the Commissioner may, on the recommendations of the Council, by notification, extend the due date for depositing the said amount in **FORM GST PMT-06**, for such class of taxable persons as may be specified therein:

Provided further that any extension of time limit notified by the Commissioner of State tax or Union territory tax shall be deemed to be notified by the Commissioner:

Provided also that while making a deposit in **FORM GST PMT-06**, such a registered person may—

- (a) for the first month of the quarter, take into account the balance in the electronic cash ledger.
- (b) for the second month of the quarter, take into account the balance in the electronic cash ledger excluding the tax due for the first month.
- (4) The amount deposited by the registered persons under sub-rule (3) above, shall be debited while filing the return for the said quarter in **FORM GSTR-3B**, and any claim of refund of such amount lying in balance in the electronic cash ledger, if any, out of the amount so deposited shall be permitted only after the return in **FORM GSTR-3B** for the said quarter has been filed.

Form and manner of submission of monthly return

Substituted w.e.f. 01.01.2021 vide Notification No. 82/2020-CT dated 10.11.2020 for **Rule 61.** - (1) Every registered person other than a person referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 or an Input Service Distributor or a non-resident taxable person or a person paying tax under section 10 or section 51 or, as the case may be, under section 52 shall furnish a return specified under sub-section (1) of section 39 in **FORM GSTR-3** electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner.

(2) **Part A** of the return under sub-rule (1) shall be electronically generated on the basis of information furnished through **FORM GSTR-1**, **FORM GSTR-2** and based on other liabilities of preceding tax periods.

(3) Every registered person furnishing the return under sub-rule (1) shall, subject to the provisions of section 49, discharge his liability towards tax, interest, penalty, fees or any other amount payable under the Act or the provisions of this Chapter by debiting the electronic cash ledger or electronic credit ledger and include the details in **Part B** of the return in **FORM GSTR-3**.

(4) A registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49, may claim such refund in **Part B** of the return in **FORM GSTR-3B** and such return shall be deemed to be an application filed under section 54.

(5) Where the time limit for furnishing of details in **FORM GSTR-1** under section 37 or in **FORM GSTR-2** under section 38 has been extended, the return specified in sub-section (1) of section 39 shall, in such manner and subject to

such conditions as the Commissioner may, by notification, specify, be furnished in **FORM GSTR-3B** electronically through the common portal, either directly or through a Facilitation Centre notified by the Commissioner:

Provided that where a return in **FORM GSTR-3B** is required to be furnished by a person referred to in sub-rule (1) then such person shall not be required to furnish the return in **FORM GSTR-3**.

(6) Every registered person other than a person referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) or an Input Service Distributor or a non-resident taxable person or a person paying tax under section 10 or section 51 or, as the case may be, under section 52 shall furnish a return in **FORM GSTR-3B**, electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner, on or before the twentieth day of the month succeeding such tax period:

Provided that for taxpayers having an aggregate turnover of up to five crore rupees in the previous financial year, whose principal place of business is in the States of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands or Lakshadweep, the return in **FORM GSTR-3B** of the said rules for the months of October, 2020 to March, 2021 shall be furnished electronically through the common portal, on or before the twenty-second day of the month succeeding such month:

Provided further that for taxpayers having an aggregate turnover of up to five crore rupees in the previous financial year, whose principal place of business is in the States of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha, the Union territories of Jammu and Kashmir, Ladakh, Chandigarh or Delhi, the return in **FORM GSTR-3B** of the said rules for the months of October, 2020 to March, 2021 shall be furnished electronically through the common portal, on or before the twenty-fourth day of the month succeeding such month. (*Inserted vide Notification No. 82/2020-CT dated 10.11.2020*)

24. Manner of opting for furnishing quarterly return - Rule 61A of CGST Act.

(1) Every registered person intending to furnish return on a quarterly basis under proviso to sub-section (1) of section 39, shall in accordance with the conditions and restrictions notified in this regard, indicate his preference for furnishing of return on a quarterly basis, electronically, on the common portal, from the 1st day of the second month of the preceding quarter till the last day of the first month of the quarter for which the option is being exercised:

Provided that where such option has been exercised once, the said registered person shall continue to furnish the return on a quarterly basis for future tax periods, unless the said registered person,—

- (a) becomes ineligible for furnishing the return on a quarterly basis as per the conditions and restrictions notified in this regard; or
- (b) opts for furnishing of return on a monthly basis, electronically, on the common portal:

Provided further that a registered person shall not be eligible to opt for furnishing quarterly return in case the last return due on the date of exercising such option has not been furnished.

(2) A registered person, whose aggregate turnover exceeds ₹5 crore rupees during the current financial year, shall opt for furnishing of return on a monthly basis, electronically, on the common portal, from the first month of the quarter, succeeding the quarter during which his aggregate turnover exceeds ₹5 crore rupees.

Inserted vide Notification No. 82/2020-CT dated 10.11.2020.

Changes made with effect from 1st day of January 2021:

Rule 61(2) Every registered person required to furnish return, under sub-rule (1) shall, subject to the provisions of section 49, discharge his liability towards tax, interest, penalty, fees or any other amount payable under the Act by debiting the electronic cash ledger or electronic credit ledger and include the details in the return in **FORM GSTR-3B**.

(3) Every registered person required to furnish return, every quarter, under clause (ii) of sub-rule (1) shall pay the tax due under proviso to sub-section (7) of section 39, for each of the first two months of the quarter, by depositing the said amount in **FORM GST PMT-06**, by the twenty fifth day of the month succeeding such month:

Provided that the Commissioner may, on the recommendations of the Council, by notification, extend the due date for depositing the said amount in **FORM GST PMT-06**, for such class of taxable persons as may be specified therein:

Provided further that any extension of time limit notified by the Commissioner of State tax or Union territory tax shall be deemed to be notified by the Commissioner:

Provided also that while making a deposit in **FORM GST PMT-06**, such a registered person may-

- (a) for the first month of the quarter, take into account the balance in the electronic cash ledger.
- (b) for the second month of the quarter, take into account the balance in the electronic cash ledger excluding the tax due for the first month.

(4) The amount deposited by the registered persons under sub-rule (3) above, shall be debited while filing the return for the said quarter in **FORM GSTR-3B**, and any claim of refund of such amount lying in balance in the electronic cash ledger, if any, out of the amount so deposited shall be permitted only after the

return in **FORM GSTR-3B** for the said quarter has been filed. [Notification No. 82/2020-C.T., dated 10-11-2020]

25. Form and manner of submission of statement and return – Rule 62 of CGST Rules

- (1) Every registered person paying tax under section 10 shall—
 - (i) furnish a statement, every quarter or, as the case may be, part thereof, containing the details of payment of self-assessed tax in **FORM GST CMP-08**, till the 18th day of the month succeeding such quarter; and
 - (ii) furnish a return for every financial year or, as the case may be, part thereof in **FORM GSTR-4**, till the thirtieth day of April following the end of such financial year, electronically through the common portal, either directly or through a Facilitation Centre notified by the Commissioner.

(2) Every registered person furnishing the statement under sub-rule (1) shall discharge his liability towards tax or interest] payable under the Act or the provisions of this Chapter by debiting the electronic cash ledger.

- (3) The return furnished under sub-rule (1) shall include the—
 - (a) invoice wise inter-State and intra-State inward supplies received from registered and un-registered persons; and
 - (b) consolidated details of outward supplies made.

(4) A registered person who has opted to pay tax under section 10 from the beginning of a financial year shall, where required, furnish the details of outward and inward supplies and return under rules 59, 60 and 61 relating to the period during which the person was liable to furnish such details and returns till the due date of furnishing the return for the month of September of the succeeding financial year or furnishing of annual return of the preceding financial year, whichever is earlier.

Explanation.—For the purposes of this sub-rule, it is hereby declared that the person shall not be eligible to avail input tax credit on receipt of invoices or debit notes from the supplier for the period prior to his opting for the composition scheme.

(5) A registered person opting to withdraw from the composition scheme at his own motion or where option is withdrawn at the instance of the proper officer shall, where required, furnish a statement in **FORM GST CMP-08** for the period for which he has paid tax under the composition scheme till the 18th day of the month succeeding the quarter in which the date of withdrawal falls and furnish a return in **FORM GSTR-4** for the said period till the thirtieth day of April following the end of the financial year during which such withdrawal falls.

26. Form and manner of submission of monthly return on - Rule 63 of CGST Rules

Every registered non-resident taxable person shall furnish a return in **FORM GSTR-5** electronically through the common portal, either directly or through a Facilitation Centre notified by the Commissioner, including therein the details of

outward supplies and inward supplies and shall pay the tax, interest, penalty, fees or any other amount payable under the Act or the provisions of this Chapter within twenty days after the end of a tax period or within seven days after the last day of the validity period of registration, whichever is earlier.

27. Form and manner of submission of return by persons providing online information and database access or retrieval services – Rule 64 of CGST Rules:

Form and manner of submission of return by persons providing online information and database access or retrieval services and by persons supplying online money gaming from a place outside India to a person in India.-Every registered person either providing online money gaming from a place outside India to a person in India, or providing online information and data base access or retrieval services from a place outside India to a non-taxable online recipient referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) or to a registered person other than a non-taxable online recipient, shall file return in FORM GSTR-5A on or before the twentieth day of the month succeeding the calendar month or part thereof.

The amendment is effective from October 01, 2023 *vide Notification No.48/2023-CT dated 29.09.2023*

28. Form and manner of submission of return by an Input Service Distributor - Rule 65 of CGST Rules

Every Input Service Distributor shall, on the basis of details contained in **FORM GSTR-6A**, and where required, after adding, correcting or deleting the details, furnish electronically the return in **FORM GSTR-6**, containing the details of tax invoices on which credit has been received and those issued under Section 20, through the common portal either directly or from a Facilitation Centre notified by the Commissioner.

29. Form and manner of submission of return by a person required to deduct tax at source - Rule 66 of CGST Rules

(1) Every registered person required to deduct tax at source under section 51 (hereafter in this rule referred to as deductor) shall furnish a return in **FORM GSTR-7** electronically through the common portal either directly or from a Facilitation Centre notified by the Commissioner.

(2) The details furnished by the deductor under sub-rule (1) shall be made available electronically to each of the deductees on the common portal after filing of **FORM GSTR-7** for claiming the amount of tax deducted in his electronic cash ledger after validation].

(3) The certificate referred to in sub-section (3) of section 51 shall be made available electronically to the deductee on the common portal in **FORM GSTR-7A** on the basis of the return furnished under sub-rule (1).

30. Form and manner of submission of statement of supplies through an e-commerce operator - Rule 67 of CGST Rules

(1) Every electronic commerce operator required to collect tax at source under section 52 shall furnish a statement in **FORM GSTR-8** electronically on the common portal, either directly or from a Facilitation Centre notified by the Commissioner, containing details of supplies effected through such operator and the amount of tax collected as required under sub-section (1) of section 52.

(2) The details of **tax collected at source under sub-section (1) of section 52 furnished by the operator under sub-rule (1) shall be made available electronically to each of the registered suppliers** on the common portal after filing of FORM GSTR-8 for claiming the amount of tax collected in his electronic cash ledger after validation

*The amendment will be made effective from October 01, 2023 vide Notification No. 38/2023-CT dated 4.08.2023

31. Manner of furnishing of return or details of outward supplies by short messaging service facility - Rule 67A of CGST Rules

Notwithstanding anything contained in this Chapter, for a registered person who is required to furnish a Nil return under section 39 in **FORM GSTR-3B** or a Nil details of outward supplies under section 37 in **FORM GSTR-1** or a Nil statement in **FORM GST CMP-08** for a tax period, any reference to electronic furnishing shall include furnishing of the said return or the details of outward supplies or statement through a short messaging service using the registered mobile number and the said return or the details of outward supplies or statement shall be verified by a registered mobile number based One Time Password facility.

Explanation.—For the purpose of this rule, a nil return or nil details of outward supplies or nil statement shall mean a return under section 39 or details of outward supplies under section 37 or statement under rule 62, for a tax period that has nil or no entry in all the Tables in **FORM GSTR-3B** or **FORM GSTR-1** or **FORM GST CMP-08**, as the case may be.

32. Notice to non-filers of returns - Rule 68 of CGST Rules

A notice in **FORM GSTR-3A** shall be issued, electronically, to a registered person who fails to furnish return under section 39 or section 44 or section 45 or section 52.

33. Matching of claim of input tax credit

Rule 69 of CGST Rules - Omitted

34. Final acceptance of input tax credit and communication thereof

Rule 70 of CGST Rules - Omitted.

35. Communication and rectification of discrepancy in claim of input tax credit and reversal of claim of input tax credit

Rule 71 of CGST Rules - Omitted

36. Claim of input tax credit on the same invoice more than once*Rule 72 of CGST Rules - Omitted***37. Matching of claim of reduction in the output tax liability***Rule 73 of CGST Rules - Omitted***38. Final acceptance of reduction in output tax liability and communication thereof***Rule 74 of CGST Rules - Omitted***39. Communication and rectification of discrepancy in reduction in output tax liability and reversal of claim of reduction***Rule 75 of CGST Rules - Omitted***40. Claim of reduction in output tax liability more than once***Rule 76 of CGST Rules - Omitted.***41. Refund of interest paid on reclaim of reversals***Rule 77 of CGST rules - Omitted***42. Matching of details furnished by the e-Commerce operator with the details furnished by the supplier - Rule 78 of CGST Rules**

The following details relating to the supplies made through an e-Commerce operator, as declared in **FORM GSTR-8**, shall be matched with the corresponding details declared by the supplier in **FORM GSTR-1**,

- (a) State of place of supply; and
- (b) net taxable value:

Provided that where the time limit for furnishing **FORM GSTR-1** under section 37 has been extended, the date of matching of the above mentioned details shall be extended accordingly.

Provided further that the Commissioner may, on the recommendations of the Council, by order, extend the date of matching to such date as may be specified therein.

43. Annual return - Rule 80 of CGST Rules

(1) Every registered person, other than those referred to in the second proviso to section 44, an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and anon-resident taxable person, shall furnish an annual return for every financial year as specified under section 44 electronically in **FORMGSTR-9** on or before the thirty-first day of December following the end of such financial year through the common portal either directly or through a Facilitation Centre notified by the Commissioner:

Provided that a person paying tax under section 10 shall furnish the annual return in **FORM GSTR-9A**.

(2) Every electronic commerce operator required to collect tax at source under section 52 shall furnish annual statement referred to in sub-section (5) of the said section in **FORM GSTR -9B**.

(1A) Notwithstanding anything contained in sub-rule (1), for the financial year 2020-2021 the said annual return shall be furnished on or before the twenty-eighth day of February, 2022.

(3) Every registered person, other than those referred to in the second proviso to section 44, an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person, whose aggregate turnover during a financial year exceeds five crore rupees, shall also furnish a self-certified reconciliation statement as specified under section 44 in **FORM GSTR-9C** along with the annual return referred to in sub-rule(1), on or before the thirty-first day of December following the end of such financial year, electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner.

44. Final return - Rule 81 of CGST Rules

Every registered person required to furnish a final return under section 45, shall furnish such return electronically in **FORM GSTR-10** through the common portal either directly or through a Facilitation Centre notified by the Commissioner.

45. Details of inward supplies of persons having Unique Identity Number. - Rule 82 of CGST Rules

(1) Every person who has been issued a Unique Identity Number and claims refund of the taxes paid on his inward supplies, shall furnish the details of such supplies of taxable goods or services or both electronically in **FORM GSTR-11**, along with application for such refund claim, through the common portal either directly or through a Facilitation Centre notified by the Commissioner.

(2) Every person who has been issued a Unique Identity Number for purposes other than refund of the taxes paid shall furnish the details of inward supplies of taxable goods or services or both as may be required by the proper officer in **FORM GSTR-11**.

The various types of Returns under GST (from GSTR-1 to GSTR -11) prescribed under GST law along with the due dates of submission are summarized in the Table as under:

| Return Form | Particular of submission | Who Files | Frequency/Due Date of Filing/importance of returns |
|--------------------|---|--|--|
| GSTR-1/ IFF | Details of Outward supplies of Goods or Services. | Registered Person (including casual taxable person) except composition dealer. | <p><i>Monthly by 11th of the next month. For those who opt to file GSTR-3B return on quarterly basis, the GSTR-1 return should be filed by 13th of month following the quarter-Notification No. 83/2020-CT. dated 10-11-2020</i></p> <p><i>Nil return is required even if there are no transactions and can be filed through SMS.</i></p> |

| Return Form | Particular of submission | Who Files | Frequency/Due Date of Filing/importance of returns |
|---------------------|--|---|--|
| | | | <p><i>In case of quarterly return filing- Registered person have to file Invoice Furnishing Facility-(IFF) for the first two months to furnish the details of such outward supplies to a registered person. The facility of furnishing details of invoices in IFF has been provided so as to allow details of such supplies to be duly reflected in the FORM GSTR-2A and FORM GSTR-2B of the concerned recipient.</i></p> <p>From October'2022 onwards, it is mandatory to file :</p> <ul style="list-style-type: none"> ➢ Previous period GSTR-1 before current period GSTR-1. ➢ Current period GSTR-1 before current period GSTR-3B. <p>Notification No.18/2022-C.T., dated 28.09.2022.</p> <ul style="list-style-type: none"> ➢ Registered person can't file GSTR-1 if not furnished GSTR-3B for the preceding month ➢ Recovery of self-assessed tax without SCN if there is difference between GSTR-1 and GSTR-3B. |
| GSTR-2A/ GSTR-2B | This is auto populated details of tax invoices, debit notes and credit notes issued for supplies made by supplier (including casual taxable person) reflected in | Registered Person (including casual taxable person) except composition dealer | <p>Monthly- auto populated returns. ITC can be taken on basis of invoices of supplier as reflected in GSTR-2B including imports, tax paid under RCM.</p> <p>GSTR-2A is only for information.</p> <p>GST ITC available to recipient only when supplier pays and files GSTR-1, which matches with GSTR-2A/GSTR-2B.</p> |

| Return Form | Particular of submission | Who Files | Frequency/Due Date of Filing/importance of returns |
|--------------------|--|---|---|
| | GSTR-2A and GSTR-2B of recipient. | | |
| GSTR-3B | Return on the basis of self assessment of details of outward supplies and inward supplies along with the payment of tax. | Registered Person (including casual taxable person) except composition dealer | <p>Monthly- 20th days of the next month, in the place of GST-3 as per Notification No. 49/2019-C.T dated 9.10.2019. For the registered person with aggregate turnover exceeding ₹5 crores in preceding financial year. (Within 22/24 days in respect of taxable persons with aggregate turnover upto ₹5 crores in preceding financial year and those opting for QRMP scheme).</p> <p>Nil return is required even if there are no transactions in a month/quarter –[Nil return can be filed through SMS]</p> |
| GSTR-4 | Details of inward and outward supplies of Goods or Services | Registered person opting composition scheme or paying tax under Section 10 of CGST Act, | <p>Yearly before 30th April from end of financial year.</p> <p>Nil return is to be filed even if there are no transactions in a month.</p> |
| GST CMP-08 | Statement of self-assessed tax by taxable person under composition scheme. | Registered person under section-10 of CGST Act. | <p>Quarterly within 18 days from close of quarter.</p> <p>Nil return can be filed through SMS.</p> |
| ITC-04 | Details of inputs sent for job work | By the principal of job working | <p>Half yearly for those whose aggregate turnover in preceding financial year exceeds ₹5 crores and yearly for others.</p> <p>The return is to be filed within 25 days from end of half year/year as applicable.</p> |
| GSTR-5 | Details of inward and | Non-Resident taxable person | Monthly, 20th days of the next month or seven days after end of |

| Return Form | Particular of submission | Who Files | Frequency/Due Date of Filing/importance of returns |
|--------------------|--|--|--|
| | outward supplies of Goods or Services | | validity period of registered person. |
| GSTR-5A | Return by taxable person supplying OIDAR services | OIDAR service providers | Monthly, within 20 days of the next month FORM GSTR-5A have been amended so that OIDAR service providers have to provide details of supplies made to registered person in India and online recipients in his return in FORM GSTR-5A vide Notification No.38/2023-Central Tax dated 04.08.2023 |
| GSTR-6 | Details of tax invoices on which credit has been received and those issued under Section 20 of the CGST Act. | Input Service Distributor | Monthly, 13th of the next month |
| GSTR-7 | Details of deduction of tax at source | Tax Deductor u/s 51 of CGST Act. | Monthly, within 10th of the next month |
| GSTR-8 | Details of supplies effected through e-commerce operator and the amount of tax collected. | E-commerce operator- u/s 52 of CGST Act. | Monthly, 10th of the next month |
| GSTR-9 | Details of Supplies of Goods or Services and Tax details for the Financial Year. | Registered Person other than an ISD, TDS/TCS Taxpayers, Casual Taxable Person and Non-resident Taxpayer. | Yearly, on or before 31st December of the next Financial Year. Registered persons whose aggregate turnover in financial year is upto ₹2 crores are exempt from filing annual return for FY 2021-22 vide Notification No.10 /2022-CT., dated 5-7-2022. |

| Return Form | Particular of submission | Who Files | Frequency/Due Date of Filing/importance of returns |
|--------------------|---|--|---|
| | | | <p>For FY 2020-2021, it was exempted vide Notification No.31/2021-CT., dated 30-7-2021.</p> <p>GSTR-9 return was optional for those with aggregate turnover upto ₹2 crores vide Notification No. 47/2019-CT., dated 9-10-2019 as amended.</p> |
| GSTR-9A | Annual Return by the taxable person registered under section 10 of CGST Act. | Taxable person under composition scheme | <p>On or before 31st December after close of financial year.</p> <p>Registered persons whose aggregate turnover in financial year is upto ₹2 crores are exempt from filing annual return for FY 2021-22 vide Notification No.10/2022-CT., dated 5-7-2022.</p> <p>For FY 2020-2021, it was exempted vide Notification No. 31/2021-CT., dated 30-7-2021.</p> |
| GSTR-9B | Annual Return by e-commerce operator | Registered person under section 52 of CGST Act to collect TCS | Form has not been notified for implementation of Annual return |
| GSTR-9C | Certification of Annual reconciliation of financial statement by the registered person along with filing of Annual return | Registered person whose aggregate turnover during financial year ₹5 crores | <p>Yearly, GSTR-9C is to be filed along with Annual Return in form GSTR-9 by registered persons whose aggregate turnover during the financial year exceeds ₹5 crores till 1-8-2021.</p> <p>This requirement of Audit report in GSTR-9C has been omitted and in form GSTR-9C, omitted it is now only self certification basis.</p> |
| GSTR-10 | Final Return by the specified registered | Taxable person whose GST registration has | Within three months of the date of cancellation date of order of cancellation, whichever is later. |

| Return Form | Particular of submission | Who Files | Frequency/Due Date of Filing/importance of returns |
|--------------------|--|---|--|
| | taxable person. | been surrendered or cancelled | As and when registration surrenders or cancelled. |
| GSTR-11 | Details of inward supplies to be furnished by a person having UIN and claiming refund. | Person has been issued a UIN and claims refund of the taxes paid. | Quarterly, 28th of the month following the month for which statement is filed by their suppliers |

Note to above Table:

1. **FORM GSTR-1A** - Details of additions, corrections or deletions made by the recipient in the outward supply.
2. **FORM GSTR-3A** - Notice sent to a registered taxable person who fails to file return under Section 27 and Section 46 of the CGST Act.
Notice sent to a registered person for non-filing of Annual return in FORM GSTR-9 or FORM GSTR-9A vide Notification No.38/2023-Central Tax dated 04.08.2023
3. **FORM GSTR-3B** - Monthly return in place of GSTR-3 (from July'2017 to June'2018) to be submitted by 20th of the next month.
4. **FORM GSTR-4A** - To furnish details of inward supplies received by the recipient registered under composition scheme which are based on Form GSTR-1 filed by the supplier.
- 4A. FORM GSTR-5A have been amended so that OIDAR service providers have to provide details of supplies made to registered person in India and online recipients in his return in FORM GSTR-5A vide Notification No.38/2023-Central Tax dated 04.08.2023
5. **FORM GSTR-6A** - To furnish details of inward supplies received by the ISD recipient which are based on Form GSTR-6 filed by the supplier and correcting or deleting the details so furnished.
6. **FORM GSTR-7A** - TDS Certificate shall be made available to the deductee on the common portal.
7. **FORM GSTR-9A** - Annual return shall be furnished by the person paying tax under Section 10 of the CGST Act.
8. **FORM GSTR-9B** - Annual return shall be furnished by every electronic commerce operator required to collect tax at source under Section 52 of the CGST Act.
9. **FORM GSTR-9C** - Every registered person whose aggregate turnover during a financial year exceeds two crore rupees shall get his accounts audited as specified under sub-section (5) of Section 35 of the CGST

Act, shall furnish electronically on the common portal a copy of audited annual accounts and a reconciliation statement, duly certified in **FORM GSTR-9C**. As per the latest Govt. decision vide Circular No. F.NO. (16) DGGST/Tech/118/2018, dated 17-9-2018-GSTR-9C, Filing of annual returns will applicable to threshold limit of turnover of ₹10 Crores instead of ₹2 Crores (This Circular of enhancement of limit so far has not been enforced).

46. Persons required to furnish return for every quarter from January 2021 onwards and pay tax due every month

The registered persons, having an aggregate turnover of up to ₹5 Cr. in the preceding financial year and who have opted to furnish a return for every quarter from January 2021 onwards and pay tax every month in accordance of sub-section (7) of section 39.

- (i) the return for the preceding month, as due on the date of exercising such option has been furnished.
 - (ii) where such option has been exercised once, they shall continue to furnish the return as per the selected option for future tax periods, unless they revise the same.
- (2) A registered person whose aggregate turnover crosses ₹5 Cr. during a quarter in a financial year shall not be eligible for furnishing of return on quarterly basis from the first month of the succeeding quarter.

Notification No. 84/2020-C.T. dated 84/2020, 10-11-2020.

47. Quarterly Return Monthly Payment Scheme

As a trade facilitation measure and in order to further ease the process of doing business, the GST Council in its 42nd meeting held on 05.10.2020, had recommended that registered person having aggregate turnover up to five (5) crore rupees may be allowed to furnish return on quarterly basis along with monthly payment of tax, with effect from 01.01.2021.

48. QRMP Scheme

1. Notification No. 81/2020-Central Tax, dated 10.11.2020. Notifies amendment carried out in sub-section (1), (2) and (7) of section 39 of the CGST Act vide Finance (No. 2) Act, 2019.
2. Notification No. 82/2020-Central Tax, dated 10.11.2020. Makes the Thirteenth amendment (2020) to the CGST Rules 2017.
3. Notification No. 84/2020-Central Tax, dated 10.11.2020. Notifies class of persons under proviso to section 39(1) of the CGST Act.
4. Notification No. 85/2020-Central Tax dated 10.11.2020. Notifies special procedure for making payment of tax liability in the first two months of a quarter.
5. Various issues related to notifications issued to implement the QRMP Scheme have been examined. In order to explain the Scheme in simple terms and in order to ensure uniformity in implementation across field formations, the

Board, in exercise of its powers conferred under section 168 (1) of the Central Goods and Services Act, 2017 (hereinafter referred to as the CGST Act), hereby clarifies various issues in succeeding paragraphs.

49. Eligibility for the QRMP Scheme

In terms of notification No. 84/2020- Central Tax, dated 10.11.2020, a registered person who is required to furnish a return in FORM GSTR-3B, and who has an aggregate turnover of up to ₹5 crore rupees in the preceding financial year, is eligible for the QRMP Scheme. It is clarified that the aggregate annual turnover for the preceding financial year shall be calculated in the common portal taking into account the details furnished in the returns by the taxpayer for the tax periods in the preceding financial year. This new Scheme will be effective from 01.01.2021. Further, in case the aggregate turnover exceeds ₹5 crore rupees during any quarter in the current financial year, the registered person shall not be eligible for the Scheme from the next quarter.

50. Exercising option for QRMP Scheme

50.1 Facility to avail the Scheme on the common portal would be available throughout the year. In terms of rule 61A of the Central Goods and Services Tax Rules, 2017 (hereinafter referred as CGST Rules), a registered person can opt in for any quarter from first day of second month of preceding quarter to the last day of the first month of the quarter. In order to exercise this option, the registered person must have furnished the last return, as due on the date of exercising such option. For example: A registered person intending to avail of the Scheme for the quarter 'July to September' can exercise his option during 1st of May to 31st of July. If he is exercising his option on 27th July for the quarter (July to September), in such case, he must have furnished the return for the month of June which was due on 22/24th July.

50.2 Registered persons are not required to exercise the option every quarter. Where such option has been exercised once, they shall continue to furnish the return as per the selected option for future tax periods, unless they revise the said option.

50.3 For the first quarter of the Scheme i.e. for the quarter January, 2021 to March, 2021, in order to facilitate the taxpayers, it has been decided that all the registered persons, whose aggregate turnover for the FY 2019-20 is up to ₹5 crore rupees and who have furnished the return in FORM GSTR-3B for the month of October, 2020 by 30th November, 2020, shall be migrated on the common portal as below. Therefore, taxpayers are advised to furnish the return of October, 2020 in time so as to be eligible for default migration. The taxpayers who have not filed their return for October, 2020 on or before 30th November, 2020 will not be migrated to the Scheme. They will be able to opt for the Scheme once the FORM GSTR-3B as due on the date of exercising option has been filed.

| S. no. | Class of Registered Persons | Default Option |
|--------|---|------------------|
| 1 | Registered persons having aggregate turnover of up to ₹1.5 crore rupees who have furnished FORM GSTR-1 on quarterly basis in the current financial year | Quarterly return |
| 2 | Registered persons having aggregate turnover of up to ₹1.5 crore rupees who have furnished FORM GSTR-1 on monthly basis in the current financial year | Monthly Return |
| 3 | Registered persons having aggregate turnover more than ₹1.5 crore rupees and up to ₹5 crore rupees in the preceding financial year | Quarterly return |

Above default option has been provided for the convenience of registered persons based on their anticipated behaviour. However, such registered persons are free to change the option as above, if they so desire, from 5th of December, 2020 to 31st of January, 2021. It is re-iterated that any taxpayer whose aggregate turnover has exceeded ₹5 crore rupees in the financial year 2020-21, shall opt out of the Scheme.

50.4 Similarly, the facility for opting out of the Scheme for a quarter will be available from first day of second month of preceding quarter to the last day of the first month of the quarter.

50.5 All persons who have obtained registration during any quarter or the registered persons opting out from paying tax under Section 10 of the CGST Act during any quarter shall be able to opt for the Scheme for the quarter for which the opting facility is available on the date of exercising option as in para 4.1.

50.6 It is also clarified that such registered person, whose aggregate turnover crosses ₹5 crore rupees during a quarter in current financial year, shall opt for furnishing of return on a monthly basis, electronically, on the common portal, from the succeeding quarter. In other words, in case the aggregate turnover exceeds ₹5 crore rupees during any quarter in the current financial year, the registered person shall not be eligible for the Scheme from the next quarter.

50.7 It is further clarified that the option to avail the QRMP Scheme is GSTIN wise and therefore, distinct persons as defined in Section 25 of the CGST Act (different GSTINs on same PAN) have the option to avail the QRMP Scheme for one or more GSTINs. In other words, some GSTINs for that PAN can opt for the QRMP Scheme and remaining GSTINs may not opt for the Scheme.

51. Furnishing of details of outward supplies under section 37 of the CGST Act.

51.1 The registered persons opting for the Scheme would be required to furnish the details of outward supply in FORM GSTR-1 quarterly as per the rule 59 of the CGST Rule.

51.2 For each of the first and second months of a quarter, such a registered person will have the facility (Invoice Furnishing Facility-IFF) to furnish the details of such outward supplies to a registered person, as he may consider necessary, between the 1st day of the succeeding month till the 13th day of the succeeding month. The said details of outward supplies shall, however, not exceed the value of fifty lakh rupees in each month. It may be noted that after 13th of the month, this facility for furnishing IFF for previous month would not be available. As a facilitation measure, continuous upload of invoices would also be provided for the registered persons wherein they can save the invoices in IFF from the 1st day of the month till 13th day of the succeeding month. The facility of furnishing details of invoices in IFF has been provided so as to allow details of such supplies to be duly reflected in the FORM GSTR-2A and FORM GSTR-2B of the concerned recipient.

For example, a registered person who has availed the Scheme wants to declare two invoices out of the total ten invoices issued in the first month of quarter since the recipient of supplies covered by those two invoices desires to avail ITC in that month itself. Details of these two invoices may be furnished using IFF. The details of the remaining 8 invoices shall be furnished in FORM GSTR-1 of the said quarter. The two invoices furnished in IFF shall be reflected in FORM GSTR-2B of the concerned recipient of the first month of the quarter and remaining eight invoices furnished in FORM GSTR-1 shall be reflected in FORM GSTR-2B of the concerned recipient of the last month of the quarter. The said facility would however be available, say for the month of July, from 1st August till 13th August. Similarly, for the month of August, the said facility will be available from 1st September till 13th September.

52. QRMP Scheme is optional

51.3 The details of invoices furnished using the said facility in the first two months are not required to be furnished again in FORM GSTR-1. Accordingly, the details of outward supplies made by such a registered person during a quarter shall consist of details of invoices furnished using IFF for each of the first two months and the details of invoices furnished in FORM GSTR-1 for the quarter. At his option, a registered person may choose to furnish the details of outward supplies made during a quarter in FORM GSTR-1 only, without using the IFF.

53. Monthly Payment of Tax

53.1 The registered person under the QRMP Scheme would be required to pay the tax due in each of the first two months of the quarter by depositing the due amount in FORM GST PMT-06, by the twenty fifth day of the month succeeding such month. While generating the challan, taxpayers should select “Monthly payment for quarterly taxpayer” as reason for generating the challan. The said person can use any of the following two options provided below for monthly payment of tax during the first two months—

54. Fixed Sum Method

A facility is being made available on the portal for generating a pre-filled challan in FORM GST PMT-06 for an amount equal to thirty-five per cent. of the tax paid in cash in the preceding quarter where the return was furnished quarterly; or equal to the tax paid in cash in the last month of the immediately preceding quarter where the return was furnished monthly.

For easy understanding, the same is explained by way of illustration in table below:

- (i) In case the last return filed was on quarterly basis for Quarter Ending March, 2021.

Tax paid in Cash in Quarter (January - March, 2021)

>CGST 100

>SGST 100

> IGST 500

>Cess 50

Tax required to be paid in each of the months – April and May, 2021

>CGST 35

>SGST 35

>IGST 175

>Cess 17.5

- (ii) In case the last return filed was monthly for tax period March, 2021: Tax paid in Cash in March, 2021

>CGST 50

>SGST 50

>IGST 80

>Cess –

Tax required to be paid in each of the months – April and May, 2021

>CGST 50

>SGST 50

>IGST 80

Cess –

Monthly tax payment through this method would not be available to those registered persons who have not furnished the return for a complete tax period preceding such month. A complete tax period means a tax period in which the person is registered from the first day of the tax period till the last day of the tax period.

55. Self-Assessment Method

The said persons, in any case, can pay the tax due by considering the tax liability on inward and outward supplies and the input tax credit available, in

FORM GST PMT-06. In order to facilitate ascertainment of the ITC available for the month, an auto-drafted input tax credit statement has been made available in **FORM GSTR-2B**, for every month.

53.2 The said registered person is free to avail either of the two tax payment method above in any of the two months of the quarter.

53.3 It is clarified that in case the balance in the electronic cash ledger and/or electronic credit ledger is adequate for the tax due for the first month of the quarter or where there is nil tax liability, the registered person may not deposit any amount for the said month. Similarly, for the second month of the quarter, in case the balance in the electronic cash ledger and/or electronic credit ledger is adequate for the cumulative tax due for the first and the second month of the quarter or where there is nil tax liability, the registered person may not deposit any amount.

53.4 Any claim of refund in respect of the amount deposited for the first two months of a quarter for payment of tax shall be permitted only after the return in FORM GSTR-3B for the said quarter has been furnished. Further, this deposit cannot be used by the taxpayer for any other purpose till the filing of return for the quarter.

56. Quarterly filing of FORM GSTR-3B

Such registered persons would be required to furnish FORM GSTR-3B, for each quarter, on or before 22nd or 24th day of the month succeeding such quarter. In FORM GSTR-3B, they shall declare the supplies made during the quarter, ITC availed during the quarter and all other details required to be furnished therein. The amount deposited by the registered person in the first two months shall be debited solely for the purposes of offsetting the liability furnished in that quarter's FORM GSTR-3B. However, any amount left after filing of that quarter's FORM GSTR-3B may either be claimed as refund or may be used for any other purpose in subsequent quarters. In case of cancellation of registration of such person during any of the first two months of the quarter, he is still required to furnish return in FORM GSTR-3B for the relevant tax period.

57. Applicability of Interest

57.1. For registered person making payment of tax by opting Fixed Sum Method

- (i) No interest would be payable in case the tax due is paid in the first two months of the quarter by way of depositing auto-calculated fixed sum amount as detailed in para 6.1(a) above by the due date. In other words, if while furnishing return in FORM GSTR-3B, it is found that in any or both of the first two months of the quarter, the tax liability net of available credit on the supplies made/received was higher than the amount paid in challan, then, no interest would be charged provided they deposit system calculated amount for each of the first two months and discharge their entire liability for the quarter in the FORM GSTR-3B of the quarter by the due date.

- (ii) In case such payment of tax by depositing the system calculated amount in FORM GST PMT-06 is not done by due date, interest would be payable at the applicable rate, from the due date of furnishing FORM GST PMT-06 till the date of making such payment.
- (iii) Further, in case FORM GSTR-3B for the quarter is furnished beyond the due date, interest would be payable as per the provisions of Section 50 of the CGST Act for the tax liability net of ITC.

Illustration 1 – A registered person, who has opted for the Scheme, had paid a total amount of ₹100/- in cash as tax liability in the previous quarter of October to December. He opts to pay tax under fixed sum method. He therefore pays ₹35/- each on 25th February and 25th March for discharging tax liability for the first two months of quarter viz. January and February. In his return for the quarter, it is found that liability, based on the outward and inward supplies, for January was ₹40/- and for February it was ₹. No interest would be payable for the lesser amount of tax (i.e. ₹5 and ₹7 respectively) discharged in these two months provided that he discharges his entire liability for the quarter in the FORM GSTR-3B of the quarter by the due date.

Illustration 2 – A registered person, who has opted for the Scheme, had paid a total amount of ₹100/- in cash as tax liability in the previous quarter of October to December. He opts to pay tax under fixed sum method. He therefore pays ₹35/- each on 25th February and 25th March for discharging tax liability for the first two months of quarter viz. January and February. In his return for the quarter, it is found that total liability for the quarter net of available credit was ₹₹125 but he files the return on 30th April. Interest would be payable at applicable rate on ₹55 to ₹125 – ₹70 (deposit made in cash ledger in M1 and M2)] for the period between due date of quarterly FORM GSTR- 3B and 30th April.

57.2 For registered person making payment of tax by opting Self-Assessment Method Interest amount would be payable as per the provision of Section 50 of the CGST Act for tax or any part thereof (net of ITC) which remains unpaid/paid beyond the due date for the first two months of the quarter.

57.3 Interest payable, if any, shall be paid through FORM GSTR-3B.

58. Applicability of Late Fee

Late fee is applicable for delay in furnishing of return/details of outward supply as per the provision of Section 47 of the CGST Act. As per the Scheme, the requirement to furnish the return under the proviso to sub-section (1) of Section 39 of the CGST Act is quarterly. Accordingly, late fee would be the applicable for delay in furnishing of the said quarterly return/details of outward supply. It is clarified that no late fee is applicable for delay in payment of tax in first two months of the quarter.

GSTR-1 Late fees

| Period | Nil GSTR 1 | | Other than Nil GSTR 1 | | |
|------------------|------------------|---------------|-----------------------|---------------------|----------------------------|
| | Late fee per day | Max Late fees | Late fee per day | Max Late fees | |
| Jul'17 to Dec'17 | ₹200 | ₹ 10,000 | ₹ 200 | ₹ 10,000 | |
| Jan'18 to May'21 | ₹ 20 | ₹ 10,000 | ₹ 50 | ₹ ₹10,000 | |
| Jun'21 onwards | ₹20 | ₹500 | ₹50 | AATO up to ₹1.5 crs | AATO between ₹1.5 - ₹5 crs |
| | | | | ₹2,000 | ₹5,000 |
| | | | | | ₹10,000 |

- Late Fee per day was reduced vide Notification No. 4/2018-CGST dated 23.01.2018
- Max Late Fee was rationalized vide Notification No. 20/2021-CGST dated 10.06.2021

* * *

Introducing Electronic Credit Reversal and Re-claimed statement on GSTN

The Government has notified certain changes in Table 4 of Form GSTR-3B to enable taxpayers in reporting correct information regarding ITC availed, ITC reversal, ITC re-claimed and ineligible ITC vide Notification No. 14/2022 – Central Tax dated 05th July, 2022 (read with circular 170/02/2022-GST, dated 6th July, 2022). Accordingly, the reclaimable ITC earlier reversed in Table 4(B)2 may be subsequently claimed in Table 4(A)5 on fulfilment of necessary conditions. Such reclaimed ITC in Table 4(A)5 also needs to be explicitly reported in Table 4D(1).

(1) In order to facilitate the taxpayers in correct and accurate reporting of ITC reversal and reclaim thereof and to avoid clerical mistakes, a new ledger namely Electronic Credit and Re-claimed Statement is being introduced on the GST portal. This statement will help the taxpayers in tracking of their ITC that has been reversed in Table 4B(2) and thereafter re-claimed in Table 4D(1) and 4A(5) for each return period, starting from August return period.

(2) This statement shall facilitate that while re-claiming ITC in GSTR-3B, the amount aligns appropriately with the corresponding reversed ITC. This aims to improve the overall consistency and correctness of ITC reversal and re-claims related transactions. For Monthly taxpayers, the specified return period pertains to August 2023. For those filing quarterly returns, the specified return period corresponds to Q2 of the financial year 2023-24, encompassing the months of July, September 2023.

(3) Taxpayers are being provided a facility to report their cumulative ITC reversal (ITC that has been reversed earlier and has not yet been reclaimed) as opening balance for “Electronic Credit Reversal and Re-claimed Statement”, if any. The navigation to report ITC reversal balance:

Login >> Report ITC Reversal Opening Balance.
or Services >> Ledger >> Electronic Credit Reversal and Re-claimed Statement

>> Report ITC Reversal Opening Balance

- (a) Taxpayers having monthly filing frequency are required to report their opening balance considering the ITC reversal done till the return period of July 2023.
- (b) In contrast, quarterly taxpayers shall report their opening balance up to Q1 of the financial year 2023-24, considering the ITC reversal made till the April-June 2023 return period.
- (c) The taxpayers have the opportunity to declare their opening balance for ITC reversal Until 30th November 2023.
- (d) The taxpayers shall also be provided 3 (three) amendment opportunities to correct their opening balance in case of any mistakes or inaccuracies in reporting. Importantly, until 30th November 2023, both reporting and amendment facilities are accessible.
- (e) However, after 30th November till 31st December 2023, only amendments will be permitted and the option for fresh reporting will not be available. This amendment facility shall be discontinued after 31st December 2023.

(4) With the provision for taxpayers to report their accumulated ITC reversal balance, the portal will subsequently maintain a record of reversal and re-claimed amounts on a return period basis in statement. Hence, a validation mechanism is incorporated into the GSTR-3B form. This validation will trigger a warning message if a taxpayer attempts to re-claim excess ITC in table 4D(1) than the available ITC reversal balance in the statement along with ITC reversal made in current return period in Table 4B(2). This warning message would facilitate accurate reporting but the taxpayers will still have the option to proceed with filing. However, the taxpayers are advised not to reclaim ITC exceeding the closing balance of “Electronic Credit Reversal and Re-claimed Statement” and may report their pending reversed ITC, if any, as ITC reversal opening balance.

(5) For monthly taxpayers, the warning message will commence appearing from the GSTR-3B filing for the August 2023 return period. Similarly, for quarterly taxpayers this warning message would start from the filing period covering July to September 2023.

C.B.I & C, Circular No. 143/13/2020-GST dated, 10-11-2020

Quarterly Return Filing & Monthly Payment of Taxes (QRMP) Scheme

As a continuation of initiative in ease of doing business and simplification of returns filing system, the Government has introduced the QRMP Scheme the eligible taxpayers have to file their monthly return in FORM GSTR-1 and FORM GSTR-3B on quarterly basis, while paying their tax dues on monthly basis through a challan by net banking with cash transaction.

Salient features of Quarterly Return filing & Monthly Payment of Taxes (QRMP) Scheme.

1. Who can opt for the scheme:

Following registered person (hereinafter RP) can file quarterly returns and pay tax on monthly basis w.e.f. 01.01.2021:

- (a) A registered person who is required to file Form GSTR-3B with annual aggregate turnover of up to ₹5 Cr. in the previous financial year is eligible. If annual aggregate turnover crosses ₹5 Cr. during a quarter. Registered person will become ineligible for the Scheme from next quarter.
- (b) Any person obtaining a new registration or opting out of Composition Scheme can also opt for this Scheme.
- (c) The option to avail this Scheme can be availed GSTIN wise. Therefore, few GSTINs for that PAN can opt for the Scheme and remaining GSTINs can remain out of the Scheme.

2. Changes on the GST Portal:

For quarter January,2021 to March,2021, all registered persons whose annual aggregate turnover for the financial year 2019-20 is up to ₹5 Cr. and have furnished the return in Form GSTR-3B for the month of October, 2020 by 30th 2020, will be migrated by default in the GST system as follows:

| Sl. No | Class of registered person with annual aggregate turnover of | Default Return option |
|--------|--|-----------------------|
| 1 | Up to ₹1.5 Cr., who have furnished Form GSTR-1 on quarterly basis in current Financial Year. | Quarterly |
| 2 | Up to ₹1.5 Cr., who have furnished Form GSTR-1 on monthly basis in current Financial Year | Monthly |
| 3 | More than ₹1.5 Cr. in preceding Financial Year. | Quarterly |

When can a person opt for the same:

- Facility can be availed throughout the year, in any quarter.
- Option for QRMP Scheme, once exercised, will continue till registered person revises the option or his annual aggregate turnover exceeds ₹5 Cr.
- Registered persons migrated by default can choose to remain out of the scheme by exercising their option from 5th December, 2020 till 31st January 2021.

- The registered persons opting for the scheme can avail the facility of Invoice Furnishing (IFF), so that the outward supplies to registered person is reflected in their form GSTR 2A & GSTR 2B.

Payment of tax under the scheme:

- Registered persons need to pay tax due in each of first two months (by 25th of next month) in the quarter by selecting “Monthly payment for quarterly taxpayer” as reason for generating Challan.
- Registered persons can either use Fixed Sum Method (pre-filled challan) or Self-Assessment Method (actual tax due), for monthly payment of tax for first two months, after adjusting ITC.
- No deposit is required for the month, if there is nil tax liability.
- Tax deposited for first 02 months can be used for adjusting liability for the quarter in Form GSTR-3B and can't be used for any other purpose till the filing of return for the quarter.

[Notifications Nos. 81/2020-C.T, 82/2020-C.T, 84/2020-C.T., and 85/2020-C.T all dated 10-11-2020]

* * *

Payment of Tax by Fixed Sum Method under QRMP Scheme

1. W.e.f. 1st January, 2021, following two options are available to the Taxpayers who are under Quarterly Returns and Monthly Payment of Tax (QRMP) Scheme for tax payment for first 02 months of a quarter:
 - (a) Fixed Sum Method: Portal can generate a pre-filled challan in Form GST PMT-06 based on his past record.
 - (b) Self-Assessment Method: The Tax due is to be paid on actual supplies after deducting the Input Tax Credit available.
2. In fixed sum method, the 35% Challan can be generated by selecting the **Reason For Challan>Monthly Payment for Quarterly Return>35% Challan** which is in turn calculated as per following situation:
 - (a) 35% of amount paid as tax from Electronic Cash Ledger in their preceding quarter GSTR-3B return, if it was furnished on **quarterly basis**; or
 - (b) 100% of the amount paid as tax from Electronic Cash Ledger in their GSTR-3B return for the last month of the immediately preceding quarter, if it was furnished on **monthly basis**.
3. It is to note that, for the months of Jan and Feb, 2021, in Q4 of 2020-21, the auto-populated challan generated under 35% Challan would contain 100% of the tax liability discharged from Electronic Cash Ledger for the month of December, 2020 (and not 35%). [Reason: Till December 2020, all taxpayers were filing GSTR-3B return on a monthly basis.]
4. From April, 2021 onwards, the pattern as suggested at Para 2 (a) and (b) would follow.

5. It is noteworthy, that the taxpayers are not required to deposit any amount for the first 02 months of a quarter, if:

- (a) Balance in Electronic Cash Ledger/Electronic Credit Ledger is sufficient for tax due for the first/second month of the quarter; or
- (b) There is NIL tax liability

Requirement of filing FORM GST ITC-04 under rule 45(3) of the CGST Rules, 2017

- Rule 45(3) of CGST Rules 2017 (Amended vide Notn. No. 35/2021-Central Tax dated 24th September 2021)
- Taxpayers whose annual aggregate turnover in preceding financial year is above ₹5 crores shall furnish ITC-04 once in six months-commencing on the 1st April and the 1st October
- Taxpayers whose annual aggregate turnover in preceding financial year is up to ₹5 crores shall furnish ITC-04 once in a financial year.

Restriction on filing GSTR-1 for not furnishing GSTR-3B

- Rule 59(6) of the CGST Rules amended with effect from 01.01.2022 vide Notn No. 35/2021-Central Tax dated 24th September 2021
- A registered person shall not be allowed to furnish **FORM GSTR-1**, if he has not furnished the return in **FORM GSTR- 3B** for the preceding month

59. Standard Operating Procedure to be followed in case of non-filers of returns

Circular No. 129/48/2019 - GST dated 24.12.2019 has clarified that “Doubts have been raised across the field formations in respect of the appropriate procedure to be followed in case of non-furnishing of return under section 39 or section 44 or section 45 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the “CGST Act”). It has further been brought to the notice that divergent practices are being followed in case of non-furnishing of the said returns.

2. The matter has been examined. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of the law across field formations, the Board, in exercise of its powers conferred by section 168 (1) of the CGST Act, hereby issues the following clarifications and guidelines.

3. Section 46 of the CGST Act read with rule 68 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the “CGST Rules”) requires issuance of a notice in FORM GSTR-3A to a registered person who fails to furnish return under section 39 or section 44 or section 45 (hereinafter referred to as the “defaulter”) requiring him to furnish such return within fifteen days. Further section 62 provides for assessment of non-filers of return of registered persons who fails to furnish return under section 39 or section 45 even after service of notice under section 46. FORM GSTR-3A provides as under:

“Notice to return defaulter u/s 46 for not filing return”

Tax Period -

Type of Return –

Being a registered taxpayer, you are required to furnish return for the supplies made or received and to discharge resultant tax liability for the aforesaid tax period by due date. It has been noticed that you have not filed the said return till date.

1. You are, therefore, requested to furnish the said return within 15 days failing which the tax liability may be assessed u/s 62 of the Act, based on the relevant material available with this office. Please note that in addition to tax so assessed, you will also be liable to pay interest and penalty as per provisions of the Act.

2. Please note that no further communication will be issued for assessing the liability.

3. The notice shall be deemed to have been withdrawn in case the return referred above, is filed by you before issue of the assessment order.”

As such, no separate notice is required to be issued for best judgment assessment under section 62 and in case of failure to file return within 15 days of issuance of FORM GSTR-3A, the best judgment assessment in FORM ASMT-13 can be issued without any further communication.

4. Following guidelines are hereby prescribed to ensure uniformity in the implementation of the provisions of law across the field formations:

- (i) Preferably, a system generated message would be sent to all the registered persons 3 days before the due date to nudge them about filing of the return for the tax period by the due date.
- (ii) Once the due date for furnishing the return under section 39 is over, a system generated mail/message would be sent to all the defaulters immediately after the due date to the effect that the said registered person has not furnished his return for the said tax period; the said mail/message is to be sent to the authorized signatory as well as the proprietor/partner/director/karta, etc.
- (iii) Five days after the due date of furnishing the return, a notice in FORM GSTR-3A (under section 46 of the CGST Act read with rule 68 of the CGST Rules) shall be issued electronically to such registered person who fails to furnish return under section 39, requiring him to furnish such return within fifteen days;
- (iv) In case the said return is still not filed by the defaulter within 15 days of the said notice, the proper officer may proceed to assess the tax liability of the said person under section 62 of the CGST Act, to the best of his judgement taking into account all the relevant material which is available or which he has gathered and would issue order under rule 100 of the CGST Rules in FORM GST ASMT-13. The proper officer would then be required to upload the summary thereof in FORM GST DRC-07;

- (v) For the purpose of assessment of tax liability under section 62 of the CGST Act, the proper officer may take into account the details of outward supplies available in the statement furnished under section 37 (FORM GSTR-1), details of supplies auto populated in FORM GSTR-2A, information available from e-way bills, or any other information available from any other source, including from inspection under section 71;
- (vi) In case the defaulter furnishes a valid return within thirty days of the service of assessment order in FORM GST ASMT-13, the said assessment order shall be deemed to have been withdrawn in terms of provision of sub-section (2) of section 62 of the CGST Act. However, if the said return remains unfurnished within the statutory period of 30 days from issuance of order in FORM ASMT-13, then proper officer may initiate proceedings under section 78 and recovery under section 79 of the CGST Act;

5. Above general guidelines may be followed by the proper officer in case of non-furnishing of return. In deserving cases, based on the facts of the case, the Commissioner may resort to provisional attachment to protect revenue under section 83 of the CGST Act before issuance of **FORM GST ASMT-13**.

6. Further, the proper officer would initiate action under sub-section (2) of section 29 of the CGST Act for cancellation of registration in cases where the return has not been furnished for the period specified in section 29.”

* * *

C.B.I & C Circular No. 124/43/2019-GST, dated 18-11-2019

Clarification regarding optional filing of annual return under Notification No. 47/2019- Central Tax dated 9th October, 2019 — regarding

Attention is invited to Notification No. 47/2019-Central Tax dated 9th October, 2019 (hereinafter referred to as “the said notification”) issued under section 148 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “the said Act”) providing for special procedure for those registered persons whose aggregate turnover in a financial year does not exceed two crore rupees and who have not furnished the annual return under sub-section (1) of section 44 of the said Act read with sub-rule (1) of rule 80 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as “the CGST Rules”).

2. Vide the said notification it is provided that the annual return shall be deemed to be furnished on the due date if it has not been furnished before the due date for the financial year 2017-18 and 2018-19, in respect of those registered persons. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of the law across field formations, the Board, in exercise of its powers conferred by section 168(1) of the said Act, hereby clarifies the issues raised as below:—

- (a) As per proviso to sub-rule (1) of rule 80 of the CGST Rules, a person paying tax under section 10 is required to furnish the annual return in

FORM GSTR-9A. Since the said notification has made it optional to furnish the annual return for FY 2017-18 and 2018-19 for those registered persons whose aggregate turnover in a financial year does not exceed two crore rupees, it is clarified that the tax payers under composition scheme, may, at their own option file FORM GSTR-9A for the said financial years before the due date. After the due date of furnishing the annual return for the year 2017-18 and 2018-19, the common portal shall not permit furnishing of FORM GSTR-9A for the said period.

- (b) As per sub-rule (1) of rule 80 of the CGST Rules, every registered person other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person, shall furnish an annual return as specified under sub-section (1) of section 44 electronically in FORM GSTR-9. Further, the said notification has made it optional to furnish the annual return for FY 2017-18 and 2018-19 for those registered persons whose aggregate turnover in a financial year does not exceed two crore rupees. Accordingly, it is clarified that the tax payers, may, at their own option file FORM GSTR-9 for the said financial years before the due date. After the due date of furnishing the annual return for the year 2017-18 and 2018-19, the common portal shall not permit furnishing of FORM GSTR-9 for the said period.

3. Section 73 of the said Act provides for voluntary payment of tax dues by the taxpayers at any point in time. Therefore, irrespective of the time and quantum of tax which has not been paid or short paid, the taxpayer has the liberty to self-ascertain such tax amount and pay it through FORM GST DRC-03. Accordingly, it is clarified that if any registered tax payer, during course of reconciliation of his accounts, notices any short payment of tax or ineligible availment of input tax credit, he may pay the same through FORM GST DRC-03.

GSTR-9 (GST Annual Return) is a type of GST return to be filed by “Regular taxpayers”. It is required to be filed “Annually”.

GSTR-9C is an Annual Audit form for all the taxpayers having the turnover “above ₹2 crores” in a particular financial year. Along with the GSTR-9C i.e. audit form; the taxpayer will also have to fill up the Reconciliation statement along with the certification of an audit.

| ANNUAL TURNOVER LIMIT | | |
|------------------------------|--|--|
| GST FORM (RETURN) | GSTR-9 (ANNUAL RETURN) | GSTR-9C (GST AUDIT) |
| FY 2017-18 | Optional Upto ₹2 Crores Mandatory above ₹2 Crores | Optional Upto ₹2 Crores Mandatory above ₹2 Crores |
| FY 2018-19 | Optional Upto ₹2 Crores Mandatory above ₹2 Crores | Optional upto ₹5 Crores Mandatory above ₹5 Crores |

| ANNUAL TURNOVER LIMIT | | |
|---|---|--|
| GST FORM (RETURN) | GSTR-9 (ANNUAL RETURN) | GSTR-9C (GST AUDIT) |
| FY 2019-20 | Optional Upto ₹2 Crores Mandatory above ₹ 2 Crores | Optional upto ₹5 Crores Mandatory above ₹5 Crores |
| FY 2020-21 and Subsequent FY | Optional Upto ₹2 Crores Mandatory above ₹2 Crores | Optional upto ₹5 Crores Mandatory above ₹5 but Only Self-Certification by the taxpayer is to be done. (No requirement of Certification from CA/CMA) |

60. Exemption from Annual Return

Exemption has been provided to the registered person whose aggregate turnover in the financial year 2021-22 is up to ₹2 crore rupees, from filing Annual Return -GSTR-9 for the said financial year.

Notification No.10/2022 CT., dated 05.07.2022

* * *

Rationalization of late fee leviable on account of delay in furnishing Return in FORM GSTR-3B and FORM GSTR-1 for prospective tax period, June2021 onwards. (For COVID-19)

To reduce burden of late fee on taxpayers, the late fee has been capped, as follows:

| Category of Taxpayers | Maximum amount Late fee |
|---|--|
| Taxpayers having nil tax liability/nil outward supplies | ₹500/- (₹250/-each for CGST & SGST per Return) |
| For taxpayers having aggregate turnover in preceding FY upto ₹1.5 Crore | ₹2000/- (₹1000/- each for CGST & SGST) per Return |
| For taxpayers having aggregate turnover in preceding FY upto ₹1.5 Crore to ₹5 Crore | ₹5000/- (₹2500/- each for CGST & SGST) per Return |
| For taxpayers having aggregate turnover in preceding FY above ₹5 Crore | ₹10000/- (₹5000/- each for CGST & SGST) per Return |

Notification No. 19/2021-Central Tax, dated 01.06.2021 and Notification No. 20/2021-Central Tax, dated 01.06.2021

* * *

C.B.I.C-Instruction No. 02/2022-GST dt.22.03.2022

**Standard Operating Procedure (SOP)
for Scrutiny of returns for FY 2017-18 and 2018-19**

(1) Section 61 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “the CGST Act”) read with rule 99 of Central Goods and Services Tax Rules, 2017 (hereinafter referred to as “the CGST Rules”) provides for scrutiny of returns and related particulars furnished by the registered person. Till the time a Scrutiny Module for online scrutiny of returns is made available on the CBIC-GST application, as an interim measure, the following Standard Operating Procedure (SOP) is being issued by the Board in order to ensure uniformity in selection/identification of returns for scrutiny, methodology of scrutiny of such returns and other related procedures.

2. Relevant statutory provision

2.1 Section 61 of the CGST Act, read with rule 99 of the CGST Rules, provides for scrutiny of returns. The same are reproduced below for reference:

Section 61. Scrutiny of returns:

(1) The proper officer may scrutinize the return and related particulars furnished by the registered person to verify the correctness of the return and inform him of the discrepancies noticed, if any, in such manner as may be prescribed and seek his explanation thereto.

(2) In case the explanation is found acceptable, the registered person shall be informed accordingly and no further action shall be taken in this regard.

(3) In case no satisfactory explanation is furnished within a period of thirty days of being informed by the proper officer or such further period as may be permitted by him or where the registered person, after accepting the discrepancies, fails to take the corrective measure in his return for the month in which the discrepancy is accepted, the proper officer may initiate appropriate action including those under section 65 or section 66 or section 67, or proceed to determine the tax and other dues under section 73 or section 74.”

Rule 99. Scrutiny of returns:

(1) Where any return furnished by a registered person is selected for scrutiny, the proper officer shall scrutinize the same in accordance with the provisions of section 61 with reference to the information available with him, and in case of any discrepancy, he shall issue a notice to the said person in FORM GST ASMT-10, informing him of such discrepancy and seeking his explanation thereto within such time, not exceeding thirty days from the date of service of the notice or such further period as may be permitted by him and also, where possible, quantifying the amount of tax, interest and any other amount payable in relation to such discrepancy.

(2) The registered person may accept the discrepancy mentioned in the notice issued under sub-rule (1), and pay the tax, interest and any other amount arising from such discrepancy and inform the same or furnish an explanation for the discrepancy in FORM GST ASMT-11 to the proper officer.

(3) Where the explanation furnished by the registered person or the information submitted under sub-rule (2) is found to be acceptable, the proper officer shall inform him accordingly in FORM GST ASMT-12.

2.2 The aforementioned provisions suggest that scrutiny of returns, inter-alia, entails the following:

- (a) Selection of returns furnished by a registered person for scrutiny, preferably based on robust risk parameters.
- (b) Scrutiny of the returns and related particulars furnished by the registered person to verify the correctness of the return. Information available with the proper officer in various returns and statements furnished by the registered person and the data/details made available through various sources like DGARM, ADVAIT, GSTN, E-Way Bill Portal, etc. may be relied upon for this purpose.
- (c) Informing the registered person of the discrepancies noticed, if any, along with quantification of the amount of tax, interest and any other amount payable in relation to such discrepancy and seeking his explanation thereto.
- (d) Where the registered person accepts the discrepancy and pays the tax, interest and any other amount arising from such discrepancy or where the explanation furnished by the registered person is found acceptable, conclude the proceedings after informing the registered person.
- (e) Where no satisfactory explanation is furnished by the registered person or where the registered person, after accepting the discrepancy, fails to pay the tax, interest and any other amount arising from such discrepancy, initiate appropriate action including those under section 65 or section 66 or section 67, or determination of tax and other dues under section 73 or section 74 of the CGST Act.

3. Section of returns for scrutiny

3.1 Selection of returns for scrutiny is to be based on specific risk parameters. For this purpose, the Directorate General of Analytics and Risk Management (DGARM) has been assigned the task to select the GSTINs registered with Central tax authorities, whose returns are to be scrutinized, and to communicate the same to the field formations from time to time through the DDM portal (to the nodal officer of the Commissionerate concerned) for further action.

3.2 For convenience of field officers, DGARM would also provide some relevant data (along with likely revenue implication) pertaining to the returns to be scrutinized through the DDM portal. It may be noted that the data provided by the DGARM is generated at a particular point of time which may undergo change at the time of scrutiny of returns by the proper officer due to subsequent compliances carried out by the taxpayer or by the suppliers of the taxpayer. The proper officer shall, therefore, rely upon the latest available data.

4. Proper officer for scrutiny of returns Vide Circular No. 3/3/2017 – GST dated 05.07.2017, “Superintendent of Central Tax” has been assigned the functions as the proper officer in relation to sub-section (1) and sub-section (3) of section 61 of the CGST Act. Accordingly, scrutiny of returns of a taxpayer may be conducted by Superintendent of Central Tax in-charge of the jurisdictional range of the said taxpayer.

5. Scrutiny Schedule

5.1 Once the list of GSTINs, whose returns have been selected for scrutiny, is communicated to the field formations, the proper officer, with the approval of the divisional Assistant/Deputy Commissioner, shall finalize a scrutiny schedule. Such scrutiny schedule will specify month-wise schedule for scrutiny in respect of all the GSTINs selected for scrutiny. While preparing the scrutiny schedule, the scrutiny of the GSTINs, which appear to be riskier based on the likely revenue implication indicated by DGARM, may be prioritized. Such scrutiny schedules in respect of all the ranges within the CGST Zone shall be reported to the Directorate General of Goods and Services Tax (DGGST) by the concerned Zone, in the format enclosed as Annexure A.

5.2 The proper officer shall conduct scrutiny of returns pertaining to minimum of 3 GSTINs per month. Scrutiny of returns of one GSTIN shall mean scrutiny of all returns pertaining to a financial year for which the said GSTIN has been identified for scrutiny.

6. Process of scrutiny by the Proper Officer

6.1 The Proper Officer shall scrutinize the returns and related particulars furnished by the registered person to verify the correctness of the returns. Information available with the proper officer on the system in the form of various returns and statements furnished by the registered person and the data/details made available through various sources like DGARM, ADVAIT, GSTN, E-Way Bill Portal, etc. may be relied upon for this purpose.

6.2 For convenience of proper officers, an indicative list of parameters to be verified is enclosed as Annexure B. It may be noted that the said list is only indicative, and not exhaustive. The proper officer may also consider any other parameter, as he may deem fit, for the purpose of scrutiny.

6.3 It may be noted that at this stage, the proper officer is expected to rely upon the information available with him or with the department. As far as possible, scrutiny of returns should have minimal interface between the proper officer and the registered person and, there should normally not be any need for seeking documents/records from the taxpayers before issuance of FORM GST ASMT-10.

6.4 The proper officer shall issue a notice to the registered person in FORM GST ASMT-10 informing him of the discrepancies noticed and seeking his explanation thereto. While issuing such notice, the Proper Officer may, as far as possible, quantify the amount of tax, interest and any other amount payable in

relation to such discrepancies. It may also be ensured that the discrepancies so communicated may, as far as possible, be specific in nature and not vague or general. There may be cases where the registered person may already have made additional payment of tax, cess, etc., after filing of the returns for the relevant tax period, through FORM GST DRC-03. The payments thus made through FORM GST DRC-03 may also be taken into consideration while communicating discrepancies to the taxpayer in FORM GST ASMT-10.

6.5 For each GSTIN identified for scrutiny for a financial year, the proper officer is required to scrutinize all the returns pertaining to the corresponding Financial Year under consideration and a single compiled notice in FORM GST ASMT-10 may be issued to the taxpayer for that financial year.

6.6 The registered person may accept the discrepancy mentioned in the notice issued in FORM GST ASMT-10, and pay the tax, interest and any other amount arising from such discrepancy through FORM GST DRC-03 and inform the same or may furnish an explanation for the discrepancy in FORM GST ASMT-11 to the proper officer within the time period prescribed under rule 99 of CGST Rules.

6.7 Where the explanation furnished by the registered person or the information submitted in respect of acceptance of discrepancy and payment of dues is found to be acceptable by the Proper Officer, he shall conclude the proceedings by informing the registered person in FORM GST ASMT-12.

6.8 In case no satisfactory explanation is furnished by the registered person in FORM GST ASMT-11 within a period of thirty days of being informed by the proper officer or such further period as may be permitted by him or where the registered person, after accepting the discrepancies, fails to pay the tax, interest and any other amount arising from such discrepancies, the proper officer, may proceed to determine the tax and other dues under section 73 or section 74. Needless to mention, for proceeding under section 73 or section 74, monetary limits as specified in Circular No. 31/05/2018-GST dated 9th February 2018 shall be adhered to. However, if the proper officer is of the opinion that the matter needs to be pursued further through audit or investigation to determine the correct liability of the said registered person, then he may refer the matter to the jurisdictional Principal Commissioner/Commissioner through the divisional Assistant/Deputy Commissioner, for the decision whether the matter needs to be referred to Audit Commissionerate or Anti-evasion Wing of the Commissionerate, as the case may be.

7. Timelines for scrutiny of returns

7.1 Scrutiny of returns is to be conducted in a time bound manner, so that necessary action to safeguard revenue may be taken up expeditiously. In this regard, the following timelines may be observed by all concerned:

| Sr.No. | Process/Event | Timeline/Frequency |
|--------|--|---|
| (i) | Communication of list of GSTINs selected for scrutiny (by DGARM to the nodal officer of the Commissionerate concerned) | From time to time |
| (ii) | Distribution of the list of GSTINs selected for scrutiny by the nodal officer to the proper officers concerned | Within three working days of receipt of the list from DGARM |
| (iii) | Finalization of scrutiny schedule with the approval of the concerned Assistant/Deputy Commissioner | Within seven working days of receipt of the details of the concerned GSTINs from the nodal officer. |
| (iv) | Sharing the scrutiny schedule by the zone with DGGST | Within thirty days of receipt of the details of the concerned GSTINs from DGARM. |
| (v) | Issuance of notice by the proper officer for intimating discrepancies in FORM GST ASMT-10, where required | Within the month, as mentioned in scrutiny schedule for scrutiny of the returns of the said GSTIN. |
| (vi) | Reply by the registered person in FORM GST ASMT-11 | Within a period of thirty days of being informed by the proper officer in FORM GST ASMT-10 or such further period as may be permitted by the proper officer |
| (vii) | Issuance of order in FORM GST ASMT-12 for acceptance of reply furnished by the registered person, where applicable | Within thirty days from receipt of reply from the registered person in FORM GST ASMT-11 |
| (viii) | Initiation of appropriate action for determination of the tax and other dues under section 73 or section 74, in cases where no reply is furnished by the registered person | Within a period of fifteen days after completion of the period of thirty days of issuance of notice in FORM GST ASMT-10 or such further period as permitted by the proper officer |
| (ix) | Initiation of appropriate action for determination of the tax and other dues under section 73 or section 74, in cases where reply is furnished by the registered person, but the same is not found acceptable by the proper office | Within thirty days from receipt of reply from the registered person in FORM GST ASMT-11 |

| Sr.No. | Process/Event | Timeline/Frequency |
|--------|---|--|
| (x) | Reference, if any, to the Commissioner for decision regarding appropriate action under section 65 or section 66 or section 67 | Within thirty days from receipt of reply from the registered person in FORM GST ASMT-11 or within a period of forty-five days of issuance of FORM GST ASMT-10, in case no explanation is furnished by the registered person. |

7.2 It may also be ensured while conducting scrutiny that the requisite action for issuing notices/orders is taken well ahead of the time limits as prescribed in section 73 or section 74 of the CGST Act, as the case may be, in respect of a return identified for scrutiny for a financial year.

8. Reporting and Monitoring A Scrutiny Register shall be maintained by the proper officer in respect of the GSTINs allotted for scrutiny, in the format detailed in Annexure C. The progress of the scrutiny exercise as per the scrutiny schedule shall be monitored by the jurisdictional Principal Commissioner/Commissioner on monthly basis. Further, a Scrutiny Progress Report, in the format detailed in Annexure D, shall be prepared by the proper officer at the end of every month. The monthly Scrutiny Progress Report for each Commissionerate of the CGST Zone shall be compiled for each month and forwarded to the Director General of Goods and Service Tax (DGGST) by the Principal Chief Commissioner/Chief Commissioner of the concerned Zone by 10th day of the succeeding month. The DGGST, in turn, would present the progress report to the Board, through the GST Policy Wing, by the 20th day of the corresponding month.

9. Till the time scrutiny module is made available on the CBIC-GST application/AIO for CBIC officers, the aforesaid interim procedure for scrutiny of returns may be conducted on manual basis. Any communication with the taxpayer for the purpose of scrutiny shall be made with the use of DIN as per the guidelines mentioned in the Circular No. 122/41/2019-GST dated 5th November 2019.

10. This SOP is envisaged to enable the department to leverage technology and risk-based tools to encourage self-compliance and to conduct scrutiny of returns with minimal interaction with the registered persons. All Principal Chief Commissioners (PCCs)/Chief Commissioners (CCs) are requested to closely monitor timely scrutiny of returns of the identified GSTINs within their jurisdictions.

C.B.I&C Instruction No. 02/2023-GST dated 26-05-2023

Standard Operating Procedure for Scrutiny of Returns for FY 2019-20 onwards-reg

Attention is invited to the Instruction No. 02/2022-GST dated 22nd March, 2022, wherein a Standard Operating Procedure (SOP) was provided for scrutiny of returns under section 61 of Central Goods and Services Tax Act, 2017 (hereinafter referred to as “the CGST Act) read with rule 99 of Central Goods and Service Tax Rules, 2017 (hereinafter referred to as “the CGST Rules”) for FY 2017-18 and 2018-19. It was mentioned in the said instruction that the said SOP was issued as an interim measure till the time a Scrutiny Module for online scrutiny of returns is made available on the ACES-GST application.

1.2 In this regard, it is to inform that DG Systems has developed functionality “Scrutiny of Returns”, containing the online workflow for scrutiny of returns in the CBIC ACES-GST application. Advisory No. 22/2023-Returns dated 16.05.2023 has also been issued by DG Systems in this regard, along with a User Manual providing for the detailed workflow of the said functionality. The GSTINs selected for scrutiny for the Financial Year 2019-20 have also been made available on the scrutiny dashboard of the proper officers on ACES-GST application.

1.3 The functionality provides for the detailed workflow for communication of discrepancies noticed, in relation to the details furnished in the returns, by the proper officer in FORM GST ASMT-10 to the registered person, receipt of reply from the registered person in FORM GST ASMT-11, issuance of order in FORM GST ASMT-12 or taking further action for issuance of show cause notice under Section 73 or 74 of CGST Act, 2017 or for referring the matter for Audit or investigation, as the case may be.

2. In view of this, the SOP for scrutiny of returns provided in the Instruction No. 02/2022-GST dated 22nd March 2022 stands modified to the following extent in respect of scrutiny of returns for financial years 2019-20 onwards:

3. Selection of returns for scrutiny and communication of the same to the field formations:

3.1 Selection of returns for scrutiny will be done by the Directorate General of Analytics and Risk Management (DGARM) based on various risk parameters identified by them. DGARM will select the GSTINs registered with the Central Tax authorities, whose returns are to be scrutinized for a financial year, based on identified risk parameters. The details of GSTINs selected for scrutiny for a financial year will be made available by DGARM through DG Systems on the scrutiny dashboard of the concerned proper officer of Central Tax on ACES-GST application.

3.2 The details of the risk parameters, in respect of which risk has been identified for a particular GSTIN, and the amount of tax/discrepancy involved in respect of the concerned risk parameters (i.e. likely revenue implication), will also be shown on the scrutiny dashboard of the proper officer for their convenience. It

is re-emphasized that as the data made available on the dashboard has been generated at a particular point of time for calculation of risk parameters, this data may undergo change at the time of scrutiny of returns, due to subsequent compliances carried out by the taxpayer or by the suppliers of the taxpayer. The proper officer shall, therefore, rely upon the latest available data.

4. Scrutiny Schedule:

4.1 Once the details of GSTINs selected for scrutiny for a financial year are made available on the scrutiny dashboard of the concerned proper officer of Central Tax on ACES-GST application, the proper officer, with the approval of the divisional Assistant/Deputy Commissioner, shall finalize a scrutiny schedule in the format specified in Annexure A of Instruction 02/2022-GST dated 22nd March 2022. Such scrutiny schedule will specify month-wise schedule for scrutiny in respect of all the GSTINs selected for scrutiny. While preparing the scrutiny schedule, the scrutiny of the GSTINs, which appear to be riskier based on the likely higher revenue implication indicated on the dashboard, may be prioritized. The Principal Commissioner/Commissioner of the concerned Commissionerate will monitor and ensure that the schedule identified in Scrutiny Schedule is adhered to by the officers under his jurisdiction.

4.2 The proper officer shall conduct scrutiny of returns pertaining to minimum of 4 GSTINs per month. Scrutiny of returns of one GSTIN shall mean scrutiny of all returns pertaining to a financial year for which the said GSTIN has been selected for scrutiny.

5. Process of scrutiny by the Proper Officer:

5.1 The Proper Officer shall scrutinize the returns and related particulars furnished by the registered persons to verify the correctness of the returns. Information available with the proper officer on the system in the form of various returns and statements furnished by the registered person and the data/details made available through various sources like DGARM, ADVAIT, GSTN, E-Way Bill Portal etc. may be relied upon for this purpose.

5.2 As mentioned in Para 3.2 above, for the convenience of proper officers, details of the risk parameters involving risk/discrepancies in respect of the GSTIN, along with the amount of tax/discrepancy involved in respect of the concerned risk parameters (i.e. likely revenue implication), will be made available in the scrutiny dashboard of the proper officer. Besides, DGARM will also make available to the field formations the details of all the risk parameters taken into consideration by them for the selection of GSTINs for scrutiny of returns for the particular financial year. In addition to these parameters, proper officer may also consider any other relevant parameter, as he may deem fit, for the purpose of scrutiny.

5.3 It may be noted that at this stage, the proper officer is expected to rely upon the information available with him on records. As far as possible, scrutiny of return should have minimal interface between the proper officer and the regis-

tered person and, there should normally not be any need for seeking documents/records from the registered persons before issuance of FORM GST ASMT-10.

5.4 The proper officer shall issue a notice to the registered person in FORM GST ASMT-10 through the scrutiny functionality on ACES-GST application, informing him of the discrepancies noticed and seeking his explanation thereto. There may be cases where the registered person may already have made additional payment of tax, cess, interest, etc. after filing of the returns for the relevant tax period, through FORM DRC-03. The payments thus made through FORM DRC-03 may also be taken into consideration while communicating discrepancies to the taxpayer in FORM GST ASMT-10. The notice in FORM GST ASMT-10, issued by the proper officer through scrutiny functionality on ACES-GST application, shall be communicated by the system to the concerned registered person on the common portal and therefore, there will be no need for sending any manual communication of notice in FORM GST ASMT-10 by the proper officer to the registered person separately. While issuing such notice, the proper officer may, as far as possible, quantify the amount of tax, interest and any other amount payable in relation to such discrepancies. It may also be ensured that the discrepancies so communicated should, as far as possible, be specific in nature and not vague or general. In this regard, the user manual issued by DG Systems may be referred to regarding the detailed procedure for issuance of FORM GST ASMT-10 on scrutiny functionality on ACES-GST application. The proper officer shall mention the parameter-wise details of the discrepancies noticed by him in FORM GST ASMT-10 and shall also upload the worksheets and supporting document(s)/annexures, if any.

5.5 For each GSTIN identified for scrutiny, the proper officer is required to scrutinize all the returns pertaining to the corresponding Financial Year under consideration and a single compiled notice in FORM GST ASMT-10 may be issued to the registered person for that financial year.

5.6 On receipt of such notice in FORM GST ASMT-10 on common portal, the registered person may accept the discrepancy mentioned in the said notice, and pay the tax, interest and any other amount arising from such discrepancy and inform the same or may furnish an explanation for the discrepancy in FORM GST ASMT-11, through the common portal, to the proper officer within the time period prescribed under rule 99 of CGST Rules.

5.7 The reply furnished by the registered person in FORM GST ASMT-11 on the common portal shall be made available to the concerned proper officer in the scrutiny dashboard on ACES-GST application. Where the explanation furnished by the registered person or the information submitted in respect of acceptance of discrepancy and payment of dues is found to be acceptable by the proper officer, he shall conclude the proceedings by informing the registered person in FORM GST ASMT-12 through the scrutiny functionality on ACES-GST application.

5.8 In case no satisfactory explanation is furnished by the registered person in FORM GST ASMT-11 within a period of thirty days of being informed by the proper officer or such further period as may be permitted by him or where the

registered person, after accepting the discrepancies, fails to pay the tax, interest and any other amount arising from such discrepancies, the proper officer, may proceed to determine the tax and other dues under section 73 or section 74 of CGST Act. Needless to mention, for proceedings under section 73 or section 74 of CGST Act, monetary limits as specified in Circular No. 31/05/2018-GST dated 9th February 2018 shall be adhered to. The user manual issued by DG Systems may be referred to for the procedure for initiating proceedings under section 73 or 74 of the CGST Act on the scrutiny functionality on ACES-GST application.

5.9 However, if the proper officer is of the opinion that the matter needs to be pursued further through audit or investigation to determine the correct liability of the said registered person, then he may take the approval of the jurisdictional Principal Commissioner/Commissioner through the divisional Assistant/Deputy Commissioner, through e-file or other suitable mode, for referring the matter to the Audit Commissionate or anti-evasion wing of the Commissionate, as the case may be. The copy of the said approval needs to be uploaded while referring the matter to the concerned formation through the scrutiny functionality, as per the procedure detailed in the user manual issued by DG Systems.

6. Timelines for scrutiny of returns:

6.1 Scrutiny of returns is to be conducted in a time bound manner, so that the cases may be taken to their logical conclusion and that too expeditiously. In this regard, the following timelines may be observed by all concerned:

| S.No | Process/Event | Timeline/Frequency |
|-------|--|--|
| (i) | Communication of GSTINs selected for scrutiny by DGARM on ACES GST Application for a financial year | From time to time. |
| (ii) | Finalization of scrutiny schedule with the approval of the concerned Assistant/Deputy Commissioner | Within seven working days of receipt of the details of the concerned GSTINs on ACES-GST application |
| (iii) | Issuance of notice by the proper officer for intimating discrepancies in FORM GST ASMT-10, where required | Within the month, as mentioned in scrutiny schedule for scrutiny for the said GSTIN |
| (iv) | Reply by the registered person in FORM GST ASMT-11 | Within a period of thirty days of being informed by the proper officer in FORM GST ASMT-10 or such further period as may be permitted by the proper officer. |
| (v) | Issuance of order in FORM GST ASMT-12 for acceptance of reply furnished by the registered person, where applicable | within thirty days from receipt of reply from the registered person in FORM GST ASMT-1 |

| S.No | Process/Event | Timeline/Frequency |
|--------|---|---|
| (vi) | Initiation of appropriate action for determination of the tax and other dues under section 73 or section 74, in cases where no reply is furnished by the registered person | Within a period of fifteen days after completion of the period of thirty days of issuance of notice in FORM GST ASMT-10 or such further period as permitted by the proper officer |
| (vii) | Initiation of appropriate action for determination of the tax and other dues under section 73 or section 74, in cases where reply is furnished by the registered person, but the same is not found acceptable by the proper officer | Within thirty days from receipt of reply from the registered person in FORM GST ASMT-11 |
| (viii) | Reference, if any, to the Audit Commissionerate or the anti-evasion wing of the Commissionerate for action, under section 65 or section 66 or section 67, as the case may be. | Within thirty days from receipt of reply from the registered person in FORM GST ASMT-11 or within a period of forty-five days of issuance of FORM GST ASMT-10, in case no explanation is furnished by the registered person |

6.2 It may also be ensured that the requisite actions must be initiated well ahead of the time limits as specified in section 73 or section 74 of the CGST Act, as the case may be, in respect of a return identified for scrutiny for a financial year.

7. Reporting and Monitoring:

7.1 The details of action taken by the proper officer in respect of GSTINs allocated to him for scrutiny will be available in the form of two MIS reports in the scrutiny dashboard on the ACES-GST application. MIS report ‘Monthly Scrutiny Progress Report’ (in the format specified in Annexure-D of Instruction No.02/2022 dated 22.03.2022) displays summary information of the status of scrutiny of returns for the selected month of a financial year for the selected formation. Besides, the GSTIN-wise details of action taken in respect of scrutiny of returns in respect of allotted GSTINs is made available in the MIS report ‘Scrutiny Register’ (in the format specified in Annexure-C of Instruction No.02/2022 dated 22.03.2022) on the scrutiny dashboard.

7.2 In view of this, the requirement of compiling and sending the Monthly Scrutiny Progress Report by the CGST zones to DGGST is hereby dispensed with for the Financial Year 2019-20 onwards. However, the CGST zones will continue to send Monthly Scrutiny Progress Reports to DGGST in respect of the Financial Years 2017-18 and FY 2018-19 till the completion of scrutiny of returns for these financial years, as per the timelines mentioned in Instruction No. 02/2022-GST dated 22nd March, 2022.

7.3 It is also added that the progress of the scrutiny exercise as per the scrutiny schedule shall be monitored by the jurisdictional Principal Commissioner/Commissioner on regular basis.

8. It is clarified that since the scrutiny functionality has been provided on ACES-GST application only for the Financial Year 2019-20 onwards, the procedure specified in Instruction No. 02/2022 dated 22.03.2022 shall continue to be followed for the scrutiny of returns for the financial years 2017-18 and 2018-19.

9. The online scrutiny functionality on ACES-GST application will further boost the efforts of the department to leverage technology and risk-based tools to encourage self-compliance and to conduct scrutiny of returns with minimal interaction with the registered person. All Principal Chief Commissioners (PCCs)/Chief Commissioners (CCs) of CGST Zone are requested to closely monitor timely scrutiny of returns of the selected GSTINs within their jurisdictions.

61. Case Laws

Manual rectification of FORM GSTR-3B permitted by the Andhra Pradesh High Court:

In the case of *Panduranga Stone Crushers v Union of India* –reported in 2019 (30) G.S.T.L. 385 (A.P), held that “The facts, which are discernible from the pleadings and the submissions and which are relevant for consideration at this stage of passing of an interim order, may be stated, in brief, as follows:

‘For the months of July, 2017 to March, 2018 i.e., for the financial year 2017-18, the petitioner submitted GSTR-3B returns through GST portal as required under law reporting the transactions of outward taxable supplies and inward taxable supplies reporting the ultimate tax liability arising as a difference between output tax liability and input tax liability under all the three respective enactments viz., IGST, CGST and SGST in terms of the annexed statements showing the input tax credit which the petitioner is entitled to every month. However, according to the petitioner, while claiming IGST input, the petitioner has inadvertently and by mistake reported IGST input tax credit in a column relating to import or goods and services instead of placing that particular amount viz., IGST input tax credit in all other ITC column. Therefore, the petitioner, *inter alia*, contending that in the absence of any provision in Section 39 of GST Act, 2017 or the relevant rules, the petitioner is entitled to rectify the mistake that has crept in GSTR-3B returns.’

Accordingly, the petitioner is permitted to rectify GSTR-3B statements for the months of August and December, 2017 and January and February, 2018 manually subject to the outcome of the writ petition. It is made clear that if the petitioner submits a rectified statement for the above purpose, the respondents shall process the same in accordance with the procedure established by law.

Non-filing of returns: Postal notice not valid, procedure under Rule 68 for electronic notice to be followed:

Show cause notice through registered post was issued to the petitioner for default in filing return. The adjudication proceedings were initiated and order was passed without issuing electronic notice as envisaged under Rule 68 of the CGST Rules, 2017. The validity of postal notice was in dispute. Observing that it was a settled principle of law that if an enactment or legislation prescribes a particular procedure to conduct business affairs, then it has to be followed, the Uttarakhand High Court directed the authority to comply with Rule 68 and reconsider the matter of the petitioner. *Jabir Hasan v Assistant Commissioner* 2021 VIL 806 UTR]

Chapter 13

Payment of Taxes

Synopsis

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1. Introduction

The registered person shall discharge his tax liability or dues on supplies of goods and services electronically on Common portal in the GST regime. The manner of payment of tax or dues in erstwhile provisions of Central Excise and Service Tax was made electronically but not on a common portal. The earlier procedure of manually maintenance of Cenvat register for availment and utilization of Cenvat credit as well as PLA for tax deposit/credit or tax payment/debit, any adjustment duty has been dispensed with in the GST regime.

2. Statutory provisions for payment of Tax

Section 49 of the CGST Act, 2017 has prescribed the manner of payment of tax, interest, penalty and other amounts in the following ways:

- (1) Every deposit made by a person by internet banking or by using prescribed mode of payment or cash (OTC) shall be credited to the electronic cash ledger of such person to be maintained in such manner as may be prescribed.
- (2) The input tax credit as self-assessed in the return of a registered person shall be credited to his electronic credit ledger, in accordance with Section 41; to be maintained in such manner as may be prescribed.
- (3) The amount available in the electronic cash ledger may be used for making any payment towards tax, interest, penalty, fees or any other amount payable under the provisions of this Act or the rules made thereunder in such manner and subject to such conditions and within such time as may be prescribed.
- (4) The amount available in the electronic credit ledger may be used for making any payment towards output tax under this Act or under the Integrated Goods and Services Tax Act in such manner and subject to such conditions and within such time as may be prescribed.
- (5) The amount of input tax credit available in the electronic credit ledger of the registered person shall be utilized as per prescribed provisions. Accordingly, credit on account of IGST, CGST, SGST and UTGST shall be utilized and adjusted in the ledger.
- (6) The balance in the electronic cash ledger or electronic credit ledger after payment of tax, interest, penalty, fee or any other amount payable under this Act or the rules made thereunder may be refunded in accordance with the provisions of Section 54.
- (7) All liabilities of a taxable person under this Act shall be recorded and maintained in an electronic liability register in such manner as may be prescribed.
- (8) Every taxable person shall discharge his tax and other dues under this Act or the rules made thereunder in the following order, namely:—
 - (a) self-assessed tax, and other dues related to returns of previous tax periods;
 - (b) self-assessed tax, and other dues related to the return of the current tax period;
 - (c) any other amount payable under this Act or the rules made thereunder including the demand determined under Section 73 or Section 74.
- (9) Every person who has paid the tax on goods or services or both under this Act shall, unless the contrary is proved by him, be deemed to have passed on the full incidence of such tax to the recipient of such goods or services or both.

- (10) A registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under this Act, to the electronic cash ledger for,—
- integrated tax, central tax, State tax, Union territory tax or cess; or
 - integrated tax or central tax of a distinct person as specified in sub-section (4) or, as the case may be, sub-section (5) of section 25, in such form and manner and subject to such conditions and restrictions as may be prescribed and such transfer shall be deemed to be a refund from the electronic cash ledger under this Act:
- Provided that no such transfer under clause (b) shall be allowed if the said registered person has any unpaid liability in his electronic liability register

[Transfer of Balance in cash ledger to Distinct Person (b) vide Notification No. 09/2022-CT., dated 05.07.2022]

- (11) where any amount has been transferred to the electronic cash ledger under this Act, the same shall be deemed to be deposited in the said ledger as provided in sub-section (1).” Notified vide Notification No.1/2020-Central Tax dated 1.1.2020.
- (12) Maximum payment of output taxes allowed from electronic ledger: The Government may specify the maximum proportion of output tax liability which may be discharged through the electronic credit ledger for specified class of registered persons. The balance has to be paid through the electronic cash ledger. Vide Notification No. 18/2022-Central Tax, dated 28.09.2022.

3. Utilisation of input tax credit subject to certain conditions - Section 49A of CGST Act

Notwithstanding anything contained in section 49, the input tax credit on account of central tax, State tax or Union territory tax shall be utilised towards payment of integrated tax, central tax, State tax or Union territory tax, as the case may be, only after the input tax credit available on account of integrated tax has first been utilised fully towards such payment

4. Order of utilisation of input tax credit - Section 49B of CGST Act.

- (1) Notwithstanding anything contained in this Chapter and subject to the provisions of clause (e) and clause (f) of subsection (5) of section 49, the Government may, on the recommendations of the Council, prescribe the order and manner of utilisation of the input tax credit on account of integrated tax, central tax, State tax or Union territory tax, as the case may be, towards payment of any such tax.

5. Interest on delayed payment of tax - Section 50 of the CGST Act

- (1) Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at

such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council:

Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be payable on that portion of the tax which is paid by debiting the electronic cash ledger. Notified vide Notification No. 09/2022-CT, dated 05.07.2022

(2) The interest under sub-section (1) shall be calculated, in such manner as may be prescribed, from the day succeeding the day on which such tax was due to be paid.

(3) A taxable person who makes an undue or excess claim of input tax credit under sub-section (10) of section 42 or undue or excess reduction in output tax liability under sub-section (10) of section 43, shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be, at such rate not exceeding twenty-four per cent., as may be notified by the Government on the recommendations of the Council.

6. Procedures of maintenance of electronic ledger

Rule 85, 86 & 87 of the CGST Rules, 2017 has prescribed that in the GST regime, all taxpayers have to maintain 3 types of electronic ledgers on Common GSTN portal namely, Electronic Liability Ledger, Electronic Credit ledger and Electronic Cash Ledger.

7. Electronic Liability Ledger - Rule 85 of CGST Rules

Rule 85 of CGST Rules, 2017 has specified Electronic Liability Ledger and the details of liability shall be recorded and credited in this ledger as under:—

- (1) The electronic liability register specified under sub-section (7) of Section 49 shall be maintained in **FORM GST PMT-01** on the Common GSTN portal. All liabilities accruing and payable by a taxable person will be recorded in this register and shall be debited to the said register.
- (2) The electronic liability register of the person shall be debited the following amounts:
 - (a) the amount payable towards tax, interest, late fee or any other amount payable as per the return furnished by the said person;
 - (b) the amount of tax, interest, penalty or any other amount payable as determined by a proper officer in pursuance of any proceedings under the Act or as ascertained by the said person;
 - (c) **Omitted**
 - (d) any amount of interest that may accrue from time to time.
- (3) Subject to the provisions of Section 49, section 49A and section 49B payment of every liability by a registered person as per his return shall be made by debiting the electronic credit ledger maintained as per Rule 86

- or the electronic cash ledger maintained as per Rule 87 and the electronic liability register shall be credited accordingly.
- (4) The amount deducted under Section 51, or the amount collected under Section 52, or the amount payable on reverse charge basis, or the amount payable under Section 10, any amount payable towards interest, penalty, fee or any other amount under the Act shall be paid by debiting the electronic cash ledger maintained as per Rule 87 and the electronic liability register shall be credited accordingly.
 - (5) Any amount of demand debited in the electronic liability register shall stand reduced to the extent of relief given by the appellate authority or Appellate Tribunal or Court and the electronic tax liability register shall be credited accordingly.
 - (6) The amount of penalty imposed or liable to be imposed shall stand reduced partly or fully, as the case may be, if the taxable person makes the payment of tax, interest and penalty specified in the show cause notice or demand order and the electronic liability register shall be credited accordingly.
 - (7) A registered person shall, upon noticing any discrepancy in his electronic liability ledger, communicate the same to the officer exercising jurisdiction in the matter, through the common portal in **FORM GST PMT-04**.

8. Electronic Credit Ledger - Rule 86 of CGST Rules

Rule 86 of the CGST Rules, 2017 specified for Electronic Credit ledger all the taxes paid on inputs goods, capital goods, inputs services, tax paid reverse charge and credit received through ISD shall be recorded and credited in the ledger shall be maintained as under:

- (1) The electronic credit ledger shall be maintained in **FORM GST PMT-02** for each registered person eligible for input tax credit under the Act on the common portal and every claim of input tax credit under the Act shall be credited to the said ledger.
 - (2) The electronic credit ledger shall be debited to the extent of discharge of any liability in accordance with the provisions of Section 49 for section 49A or section 49B.
- **Amount of refund to the extent of claim debited to the electronic credit ledger:**
- (3) Where a registered person has claimed refund of any unutilized amount from the electronic credit ledger in accordance with the provisions of Section 54, the amount to the extent of the claim shall be debited in the said ledger.
 - (4) If the refund so filed is rejected, either fully or partly, the amount debited under sub-rule (3), to the extent of rejection, shall be re-credited to the electronic credit ledger by the proper officer by an order made in **FORM GST PMT-03**.

➤ **Admissible refund recredited to the electronic credit ledger:**

- (4A) Where a registered person has claimed refund of any amount paid as tax wrongly paid or paid in excess for which debit has been made from the electronic credit ledger, the said amount, if found admissible, shall be recredited to the electronic credit ledger by the proper officer by an order made in **FORM GST PMT-03**.

Where a registered person deposits the amount of erroneous refund sanctioned to him along with interest and penalty, wherever applicable, through cash in Form GST DRC-03 on his own or on being pointed out, an amount equivalent to the amount of erroneous refund deposited by the registered person shall be re-credited to the electronic credit ledger by the proper officer by an order made in **FORM GST PMT-03A**.

➤ **Deposits of erroneous refund sanctioned and the same recredit to electronic credit ledger:**

- (4B) Where a registered person deposits the amount of erroneous refund sanctioned to him,
- under sub-section (3) of section 54 of the Act, or
 - under sub-rule (3) of rule 96, in contravention of sub-rule (10) of rule 96, along with interest and penalty, wherever applicable, through **FORM GST DRC-03**, by debiting the electronic cash ledger, on his own or on being pointed out, an amount equivalent to the amount of erroneous refund deposited by the registered person shall be re-credited to the electronic credit ledger by the proper officer by an order made in **FORM GST PMT-03A**.
- (5) Save as provided in the provisions of this Chapter, no entry shall be made directly in the electronic credit ledger under any circumstance.
- (6) A registered person shall, upon noticing any discrepancy in his electronic credit ledger, communicate the same to the officer exercising jurisdiction in the matter, through the common Portal in **FORM GST PMT-04**.

Explanation.—For the purposes of this rule, it is hereby clarified that a refund shall be deemed to be rejected, if the appeal is finally rejected or if the claimant gives an undertaking to the proper officer that he shall not file an appeal.

9. Conditions of use of amount available in electronic credit ledger - Rule 86A CGST Rules

(1) The Commissioner or an officer authorised by him in this behalf, not below the rank of an Assistant Commissioner, having reasons to believe that credit of input tax available in the electronic credit ledger has been fraudulently availed or is ineligible in as much as-

- the credit of input tax has been availed on the strength of tax invoices or debit notes or any other document prescribed under rule 36-

- (i) issued by a registered person who has been found non-existent or not to be conducting any business from any place for which registration has been obtained; or
 - (ii) without receipt of goods or services or both; or
 - (b) the credit of input tax has been availed on the strength of tax invoices or debit notes or any other document prescribed under rule 36 in respect of any supply, the tax charged in respect of which has not been paid to the Government; or
 - (c) the registered person availing the credit of input tax has been found non-existent or not to be conducting any business from any place for which registration has been obtained; or
 - (d) the registered person availing any credit of input tax is not in possession of a tax invoice or debit note or any other document prescribed under rule 36, may, for reasons to be recorded in writing, not allow debit of an amount equivalent to such credit in electronic credit ledger for discharge of any liability under section 49 or for claim of any refund of any unutilised amount.
- (2) The Commissioner, or the officer authorised by him under sub-rule (1) may, upon being satisfied that conditions for disallowing debit of electronic credit ledger as above, no longer exist, allow such debit.
- (3) Such restriction shall cease to have effect after the expiry of a period of one year from the date of imposing such restriction.

10. Restrictions on use of amount available in electronic credit ledger - Rule 86B of CGST Rules

Notwithstanding anything contained in these rules, the registered person shall not use the amount available in electronic credit ledger to discharge his liability towards output tax in excess of ninety-nine per cent. of such tax liability, in cases where the value of taxable supply other than exempt supply and zero-rated supply, in a month exceeds fifty lakh rupees:

Provided that the said restriction shall not apply where—

- (a) the said person or the proprietor or karta or the managing director or any of its two partners, whole-time Directors, Members of Managing Committee of Associations or Board of Trustees, as the case may be, have paid more than one lakh rupees as income tax under the Income-tax Act, 1961(43 of 1961) in each of the last two financial years for which the time limit to file return of income under sub section (1) of section 139 of the said Act has expired; or
- (b) the registered person has received a refund amount of more than one lakh rupees in the preceding financial year on account of unutilised input tax credit under clause (i) of first proviso of sub-section (3) of section 54; or
- (c) the registered person has received a refund amount of more than one lakh rupees in the preceding financial year on account of unutilised input tax credit under clause (ii) of first proviso of sub-section (3) of section 54; or

- (d) the registered person has discharged his liability towards output tax through the electronic cash ledger for an amount which is in excess of 1% of the total output tax liability, applied cumulatively, upto the said month in the current financial year; or
- (e) the registered person is -
 - (i) Government Department; or
 - (ii) a Public Sector Undertaking; or
 - (iii) a local authority; or
 - (iv) a statutory body;

Provided further that the Commissioner or an officer authorised by him in this behalf may remove the said restriction after such verifications and such safeguards as he may deem fit.

11. Electronic Cash Ledger - Rule 87 of CGST Rules

Rule 87 of the CGST Rules, 2017 specified for Electronic Cash ledger shall be maintained electronically on Common GSTN Portal as per the following guidelines:

- (1) The electronic cash ledger under sub-section (1) of Section 49 shall be maintained in **FORM GST PMT-05** for each person, liable to pay tax, interest, penalty, late fee or any other amount, on the common portal for crediting the amount deposited and debiting the payment there from towards tax, interest, penalty, fee or any other amount.
- (2) Any person, or a person on his behalf, shall generate a challan in **FORM GST PMT-06** on the common portal and enter the details of the amount to be deposited by him towards tax, interest, penalty, fees or any other amount.
Provided that the challan in **FORM GST PMT-06** generated at the common portal shall be valid for a period of fifteen days.
- (3) The deposit under sub-rule (2) shall be made through any of the following modes, namely:—
 - (i) Internet banking through authorised banks;
 - (ia) Unified Payment Interface (UPI) from any bank;
 - (ib) Immediate Payment Services (IMPS) from any bank;]
 - (ii) Credit card or Debit card through the authorised bank;
 - (iii) National Electronic Fund Transfer or Real Time Gross Settlement from any bank; or
 - (iv) Over the Counter payment through authorised banks for deposits up to ₹10,000/- per challan per tax period, by cash, cheque or demand draft:
Provided that the restriction for deposit up to ₹10,000/- per challan in case of an Over the Counter payment shall not apply to deposit to be made by—

- (a) Government Departments or any other deposit to be made by persons as may be notified by the Commissioner in this behalf;
- (b) Proper officer or any other officer authorised to recover outstanding dues from any person, whether registered or not, including recovery made through attachment or sale of movable or immovable properties;
- (c) Proper officer or any other officer authorised for the amounts collected by way of cash, cheque or demand draft during any investigation or enforcement activity or any *ad hoc* deposit:

Provided that the challan in **FORM GST PMT-06** generated at the common portal shall be valid for a period of 15 days.

Provided further that a person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient referred to in section 14 or a person supplying online money gaming from a place outside India to a person in India as referred to in section 14A of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) may also make the deposit under sub-rule (2) through international money transfer through Society for Worldwide Inter bank Financial Telecommunication payment network, from the date to be notified by the Board:

Explanation.—For the purposes of this sub-rule, it is hereby clarified that for making payment of any amount indicated in the challan, the commission, if any, payable in respect of such payment shall be borne by the person making such payment.

- (4) Any payment required to be made by a person who is not registered under the Act, shall be made on the basis of a temporary identification number generated through the common portal.
- (5) Where the payment is made by way of National Electronic Fund Transfer or Real Time Gross Settlement mode from any bank, the mandate form shall be generated along with the challan on the common portal and the same shall be submitted to the bank from where the payment is to be made:
Provided that the mandate form shall be valid for a period of fifteen days from the date of generation of challan.
- (6) On successful credit of the amount to the concerned government account maintained in the authorised bank, a Challan Identification Number shall be generated by the collecting bank and the same shall be indicated in the challan.
- (7) On receipt of the Challan Identification Number from the collecting bank, the said amount shall be credited to the electronic cash ledger of the person on whose behalf the deposit has been made and the common portal shall make available a receipt to this effect.

- (8) Where the bank account of the person concerned, or the person making the deposit on his behalf, is debited but no Challan Identification Number is generated or generated but not communicated to the common portal, the said person may represent electronically in **FORM GST PMT-07** through the common portal to the bank or electronic gateway through which the deposit was initiated.

“Provided that where the bank fails to communicate details of Challan Identification Number to the Common Portal, the Electronic Cash Ledger may be updated on the basis of e-Sroll of the Reserve Bank of India in cases where the details of the said e-Sroll are in conformity with the details in challan generated in FORM GST PMT-06 on the Common Portal.”

- (9) Any amount deducted under section 51 or collected under section 52 and claimed by the registered taxable person from whom the said amount was deducted or, as the case may be, collected shall be credited to his electronic cash ledger.
- (10) Where a person has claimed refund of any amount from the electronic cash ledger, the said amount shall be debited to the electronic cash ledger.
- (11) If the refund so claimed is rejected, either fully or partly, the amount debited under sub-rule (10), to the extent of rejection, shall be credited to the electronic cash ledger by the proper officer by an order made in **FORM GST PMT-03**.
- (12) A registered person shall, upon noticing any discrepancy in his electronic cash ledger, communicate the same to the officer exercising jurisdiction in the matter, through the common portal in **FORM GST PMT-04**.

Explanation 1.—The refund shall be deemed to be rejected if the appeal is finally rejected.

Explanation 2.—For the purposes of this rule, it is hereby clarified that a refund shall be deemed to be rejected, if the appeal is finally rejected or if the claimant gives an undertaking to the proper officer that he shall not file an appeal.

- (13) A registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under the Act to the electronic cash ledger for integrated tax, central tax, State tax or Union territory tax or cess in **FORM GST PMT-09**.
- (14) **Cash deposits in electronic cash ledger in GST portal, now can be made through UPI and IMPS payment modes.**

A registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under the Act to the electronic cash ledger for central tax or

integrated tax of a distinct person as Specified in sub-section (4) or, as the case may be, sub-Section (5) of section 25, in **FORM GST PMT-09**:

Provided that no such transfer shall be allowed if the said registered person has any unpaid liability in his electronic liability register.

12. Identification number for each transaction - Rule 88 of CGST Rules

Rule 88 of the CGST Rules, 2017 specified Identification number for each transaction shall be generated at the common GSTN Portal and the details of principles as under:

- (1) A unique identification number shall be generated at the common portal for each debit or credit to the electronic cash or credit ledger, as the case may be.
- (2) The unique identification number relating to discharge of any liability shall be indicated in the corresponding entry in the electronic liability register.
- (3) A unique identification number shall be generated at the common portal for each credit in the electronic liability register for reasons other than those covered under sub-rule (2).

13. Order of utilization of input tax credit - Rule 88A CGST Rules

Input tax credit on account of integrated tax shall first be utilised towards payment of integrated tax, and the amount remaining, if any, may be utilised towards the payment of central tax and State tax or Union territory tax, as the case may be, in any order:

Provided that the input tax credit on account of central tax, State tax or Union territory tax shall be utilised towards payment of integrated tax, central tax, State tax or Union territory tax, as the case may be, only after the input tax credit available on account of integrated tax has first been utilised fully.

14. Manner of calculating interest on delayed payment of tax - Rule 88B of CGST Rules

(1) The interest on tax payable in respect of such supplies shall be calculated on the portion of tax which is paid by debiting the electronic cash ledger, for the period of delay in filing the said return beyond the due date, at such rate as may be notified under sub-section (1) of the Section 50.

(2) Interest is payable, as per section 50(1), the interest shall be calculated on the amount of tax which remains unpaid, for the period starting from the date on which such tax was due to be paid till the date such tax, as such rate @24% under section 50(3).

(3) In case, where interest is payable on the amount of input tax credit wrongly availed and utilised in accordance with sub-section (3) of section 50, the interest shall be calculated on the amount of input tax credit wrongly availed and utilised, for the period starting from the date of utilisation of such wrongly availed input tax credit till the date of reversal of such credit or payment of tax in respect of such amount, at such rate as may be notified under said sub-section (3) of section 50.

Explanation.—For the purposes of this sub-rule, — (1) input tax credit wrongly availed shall be construed to have been utilised, when the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, and the extent of such utilisation of input tax credit shall be the amount by which the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed.

- (2) the date of utilisation of such input tax credit shall be taken to be,—
 - (a) the date, on which the return is due to be furnished under section 39 or the actual date of filing of the said return, whichever is earlier, if the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, on account of payment of tax through the said return; or
 - (b) the date of debit in the electronic credit ledger when the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, in all other cases.

15. Intimation difference of GSTR-1 Vs. GSTR-3B - Rule 88C of CGST Rules, 2017

Rule 88C Manner of dealing with difference in liability reported in statement of outward supplies and that reported in return.—(1) Where the tax payable by a registered person, in accordance with the statement of outward supplies furnished by him in FORM GSTR-1 or using the Invoice Furnishing Facility in respect of a tax period, exceeds the amount of tax payable by such person in accordance with the return for that period furnished by him in FORM GSTR-3B, by such amount and such percentage, as may be recommended by the Council, the said registered person shall be intimated of such difference in Part A of FORM GST DRC-01B, electronically on the common portal, and a copy of such intimation shall also be sent to his e-mail address provided at the time of registration or as amended from time to time, highlighting the said difference and directing him to—

- (a) pay the differential tax liability, along with interest under section 50, through FORM GST DRC-03; or
 - (b) explain the aforesaid difference in tax payable on the common portal, within a period of seven days.
- (2) The registered person referred to sub-rule (1) shall, upon receipt of the intimation referred to in that sub-rule, either,—
- (a) pay the amount of the differential tax liability, as specified in Part A of FORM GST DRC-01B, fully or partially, along with interest under section 50, through FORM GST DRC-03 and furnish the details thereof in Part B of FORM GST DRC-01 Electronically on the common portal; or
 - (b) furnish a reply electronically on the common portal, incorporating reasons in respect of that part of the differential tax liability that has remained unpaid, if any, in Part B of FORM GST DRC-01B,

within the period specified in the said sub-rule.

(3) Where any amount specified in the intimation referred to in sub-rule (1) remains unpaid within the period specified in that sub-rule and where no explanation or reason is furnished by the registered person in default or where the explanation or reason furnished by such person is not found to be acceptable by the proper officer, the said amount shall be recoverable in accordance with the provisions of section 79.

15.2 Intimation of difference in ITC available in GSTR-2B and availed GSTR-3B.

In order to align the CGST Rules with recommendations of the 50th GST Council Meeting the CBIC vide **Notification No. 38/2023–Central Tax dated August 04, 2022** issued ‘the Central Goods and Services Tax (Second Amendment) Rules, 2023’ to further amend the CGST Rules.

“88D. Manner of dealing with difference in input tax credit available in auto-generated statement containing the details of input tax credit and that availed in return.—

Where the amount of input tax credit availed by a registered person in the return for a tax period or periods furnished by him in FORM GSTR-3B exceeds the input tax credit available to such person in accordance with the auto-generated statement containing the details of input tax credit in FORM GSTR-2B in respect of the said tax period or periods, as the case may be, by such amount and such percentage, as may be recommended by the Council, the said registered person shall be intimated of such difference in Part A of FORM GST DRC- 01C, electronically on the common portal, and a copy of such intimation shall also be sent to his e-mail address provided at the time of registration or as amended from time to time, highlighting the said difference and directing him to—

- (a) *pay an amount equal to the excess input tax credit availed in the said FORM GSTR-3B, along with interest payable under section 50, through FORM GST DRC-03, or*
- (b) *explain the reasons for the aforesaid difference in input tax credit on the common portal, within a period of seven days.*

(2) *The registered person referred to sub-rule (1) shall, upon receipt of the intimation referred to in the said sub-rule, either,*

- (a) *pay an amount equal to the excess input tax credit, as specified in Part A of FORM GST DRC- 01C, fully or partially, along with interest payable under section 50, through FORM GST DRC-03 and furnish the details thereof in Part B of FORM GST DRC-01C, electronically on the common portal, or*
- (b) *furnish a reply, electronically on the common portal, incorporating reasons in respect of the amount of excess input tax credit that has still remained to be paid, if any, in Part B of FORM GST DRC-01C, within the period specified in the said sub-rule.*

(3) Where any amount specified in the intimation referred to in sub-rule (1) remains to be paid within the period specified in the said sub-rule and where no explanation or reason is furnished by the registered person in default or where the explanation or reason furnished by such person is not found to be acceptable by the proper officer, the said amount shall be liable to be demanded in accordance with the provisions of section 73 or section 74, as the case may be.

vide Notification No. 38/2023-Central Tax, dated August 4, 2023.

16. Key steps for generation of Challan on common portal

The taxpayer has to follow the step by step procedure for generation of Challan on common portal for payment of tax as under:

- (i) Access to GSTN common portal for generation of Challan by using user ID and pass word.
- (ii) After log in to GSTN portal fill the draft challan with correct heading of payment.
- (iii) Select the mode of payment by net banking/Credit Card/Debit Card.
- (iv) Then it will direct the website of nominated bank there by choose bank.
- (v) Make the payment through nominated bank it will display the breakup of the total amount payable.
- (vi) A unique CIN (Challan Identification Number) against the CPIN (Common Portal Identification Number) will be created which is an indication of a successful transaction.
- (vii) If the transaction is not completed because of failure of credential verification, by refreshing the bank system menu and wait a respond against CPIN.
- (viii) Upon receipt of completion of the transaction, GSTN will inform the relevant tax authorities about payment. A copy of the paid challan and a statement confirming receipt of the payment will be available by GSTN portal.
- (ix) On successfully completion of the above procedure the tax paid challan CIN will be credited to the tax payer ledger account.

After the generation of challan at Common GSTN Portal, it cannot be modified and is valid for a period of 15 days.

17. Order of Cross Utilisation of input tax credit is being rationalized

As per decision of 28th meeting of the GST Council, a registered person would be able to utilize credit on account of CGST, SGST/UTGST once the registered person exhausted all the ITC on account of IGST.

As per section 49 of the CGST Act, 2017 and inserted new provisions 49A vide (Amendment) Act, 2018 and the manner of utilization of ITC is summarized in the below table: (w.e.f. 1st February, 2019)

| ITC Credit to be Set off | Manner of Utilisation of ITC |
|--------------------------|--------------------------------------|
| IGST Output | IGST Input > CGST Input > SGST Input |
| CGST Output | IGST Input > CGST Input |
| SGST Output | IGST Input > SGST Input |

CBIC, CIRCULAR**18. Clarification on utilisation of the amounts available in the electronic credit ledger and electronic cash ledger for payment of tax and other liabilities**

- It is clarified that any payment towards output tax, whether self-assessed in the return or payable as a consequence of any proceeding instituted under the provisions of GST Laws, can be made by utilization of the amount available in the electronic credit ledger of a registered person. Section 49(2) of the CGST Act.
- It is further reiterated that as output tax does not include tax payable under RCM thereby the electronic credit ledger cannot be used for making payment of any tax which is payable under RCM.
- Section 49(4), the electronic credit ledger cannot be used for making payment of any interest, penalty, fees or any other amount like erroneous refund.
- Section 49(3) the amount available in the electronic cash ledger may be used for making any payment towards tax, interest, penalty, fees or any other amount payable under the provisions of the GST Laws.

Vide Circular No. 172/04/2022-GST, dated 7-7-2022

19. Interest on delayed payment of tax

(1) If any person fails to pay the tax to the Government within the period prescribed, shall pay voluntarily interest at such rate, not exceeding 18% as may be notified by the Government.

(2) The interest shall be calculated from the day succeeding the day on which such tax due to be paid.

(3) A taxable person, who makes an undue or excess claim of input tax credit or undue or excess reduction in output tax liability, shall pay interest at such rate not exceeding 24% as may be notified by the Government.

| |
|--|
| INTEREST OF 18% ONLY ON ITC WRONGLY AVAILED AND UTILIZED. |
|--|

Where the input tax credit has been wrongly availed and utilised, the registered person shall pay interest on such input tax credit wrongly availed and utilised, at such rate not exceeding 24% as may be notified by the Government, (*vide* Notification No. 13/2017-CT, dated 28.06.2017, Now the interest rate is 18% with retrospective effect *vide* Notification No. 09/2022-Central Tax, dated 05.07.2022).

20. Manner of payment of Taxes

As per 31st GST Council's recommendations single cash ledger for each tax head would be maintained. The modalities for implementation would be finalized in consultation with GSTN and the accounting authorities.

Amendment of Section 50 of the CGST Act to provide that interest should be charged only on the net tax liability of the taxpayer, after taking into account the admissible input tax credit, i.e. interest would be leviable only on the amount payable through the electronic cash ledger. (*Proposed and will be effective only after the necessary amendments in the GST Acts are carried out.*)

The Finance (No. 2) Act, 2019.—Section 50 of the CGST Act, 2017, in sub-section (1), inserted:

“Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such returns is furnished after commencement of any proceeding under section 73 or section 74 in respect of the said period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger.”

Clarified relating to interest on delayed payment of GST

The Central Board of Indirect Taxes & Customs (CBIC) vide its Notification No. 63/2020-C.T, dated 25th August 2020 clarified relating to interest on delayed payment of GST has been issued prospectively due to certain technical limitations. However, it has assured that no recoveries shall be made for the past period as well by the Central and State tax administration in accordance with the decision taken in the 39th Meeting of GST Council. This will ensure full relief to the taxpayers as decided by the GST Council.

As per the recent CBIC tweet, which clarifies that the Notification No. 63/2020-Central Tax dated August 25, 2020, issued in respect of “Interest in GST to be levied on Net Tax liability w.e.f September 1, 2020” is due to certain technical limitations.

Further, it has been assured that no recoveries shall be made for the past period by the Central and State tax administration in accordance with the decision taken in the 39th GST Council Meeting. This will ensure full relief to the taxpayers as decided by the GST Council.

Clarification Recovery of interest on net cash tax liability

Interest - Recovery of interest on net cash tax liability w.e.f. 1-7-2017- Instructions.—In continuation to press release dated 26-8-2020 which clarified that Notification No. 63/2020-C.T., dated 25-8-2020, relating to interest on delayed payment of GST, has been issued prospectively due to certain technical limitations, however, it was assured that no recoveries shall be made for the past period accordance with the decision taken in the 39th Meeting of GST Council, the Department of Revenue has decided to address the issue through administrative arrangements, as under:

- (a) For the period 1-7-2017 to 31-8-2020, field formations have been instructed to recover interest only on the net cash tax liability (i.e., that portion of the tax that has been paid by debiting the electronic cash ledger or is payable through cash ledger); and
- (b) Wherever SCNs have been issued on gross tax payable, the same may be kept in Call Book till the retrospective amendment in Section 50 of the CGST Act is carried out.

-M.F. (D.R.) Instruction F. No. CBEC-20/01/08/2019-GST, dated 18-9-2020.

21. Payment of Interest on Net Cash Liability – Section 50 of CGST Act:

Section 50 of the CGST Act is being amended, retrospectively, to substitute the proviso to sub-section (1) so as to charge interest on net cash liability with effect from the 1st July, 2017.

It is to mention that the Finance (No. 2) Act, 2019 inserted proviso to Section 50 stating that interest on delayed payment of tax is leviable only on that portion of output tax liability which is discharged by way of cash. The said proviso has been notified vide Notification No. 63/2020-CT., dated 20.08.2020 with effect from 1-09-2021. This is in line with recommendation of 39th GST Council meeting. With this amendment the issue of payment of tax on gross tax liability will now finally settle. Now, Section 50(1) of the CGST Act has been amended retrospectively from 1st July, 2017 so as to charge interest on delayed payment of GST on net cash liability.

22. Case Law

SECTION 50 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - PAYMENT OF TAX - INTEREST ON DELAYED PAYMENT

Interest was chargeable only on tax amount paid by debiting electronic cash ledger and not on amount paid by debiting electronic credit ledger in respect of returns filed after due date - *Utkal Automobiles (P.) Ltd. v Union of India [2022] 142 taxmann.com 116 (Orissa)*

* * *

SECTION 49 (4) OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 – PRE-DEPOSIT AMOUNT 10% ON CASH LEDGER ONLY.

Pre-deposit amount is required to be paid from Electronic Cash Ledger in respect of filing Appeal before the Appellate Authority under section 107 of the CGST Act, 2017- in the case of *Jyoti Construction v Deputy Commissioner of CT & GST, reported in 2021 (54) G.S.T.L. 279(Ori.),*

* * *

SECTION 49(4) OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 – PRE-DEPOSIT AMOUNT 10% ON CREDIT LEDGER OR CASH LEDGER.

Pre-deposit amount is required to be paid from Electronic Cash Ledger or Electronic Credit Ledger in respect of filing Appeal before the Appellate Authority under section 107 of the CGST Act, 2017- in the case of Oasis Realty,

Roma Builders Pvt Ltd. Macrotech Developers Limited v Union of India (Bombay High Court).

GST: Where appeals are to be filed, necessary pre-deposit can be made by debiting Electronic Credit Ledger instead of Electronic Cash Ledger

The Hon'ble High Court of Orissa in the case of *M/s Kiran Motors v Additional Commissioner of CT & GST (Appeals)*, reported in (2023) 9 centax 357(Ori.), held that It is seen that by circular dated 6th July 2022 issued by the GST Policy Wing, Central Board of Indirect Taxes and Customs, Department of Revenue, Ministry of Finance, Government of India, it has been clarified that payment of pre-deposit can be made by using the ECL.

In that view of the matter, the impugned order dated 31-3-2023 is set aside. As the learned counsel for the Petitioner points out that the petitioner has already made the pre-deposit using the ECL, that will now be accepted by the Department. The appeal will now be listed before the 1st appellate authority *i.e.*, the Additional Commissioner of CT & GST on 11th September, 2023. The Petitioner will appear on that date before the appellate authority along with a downloaded copy of this order. The appeal thereafter be disposed of afresh after hearing the petitioner and the Department within a period of three months thereafter.

Chapter 14

Reverse Charge Mechanism (RCM) under GST Law

Synopsis

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1. Introduction

The concept of Reverse Charge Mechanism was introduced in erstwhile Service Tax laws. Generally, tax is payable by the person who provides services but under Reverse Charge Mechanism the liability to pay tax has shifted to recipient of services. The concept of Reverse Charge Mechanism is incorporated under GST, but in GST regime Government is notified not only supply of certain services but also supply of certain goods. The objective of Reverse Charge Mechanism is to widen the scope of levy of tax on unorganized sectors and give exemption to specific class of supplier of goods/services and import of services.

Therefore, under Reverse Charge Mechanism the liability to pay tax is fixed on the recipient of supply of goods or services instead of the supplier or provider in respect of certain categories of goods or services or both under Section 9(3) or Section 9(4) of the CGST Act, 2017 and under sub-section (3) or sub-section (4) of Section 5 of the IGST Act, 2017.

2. Statutory provision of reverse charge mechanism

Section 2(98) of the CGST Act, 2017 has defined the term “Reverse Charge” and the same is reproduced as follows:

“reverse charge” means the liability to pay tax by the recipient of supply of goods or services or both instead of the supplier of such goods or services or both under sub-section (3) or sub-section (4) of Section 9, or under sub-section (3) or sub-section (4) of Section 5 of the Integrated Goods and Services Tax Act.

The plain reading of the cited definition of reverse charge under GST laws, it is clearly stated that reverse charge is not only confined to services rather the scope of reverse charge is extended to goods also. For more detailed provisions of reverse charge as provided under section and sub-section of the CGST Act, 2017 and IGST Act, 2017 is reproduced in the following paras as under:

Section 9(3) of the CGST Act, 2017 provides the provisions of reverse charge and the same is reproduced as follows:

“The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.”

3. Reverse Charge Mechanism in respect of Un-Registered Person (Section 9(4))

Section 9(4) of the CGST Act, 2017 provides the provisions of reverse charge and the same is reproduced as follows:

“The central tax in respect of the supply of taxable goods or services or both by a supplier, who is not registered, to a registered person shall be paid by such person on reverse charge basis as the recipient and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.”

The above provision has been deferred till 30th September, 2019 vide Notification No. 22/2018-Central Tax., dated 6-8-2018 has been rescinded vide Notification No. 1/2019-Central Tax (Rate) dated 29.1.2019 [said section 9(4) has been forced w.e.f.1.2.2019]. **[But the list of Goods or services not yet declared by the Government for implementation of the said provision.]**

- **Govt. has to specify categories of supply of goods or services recipient is liable to pay tax:**

Section 5(3) of the IGST Act, 2017 provides the provisions of reverse charge and the same is reproduced as follows:

“The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the

tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.”

4. Reverse Charge Mechanism in respect of Un-Registered Person (Section 5(4))

Section 5(4) of the IGST Act, 2017 provides the provisions of reverse charge and the same is reproduced as follows:

“The integrated tax in respect of the supply of taxable goods or services or both by a supplier, who is not registered, to a registered person shall be paid by such person on reverse charge basis as the recipient and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.”

The above provision has been deferred till 30th September, 2019 vide Notification No. 23/2018-Integrated Tax., dated 6-8-2018 has been rescinded vide Notification No. 1/2019-Integrated Tax (Rate) dated 29.1.2019 [said section 5(4) has been forced w.e.f.1.2.2019]. **[But the list of Goods or services not yet declared by the Government for implementation of the said provision.]**

➤ Procure from Un-registered person he needs pay GST under RCM

The above cited provisions of CGST Act, 2017 and IGST Act, 2017 says that there are two types of reverse charge scenarios provided in law. First situation is dependent on the nature of supply and/or nature of supplier. This is covered by Section 9(3) of the CGST/SGST/UTGST Act and Section 5(3) of the IGST Act. Second situation is covered by Section 9(4) of the CGST/SGST/UTGST Act and Section 5(4) of the IGST Act where a taxable supply by any unregistered person to a registered person is covered. Accordingly, whenever a registered person procures supplies from an unregistered supplier, he needs to pay GST on reverse charge basis. However, supplies where the aggregate value of such supplies of goods or services or both received by a registered person from any or all the unregistered suppliers is less than five thousand rupees in a day are exempted vide Notification No. 8/2017-C.T. (Rate), dated 28-6-2017.

5. Compulsory GST registration under RCM (Threshold limit of registration is not applicable under RCM)

As per Section 24 of the CGST Act, 2017, a person who is required to pay tax under reverse charge has to compulsorily register under GST irrespective of the threshold limit of registration and threshold limit of ₹20 lakhs/₹40 lakhs (₹10 lakhs for special category States except J&K) but special category States threshold exemption is increased to ₹20 lakhs (as per CGST Amendment Act, 2018) is not applicable to the Reverse Charge Mechanism.

6. Invoicing Rules under RCM

Under reverse charge, the buyer or recipient of goods or services or both has to issue invoice or payment voucher on received of goods or services or both from the supplier as may be the case.

In terms of sub-section (3) of Section 31(3)(f) of the CGST Act, 2017 and read with clause (f) a registered person who is liable to pay tax under sub-section (3) or sub-section (4) of Section 9 of the CGST Act, shall issue an invoice in respect of goods or services or both received by him from the supplier who is not registered on the date of receipt of goods or services or both; and as per clause (g) a registered person who is liable to pay tax under sub-section (3) or sub-section (4) of Section 9 shall issue a payment voucher at the time of making payment to the supplier.

➤ **Consolidated invoice at the end of month for supplies u/s 9 (4) of CGST Act:**

The second proviso to Rule 46 provides that where an invoice is required to be issued under Section 31(3)(f) of the CGST Act, a registered person may issue a consolidated invoice at the end of a month for supplies covered under Section 9(4), the aggregate value of such supplies exceeds rupees five thousand in a day from any or all the supplies.

Considering the inconvenience that may be caused to the stakeholders in the procedure under Section 9(4) of the CGST Act, 2017, the Central Government, therefore, issued a Notification vide No. 8/2017-C.T. (Rate), dated 28-6-2017 has given exemption to intra-State supplies of goods or services or both to the tune of ₹5,000/- in a day from the purview of Section 9(4) which came into effect from 1-7-2017. If the value of the supply is more than ₹5,000/- per day then reverse charge is applicable under Section 9(4).

Exemption threshold limit of ₹5000/- per day under RCM kept abeyance:

Vide Notification No. 38/2017-C.T. (Rate), dated 13-10-2017 the threshold limit of ₹5,000/- for exemption per day kept abeyance until 31-3-2018 and also with subsequent notifications the time-line has been extended up to 30-9-2019 vide Notification No. 22/2018-C.T. (Rate), dated 6-8-2018.

The Central Board of Indirect Taxes & Customs (“CBIC”) has notified that Exemption from tax under ‘Reverse Charge Mechanism (RCM)’ under GST stands rescinded w.e.f. February 1, 2019 in respect of Intra-State Purchases of Goods and Services from Unregistered Dealers (of value upto ₹5,000 per day), in view of bringing into effect, the amendments (regarding RCM on supplies by unregistered persons) in the Amended CGST/IGST/UTGST Acts, 2018. Consequently Notification No. 8/2017- Union Territory Tax (Rate), dated the 28th June, 2017, Notification No. 8/2017-Central Tax (Rate), dated the 28th June, 2017, and Notification No. 32/2017-Integrated Tax (Rate), dated the 13th October, 2017, have been rescinded vide Notifications No. 1/2019-Central Tax (Rate), No. 1/2019-Integrated Tax (Rate) and No. 1/2019-Union Territory Tax (Rate) all dated 29-1-2019. [But the list of Goods or services not yet declared by the Government for implementation of the said provision.]

7. Real Estate Sectors under RCM

On the recommendations of the GST Council in its 33rd Meeting and decision has taken in its 34th meeting. In case of a project developer or

construction of apartment by the developer, 80% of inputs and input services [other than capital goods, TDR/JDA, FSI, long-term lease (premium) shall be purchased from registered persons. On shortfall of purchases from 80% tax shall be paid by the builder @18% on RCM basis. However, Tax on cement purchased from unregistered person shall be paid @28% under RCM, and on capital goods under RCM at applicable rates in terms of Section 9(4) the CGST Act, 2017, in terms of C.B.I & C., Notification No. 7/2019-C.T. (Rate), dated 29th March, 2019.

8. Renting of motor vehicles under RCM

The GST Council in its 37'th meeting has taken decision to place the supply of renting of motor vehicles under RCM and recommended that the said supply when provided by suppliers paying GST @5% to corporate entities may be placed under RCM. RCM was not recommended for suppliers paying GST @ 12% with full ITC, so that they may have may have the option to continue to avail ITC. RCM otherwise would have blocked the ITC chain for them. Accordingly, the Notification No. 29/2019-Central Tax (Rate) dated 31.12.2019 has been issued with effect from 1.10.2019.

Post issuance of the notification, reference have been received stating that when a service is covered by RCM, GST would be paid by the service recipient and not by the supplier. Therefore, the wording of the notification that any person other than a body corporate, paying central tax at the rate of 2.5% is not free from doubt and needs amendment/clarification from the perspective of drafting.

C.B.I&C, vide its Circular No 130/2019-GST dated 31.12.2019, has clarified that When any service is placed under RCM, the supplier shall not charge any tax from the service recipient as this is the settled procedure in law under RCM. There are only two rates applicable on the service of renting of vehicles, 5% with limited ITC and 12% with full ITC. The only interpretation of the notification entry in question which is not absurd would be that –

- (i) where the supplier of the service charges GST @ 12% from the service recipient, the service recipient shall not be liable to pay GST under RCM; and,
- (ii) where the supplier of the service doesn't charge GST @ 12% from the service recipient, the service recipient shall be liable to pay GST under RCM.

Though a supplier providing the service to a body corporate under RCM may still be paying GST @ 5% on the services supplied to other non-body corporate clients, to bring in greater clarity, serial No. 15 of the Notification No. 13/2017-CT (R) dated 28.6.17 has been amended vide notification No. 29/2019-CT (R) dated 31.12.19 to state that RCM shall be applicable on the service by way of renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient only if the supplier fulfils all the following conditions:—

- (a) is other than a body-corporate;
- (b) does not issue an invoice charging GST @12% from the service recipient; and
- (c) supplies the service to a body corporate.

9. Input Tax Credit under RCM

A supplier cannot take Input Tax Credit of GST paid on goods or services used to make supplies on which the recipient is liable to pay tax under reverse charge.

The recipient can avail Input Tax Credit of GST amount that is paid under reverse charge on receipt of goods or services by him.

GST paid on goods or services under reverse charge mechanism is available as ITC to the registered person provided that such goods or services are used or will be used for business or furtherance of business.

The ITC is availed by recipient cannot be used towards payment of output tax on goods or services, the payment of tax under reverse charge only on cash.

10. Liability arises to pay GST under RCM

The time of supply is the point when the supply is liable to GST. One of the factors relevant for determining time of supply is the person who is liable to pay tax. In reverse charge, the recipient is liable to pay GST. Thus, time of supply for supplies under reverse charge is different from the supplies which are under forward charge.

11. Time of supply for Goods under reverse charge:

As per Section 12(3) of the CGST Act, 2017 in case of supplies of goods in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earliest of the following dates, namely:—

- (a) date of receipt of goods; or
- (b) date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or
- (c) the date immediately following 30 days from the date of issue of invoice or any other document, or similar other document thereof by the supplier:

Provided that where it is not possible to determine the time of supply under clause (a) or clause (b) or clause (c), the time of supply shall be the date of entry in the books of account of the recipient of supply.

12. Time of supply for Services under Reverse Charge:

As per Section 13(3) of the CGST Act, 2017 in case of supplies for Services in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earliest of the following dates, namely:—

- (a) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or

- (b) the date immediately following 60 days from the date of issue of invoice or any other documents, similar other document thereof by the supplier:

Provided, where it is not possible to determine time of supply by using above methods under clause (a) and clause (b), the time of supply shall be the date of entry in the books of account of the recipient of supply.

13. Compliances in respect of supplies under Reverse Charge Mechanism

- (1) As per Section 31 of the CGST Act, 2017 read with Rule 46 of the CGST Rules, 2017, every tax invoice has to mention whether the tax in respect of supply in the invoice is payable on reverse charge. Similarly, this also needs to be mentioned in receipt voucher as well as refund voucher, if tax is payable on reverse charge.
- (2) **Maintenance of accounts by registered persons:** Every registered person is required to keep and maintain records of all supplies attracting payment of tax on reverse charge.
- (3) Any amount payable under reverse charge shall be paid by debiting the electronic cash ledger. In other words, reverse charge liability cannot be discharged by using input tax credit. However, after discharging reverse charge liability, credit of the same can be taken by the recipient, if he is otherwise eligible.
- (4) Invoice level information in respect of all supplies attracting reverse charge, rate wise, are to be furnished separately in column 4B of GSTR-1.
- (5) Advance paid for reverse charge supplies is also leviable to GST. The person making advance payment has to pay tax on reverse charge basis.

As per the recommendations of 45th GST Council meeting held on September 17, 2021. The CBIC vide **Notification No. 10/2021-Central Tax (Rate) dated September 30, 2021** has further amended Notification No. 04/2017-Central Tax (Rate) dated June 28, 2017 (“the RCM notification for goods”), In the RCM notification for goods, in the Table, after S. No. 3 and the entries relating thereto the entries shall be inserted namely “essential oils other than those of citrus fruit”. In effect, Supply of the said mentioned mentha oil by unregistered person to registered person shall be taxable under RCM as per Section 9(3) of CGST Act, 2017 and This notification shall be effective from October 01, 2021.

14. Reverse charge on specified goods

The supply of goods under Reverse Charge Mechanism has notified vide Notification No. 4/2017-C.T. (Rate), dated 28-6-2017 as amended from time to time under Section 9(3) of the CGST Act, 2017 and the same is reproduced in the Table below:—

Table-1

| Sr. No. | Tariff Item, Sub-heading, or Chapter | Description of Supply of Goods | Supplier of Goods | Recipient of Supply |
|---------|--|---|--|---|
| (1) | (2) | (3) | (4) | (5) |
| 1. | 0801 | Cashew nuts, not shelled or peeled | Agriculturist | Any registered person |
| 2. | 1404 90 10 | Bidi wrapper leaves (tendu) | Agriculturist | Any registered person |
| 3. | 2401 | Tobacco leaves | Agriculturist | Any registered person |
| 3A | 33012400, 33012510, 33012520, 33012530, 33012540 | Following essential oils other than those of citrus fruit namely: (a) Of peppermint (<i>Mentha piperita</i>); (b) Of other mints: Spearmint oil (ex- <i>mentha spicata</i>), Water mint-oil (ex- <i>mentha aquatic</i>), Horsemint oil (ex- <i>mentha ylvestries</i>), Bergamot oil (ex- <i>mentha citrate</i>). | Any un-registered person | Any registered person |
| 4. | 5004 to 5006 | Silk yarn | Any person who manufactures silk yarn from raw silk or silk worm cocoons for supply of silk yarn | Any registered person |
| 4A | 5201 (Effective from 15-11-2017) | Raw cotton | Agriculturist | Any registered person |
| 5. | - | Supply of lottery | State Government, Union Territory or any local authority | Lottery distributor or selling agent. <i>Explanation.</i> - For the purposes |

| Sr. No. | Tariff Item, Sub-heading, or Chapter | Description of Supply of Goods | Supplier of Goods | Recipient of Supply |
|---------|---|---|---|--|
| (1) | (2) | (3) | (4) | (5) |
| | | | | of this entry, lottery distributor or selling agent has the same meaning as assigned to it in clause (c) of Rule 2 of the Lotteries (Regulation) Rules, 2010, made under the 2 provisions of sub-section (1) of Section 11 of the Lotteries (Regulations) Act, 1998. |
| 6. | Any Chapter (Effective from 13-10-2017) | Used vehicles seized and confiscated goods, old and used goods, waste and scrap | Central Government, State Government, Union territory or a Local authority. | Any registered person |
| 7. | Any Chapter (Effective from 28-5-2018) | Priority Sector Lending Certificate | Any registered person | Any registered person |

Explanation.—(1) In this Table, “tariff item”, “sub-heading”, “heading” and “Chapter” shall mean respectively a tariff item, sub-heading, heading or chapter, as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).

(2) The rules for the interpretation of the First Schedule to the said Customs Tariff Act, 1975, including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this notification.

15. Reverse charge on specified services

The supply of services under reverse charge mechanism has been notified vide Notification No. 13/2017-C.T. (Rate), dated 28-6-2017 as amended from time to time under Section 9(3) of the CGST Act, 2017 and the list of services that will be under reverse charge as notified by the Central Government is given in table below:—

Table-2

| Sr. No. | Category of Supply of Services | Supplier of Service | Recipient of service |
|---------|---|------------------------------|--|
| (1) | (2) | (3) | (4) |
| 1. | <p>GTA Services: Supply of Services by a Goods Transport Agency (GTA) in respect of transportation of goods by road to—</p> <p>(a) any factory registered under or governed by the Factories Act, 1948; or</p> <p>(b) any society registered under the Societies Registration Act, 1860 or under any other law for the time being in force in any part of India; or</p> <p>“Provided further that nothing contained in this entry shall be where,—</p> <p>(i) the supplier has taken registration under the CGST Act, 2017 and exercised the option to pay tax on the services of GTA in relation to transport of goods supplied by him under forward charge., and</p> <p>(ii) the supplier has issued a tax invoice to the recipient charging Central Tax at the applicable rates and has</p> | Goods Transport Agency (GTA) | <p>(a) any factory registered under or governed by the Factories Act, 1948; or</p> <p>(b) any society registered under the Societies Registration Act, 1860 or under any other law for the time being in force in any part of India; or</p> <p>(c) any cooperative society established by or under any law;</p> <p>(d) any person registered under CGST/IGST/ SGST/UTGST Act; or</p> <p>(e) anybody corporate established, by or under any law; or</p> <p>(f) any partnership firm whether registered or not under any law including association of persons; or</p> <p>(g) any casual taxable person located in the taxable territory.</p> |

| Sr. No. | Category of Supply of Services | Supplier of Service | Recipient of service |
|---------|--|---------------------|----------------------|
| (1) | (2) | (3) | (4) |
| | <p>made a declaration as prescribed in Annexure III on such invoice issued by him.”</p> <p>Notification No. 5/2022-C.T (Rate) dated 13.07.2022</p> <p>(c) any cooperative society established by or under any law; or</p> <p>(d) any person registered under CGST/IGST/SGST/or UTGST Act; or</p> <p>(e) anybody corporate established, by or under any law; or</p> <p>(f) any partnership firm whether registered or not under any law including association of persons; or</p> <p>(g) any casual taxable person; located in the taxable territory.</p> <p>“Provided that nothing contained in this entry shall apply to services provided by a goods transport agency, by way of transport of goods in a goods carriage by road, to,—</p> <p>(a) a Department or Establishment of the Central Government or State Government or Union territory; or</p> <p>(b) local authority; or</p> <p>(c) Governmental agencies, which has taken registration under the Central Goods and Services Tax Act, 2017 (12 of 2017) only for the purpose of</p> | | |

| Sr. No. | Category of Supply of Services | Supplier of Service | Recipient of service |
|---------|---|--|---|
| (1) | (2) | (3) | (4) |
| | deducting tax under Section 51 and not for making a taxable supply of goods or services.” | | |
| 2. | <p>Legal Services Services provide by an individual advocate including a senior advocate or firm of advocates by way of legal services, directly or indirectly.</p> <p><i>Explanation.—‘Legal service’ means any service provided in relation to advice, consultancy or assistance in any manner and includes representational services before any Court, Tribunal or Authority.</i></p> | An individual advocate including a senior advocate or firm of advocates. | Any business entity located in the taxable territory. |
| 3 | <p>Arbitral Services Services supplied by an arbitral Tribunal to a business entity.</p> | An arbitral Tribunal | Any business entity located in the taxable territory. |
| 4 | <p>Sponsorship Services Service provided by way of Sponsorship Service to anybody corporate or partnership firm.</p> | Any person | Anybody corporate or partnership firm located in the taxable territory. |
| 5 | <p>Government Services: Services supplied by the Central Government, State Government, Union territory or local authority to a business entity excluding the following:</p> <p>(A) renting of immovable property service, and (B) services specified below:— (i) services by the Department of posts and Indian Railways;</p> | Central Government, State Government, Union territory or Local Authority | Any Business Entity located in the taxable territory. |

| Sr. No. | Category of Supply of Services | Supplier of Service | Recipient of service |
|---------|--|---|---|
| (1) | (2) | (3) | (4) |
| | (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; (iii) transport of goods or passengers. | | |
| 5A | Services by the Government Services supplied by the Central Government, State Government, Union territory or local authority by way of renting of immovable property to a person registered under the Central Goods and Services Tax Act, 2017 (with effect from 25-1-2018). | Central Government, State Government, Union territory or Local Authority. | Any person registered under the Central Goods and Services Tax Act, 2017 |
| 5AA | Services by way of renting of residential dwelling to a registered person. Notification No. 5/2022-C.T. (Rate), dated 13.07.2022 | Any Person | Any person registered under the Central Goods and Services Tax Act, 2017 w.e.f 18.07.2022 |
| 5B | Services supplied by any person by way of transfer of development rights or Floor Space Index (FSI) (including additional FSI) for construction of a project by a promoter. | Any Person | Promoter |
| 5C | Long term lease of land (30 years or more) by any person against consideration in the form of upfront amount (called as premium, salami, cost, price, development charges or by any other name) and/or periodic rent for construction of a project by a promoter. | Any person | Promoter |
| 6 | Services by the Director: Services supplied by a director of a company or a body corporate to the said company or the body corporate. | A director of a company or a body corporate | A company or a body corporate located in the taxable territory |

| Sr. No. | Category of Supply of Services | Supplier of Service | Recipient of service |
|---------|---|---|--|
| (1) | (2) | (3) | (4) |
| 7 | Insurance Agent Service: Services provided by an insurance agent to person carrying on insurance business. | An Insurance Agent | Any person carrying on insurance business, located in the taxable territory. |
| 8 | Recovery Agent Service: Services provided by a recovery agent to a banking company or a financial institution or a non-banking financial company. | A Recovery Agent | Banking company or financial institution or a non-banking financial company, located in the taxable territory. |
| 9 | Copyright Service Supply of Services by an author, music or the like by way of transfer or permitting the use or enjoyment of a copyright of a covered under clause (a) of sub-section (1) of Section 13 of the Copyright Act, 1957 relating to original literary, dramatic, musical or artistic works to a publisher, music company, producer or the like. | Author or music composer, photographer, artist, or the like. | Publisher, Music company, producer or the like, located in the taxable territory. |
| 10 | Reserve Bank Services: Supply of services by the members of Overseeing Committee to (Reserve Bank of India Effective from 13-10-2017) | Members of Overseeing Committee constituted by the Reserve Bank of India. | Reserve Bank of India |
| 11 | Services by DSAs: Services supplied by individual Direct Selling Agents (DSAs) other than a body corporate partnership or limited liability partnership firm to bank or non-banking financial company (NBFCs) Effective from 27-7-2018). | Individual Direct Selling Agents (DSAs) other than a body corporate, partnership or limited liability partnership firm. | A banking company or a non-banking financial company, located in the taxable territory. |

| Sr. No. | Category of Supply of Services | Supplier of Service | Recipient of service |
|---------|---|--|---|
| (1) | (2) | (3) | (4) |
| 12 | Services provided by Business Facilitator (BF) to a banking company. | Business facilitator (BF) | A banking company, located in the taxable territory. |
| 13 | Services provided by an agent of Business Correspondent (BC) to Business Correspondent (BC). | An agent of Business Correspondent (BC). | A business correspondent, located in the taxable territory. |
| 14 | <p>Security Services (services provided by way of supply of security personnel) provided to a registered person :</p> <p>Provided that nothing contained in the entry shall apply to,—</p> <p>(i)(a) a Department or Establishment of the Central Government or State Government or Union territory; or</p> <p>(b) local authority; or</p> <p>(c) Government agencies;</p> <p>which has taken registration under the Central Goods and Services Tax Act, 2017 (12 of 2017) only for the purpose of deducting tax under Section 51 of the said Act and not for making a taxable supply of goods or services; or (ii) a registered person paying tax under Section 10 of the said Act.</p> <p>(Sl. No. 12 to 14 vide Notification No. 29/2018-C.T. (Rate) dated 31-12-2018. w.e.f. 1-1-2019)</p> | <p>Any person other than a body corporate.</p> | <p>A registered person, located in the “taxable territory.”</p> |
| 15 | Services provided by way of renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration | <p>Any person, other than a body corporate who</p> | <p>Any body corporate located in the taxable territory.</p> |

| Sr. No. | Category of Supply of Services | Supplier of Service | Recipient of service |
|---------|---|---|---|
| (1) | (2) | (3) | (4) |
| | charged from the service recipient, provided to a body corporate. Notification No. 29/ 2019-Central Tax (Rate), dated 31.12.2019. | supplies the service to a body corporate and does not issue an invoice charging central tax at the rate of 6% to the service recipient. | |
| 16 | Services of lending securities of Securities under Lending scheme, 1997 (Scheme). Securities and Exchange Board of India (SEBI), as amended. Sl.16 changes have carried vide Notification No.22/2019-C.T (Rate) dated 30.09.2019 with effect from 1'st October, 2019. | Lender i.e. a person who deposits the securities registered in his name or in the name of any other person duly authorised on his behalf with an approved intermediary for the purpose of lending under the scheme of SEBI. | Borrower i.e. a person who borrows the securities under the Scheme through an approved intermediary of SEBI). |

The cited table is showing the list of services as notified by the Government and approved by the GST Council for levy of GST under reverse charge.

*Explanation.—*For purpose of this notification,—

- (a) The person who pays or is liable to pay freight for the transportation of goods by road in goods carriage, located in the taxable territory shall be treated as the person who receives the service for the purpose of this notification.
- (b) “Body Corporate” has the same meaning as assigned to it in clause (11) of Section 2 of the Companies Act, 2013.

- (c) The business entity located in the taxable territory who is litigant, applicant or petitioner, as the case may be, shall be treated as the person who receives the legal services for the purpose of this notification.
- (d) The words and expressions used and not defined in this notification but defined in the Central Goods and Services Tax Act, the Integrated Goods and Services Tax Act, and the Union Territory Goods and Services Tax Act shall have the same meanings as assigned to them in those Acts.
- (e) A “Limited Liability Partnership” formed and registered under the provisions of the Limited Liability Partnership Act, 2008 (6 of 2009) shall also be considered as a partnership firm or a firm.
- (f) “Insurance agent” shall have the same meaning as assigned to it in clause (10) of Section 2 of the Insurance Act, 1938 (4 of 1938).
- (g) “Renting of immovable property” means allowing, permitting or granting access, entry, occupation, use or any such facility, wholly or partly, in an immovable property, with or without the transfer of possession or control of the said immovable property and includes letting, leasing, licensing or other similar arrangements in respect of immovable property.
- (h) Provisions of this notification, insofar as they apply to the Central Government and State Governments, shall also apply to the Parliament and State Legislatures.
- (i) The term “apartment” shall have the same meaning as assigned to it in clause (e) under Section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016).
- (j) The term “promoter” shall have the same meaning as assigned to it in clause (zk) under Section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016).
- (k) The term “project” shall mean a Real Estate Project (REP) or a Residential Real Estate Project (RREP);
- (l) “The term “Real Estate Project (REP)” shall have the same meaning as assigned to it in clause (zn) of Section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016).
- (m) The term “Residential Real Estate Project (RREP)” shall mean a REP in which the carpet area of the commercial apartments is not more than 15 per cent. of the total carpet area of all the apartments in the REP.
- (n) “Floor Space Index (FSI)” shall mean the ratio of a building’s total floor area (gross floor area) to the size of the piece of land upon which it is built.

In addition to cited (Table -2) services, the following two additional services has been notified by the Central Government vide **Notification No.10/2017-Integrated Tax(Rate) Dated 28-06-2017** wherein whole of the tax shall be payable by the recipient on services under Section 5(3) of IGST Act,2017 on Reverse charge basis.

Table-3

| Sl. No. | Category of Supply of Services | Supplier of Service | Recipient of service |
|------------|--|--|--|
| (1) | (2) | (3) | (4) |
| 1 | Any service supplied by any person who is located in a non-taxable territory to any person other than non-taxable online recipient. | Any person located in a non-taxable territory. | Any person located in the taxable territory other than non-taxable online recipient. |
| 10 ** | Services supplied by a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the Customs Station of clearance in India. | A person located in a non-taxable territory. | Importer, as defined in Sec 2(26) of the Customs Act, 1962, located in the taxable territory |

** Remarks: On 19-05-2022, the Hon'ble Supreme Court has pronounced a landmark decision on 'Ocean freight' in Civil Appeal 1390 of 2022 in the case of *Union of India & Anr v M/s Mohit Minerals (P.) Ltd.* [2022] 138 taxmann.com 331(SC), while upholding the judgment of the Gujarat High Court taken on the levy of IGST on the Ocean Freight Component on import under the CIF method on a reverse charge basis.

The Apex Court has observed that the ocean freight from foreign location to customs station in India in CIF import contracts has sufficient territorial nexus for levying IGST under reverse charge. On an interpretation of Sections 5(3) and 5(4) of the IGST Act, read with Section 2(93) of the CGST Act, it is clear that the importer can be classified as the 'recipient' of the services. On this interpretation, the validity of the notifications levying GST under RCM on ocean freight has to be upheld.

16. Reverse charge on the supply from unregistered person

Provisions of Reverse Charge Mechanism under sub-section (4) of Section 9 of the CGST Act, 2017 and sub-section (4) of Section (5) of the IGST Act, 2017 and sub-section (4) of Section 7 of the UTGST Act, 2017 have been amended to empower the Government to notify class of persons who would be liable to pay tax under reverse charge with respect to specified categories of goods or services or both. On the recommendations of the GST Council made in its 28th Meeting held on 21-7-2018, the said provisions have been suspended for the CGST Act, IGST Act and the UTGST Act till 30-9-2019. (Notification Nos. 22/2018-C.T. (Rate), dated 6th August, 2018. 23/2018-IGST (Rate), dated 6th August, 2018 and 22/2018-U.T.T. (Rate), dated 6th August, 2018 respectively).

The cited Notifications No. 22/2018-C.T (Rate), 23/2018(Integrated Tax and 22/2018-U.T.T (Rate) has been rescinded and the said provisions now substituted and has been forced w.e.f. 01.02.2019)

16.1 Notification No. 11/2023, 12/2023 and 13/2023—Integrated Tax (Rate) dated September 26, 2023 The three Notifications No. 11/2023, 12/2023 and 13/2023 - Integrated Tax (Rate) dated September 26, 2023 have made amendments in the Rate, Exemption, and RCM notifications of IGST to terminate the liability cast on the importers on the services supplied by a person located in the non-taxable territory (foreign shipping line) to a person located in the nontaxable territory (foreign supplier) by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India (in lieu of import ocean freight) in case of CIF imports under reverse charge. The amendments were made after more than a year of the Hon'ble Supreme Court's judgement in *Union of India v M/s Mohit Minerals Pvt. Ltd.* wherein the Supreme Court had held the reverse charge levy on importer as import of service violative of Section 8 of the CGST Act, 2017, and decided in favour of the Indian importers.

17. Services provided by Director of a company:

Whether services supplied by director of a company in his personal capacity such as renting of immovable property to the company or body corporate are subject to Reverse Charge mechanism.

2. Reference has been received requesting for clarification whether services supplied by a director of a company or body corporate in personal or private capacity, such as renting of immovable property to the company, are taxable under Reverse Charge Mechanism(RCM) or not.

2.1 Entry No. 6 of notification No. 13/2017 CTR dated 28.06.2017 provides that tax on services supplied by director of a company or a body corporate to the said company or the body corporate shall be paid by the company or the body corporate under Reverse Charge Mechanism.

2.2 It is hereby clarified that services supplied by a director of a company or body corporate to the company or body corporate in his private or personal capacity such as services supplied by way of renting of immovable property to the company or body corporate are not taxable under RCM. Only those services supplied by director of company or body corporate, which are supplied by him as or in the capacity of director of that company or body corporate shall be taxable under RCM in the hands of the company or body corporate under notification No. 13/2017-CTR (Sl. No. 6) dated 28.06.2017. Vide C.B.I&C, Circular No.201/13/2023-GST, dated 1st August 2023.

18. Advance Rulings

AAR Order: In Re: *Bahl Paper Mills Ltd.* (AAR - Uttarakhand)

Issue: Whether under Reverse Charge Mechanism, IGST should be paid by the importer on ocean freight in case of CIF basis contract, when service provider and service recipient both are outside the territory of India.

In this regard it is observed that vide Notification No. 8/2017-I.T. (Rate), dated 28-6-2017 and Notification No. 10/2017-I.T. (Rate), dated 28-6-2017 an importer is required to pay IGST on the ocean freight. Therefore as on date, even if the importer has already paid IGST on CIF value imported goods, he is still required to pay IGST on ocean freight. Authorities also observe that the applicant has also submitted a copy of Special Civil Application No. 726 of 2018 filed by *Mohit Minerals (P) Ltd.* before Hon'ble High Court of Gujarat in this regard. Authority observes that mere filing of an application before the Hon'ble High Court does not render a notification issued by the Central Government ultra vires until or unless the same is turned down by the competent court.

RCM on Ocean Freight Not applicable:

The Hon'ble High Court of Gujarat in the case of *Mohit Minerals v Union of India* reported in 2020 (33) G.S.T.L. 321 (Guj.) held that "no tax is leviable under the Integrated Goods and Services Tax Act, 2007, on the ocean freight for the services provided by a person located in a non-taxable territory by way of transportation of goods by a vessel from a place outside India upto the customs station of clearance in India and the levy and collection of tax of such ocean freight under the impugned Notifications is not permissible in law." It may also be noted that against this order of Hon'ble High Court, the revenue has also filed an SLP before the Apex Court and matter is pending as of now.

* * *

Reverse Charge Mechanism — Services provided by Government

Since Government has provided land on lease to carry out mining activity, it is a supply of service by Government to applicant who is a business entity: Taxability—AAR-Karnataka. In Re: *JSW Steel Ltd*, reported in 2019 (30) G.S.T.L. 115 (A.A.R. - GST)

The applicant is a Public Ltd. Company, registered under the Companies Act, 1956. The Applicant is registered with GST authorities vide GSTIN 29AAACJ4323N1ZC. The applicant is manufacturer of Iron & Steel Products viz., HRPO/HRSPO coils, CRFH/CRCA coils, CRCA sheets, HR plates and sheets, MS slabs, Cobbles, Galvanized Corrugated sheets, Pig Iron, Iron scrap, Steel scrap ends etc., falling under Chapter 72; Iron ore pellets, Pig iron etc., falling under Chapter 26. The applicant seeks to obtain a ruling with regard:

"Whether the Applicant is liable to discharge GST under reverse charge, for the contribution made towards NMET and DMF, in light of Sl. No. 5 of the Notification No. 13/2017-Central Tax (Rate), dated 28-6-2017."

RULING

The Applicant is liable to pay GST under reverse charge, for the payment made towards NMET and DMF, in light of Sl. No. 5 of the Notification No. 13/2017-Central Tax (Rate), dated 28-6-2017.

* * *

Royalty paid to obtain license for mining lease from Government for exploration of natural resources to be taxed at the rate of 18% GST: AAAR-Rajasthan.

In Re: *Aravali Polyart (P.) Ltd.*, reported in 2019 (28) G.S.T.L. 485 (AAAR-GST).

The applicant is engaged in mining of soapstone and dolomite in Rajasthan on the land taken on lease for which it is required to pay royalty to the State Government. For which the applicant has sought an Advance Ruling to determine the applicable GST rate on leasing services provided by the State Government for which the applicant pays royalty.

The Authority for Advance Ruling of Rajasthan (reported in 2019 (23) G.S.T.L. 245), held that the applicant is required to pay GST at 18% in respect of said services under Reverse Charge Mechanism (RCM). The applicant filed an appeal before Appellate Authority for Advance Ruling of Rajasthan.

The Appellate Authority for Advance Ruling observed that the said service is classified under SAC 997337 which covers licensing services for the right to use minerals including their exploration and evaluation. As per the rate notification for services under GST; the rate of GST for leasing and renting of goods, transfer of right to use any goods for any purpose or any transfer of right in goods without transfer of title shall be taxable at same rate of central tax as applicable on supply of like goods involving transfer of title in goods. However, the said services provided to the applicant by the State Government are neither for leasing or renting of goods nor for transfer of right to use goods. Therefore, it should be covered under the residuary entry of the heading 9973 which attracts 18% GST. The Appellate Authority for Advance Ruling upheld the ruling by AAR that the royalty paid by the applicant to obtain license for mining lease from Government for exploration of natural resources is taxable at 18% GST. This ruling has been relied by the AAAR, Odisha reported in 2020 (32) G.S.T.L. 228 (App. A.A.R. - GST - Odisha)

Chapter 15

Tax Deduction and Tax Collection at Source

Synopsis

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1. Introduction

TDS is a familiar term under Income-Tax law, which means Tax deduction at source. TDS is an advance tax is being collected by the principal agent or employer under different sections of the Income-Tax Act. After collection of TDS, the deductor makes payment to the Government in every quarter. Similarly, the concept of TCS was available in the States VAT laws. TCS was levied and collected on sale value of the certain commodities as notified by the State tax authority. GST law makers have incorporated both concept of TDS and TCS under GST law to track the business transaction and generate revenue.

2. Provision of TDS Deduction

As per Section 51 of the CGST Act, tax at source is required to be deducted by the Government departments from the payment made or credited to the supplier in specified situations of supply of goods and services or both. The supplier of such cases takes into account the amount so deducted and makes the balance payment of tax to the government.

3. Threshold limit of TDS

The tax would be deducted @1% of the payment made to the supplier (the deductee) of taxable goods or services or both, where the total value of such supply, under a contract, exceeds two lakh fifty thousand rupees (excluding the amount of Central tax, State tax, Union Territory tax, Integrated tax and cess indicated in the invoice). Thus, individual supplies may be less than ₹2,50,000/-, but if contract value is more than ₹2,50,000/-, TDS will have to be deducted. However, no deduction shall be made if the location of the supplier and the place of supply is in a State or Union territory, which is different from the State, or as the case may be, Union Territory of registration of the recipient.

4. Registration of TDS deductors

A TDS deductor has to compulsorily register without any threshold limit. The deductor has a privilege of obtaining registration under GST without requiring PAN. He can obtain registration using his Tax Deduction and Collection Account Number (TAN) issued under the Income Tax Act, 1961.

5. Government departments to deduct TDS

The CGST Act specified the following Government departments empowered to deduct tax at source Section 51(1) of the Act:

- (a) a department or establishment of the central Government or state Government, or
- (b) local authority; or
- (c) Governmental agencies.
- (d) Such person or category of persons as may be notified by Central or State Governments on the recommendation of the GST Council.

Provided that no deduction shall be made if the location of the supplier and the place of supply is in a State or Union territory which is different from the State or as the case may be, Union territory of registration of the recipient.

Explanation.—For the purpose of deduction of tax specified above, the value of supply shall be taken as the amount excluding the central tax, State tax, Union territory tax, integrated tax and cess indicated in the invoice.

(2) The amount deducted as tax under this section shall be paid to the Government by the deductor within ten days after the end of the month in which such deduction is made, in such manner as may be prescribed.

(3) A certificate of tax deduction at source shall be issued in such form and in such manner as may be prescribed.

(4) [omitted]

(5) The deductee shall claim credit, in his electronic cash ledger, of the tax deducted and reflected in the return of the deductor furnished under sub-section (3) of section 39, in such manner as may be prescribed.

(6) If any deductor fails to pay to the Government the amount deducted as tax under sub-section (1), he shall pay interest in accordance with the provisions of sub-section (1) of section 50, in addition to the amount of tax deducted.

(7) The determination of the amount in default under this section shall be made in the manner specified in section 73 or section 74.

(8) The refund to the deductor or the deductee arising on account of excess or erroneous deduction shall be dealt with in accordance with the provisions of section 54:

Provided that no refund to the deductor shall be granted, if the amount deducted has been credited to the electronic cash ledger of the deductee.

C.B.I. & C. vide Notification No. 50/2018-C.T., dated 13-9-2018 has added the following category of persons as Deductors.

- (a) An Authority or a board or any other body (i) Set up by an Act of Parliament or a State Legislature; or (ii) Established by any Government, with 50% or more participation by way of equity or control, to carry out any function;
- (b) Society established by the Central or State Government or a Local Authority under the Societies Registration Act, 1860 (21 of 1860);
- (c) Public sector undertakings.

From the above list, it is evident that all are Governmental users, being bulk registered persons.

6. Rate of TDS

According to Section 51(1) of the CGST Act,2017 advance tax (TDS) @1% to be deducted by the deductor from the amount due to the supplier of taxable

goods and services or both TDS Rate is (@ 1% CGST + 1% SGST for intra-State or 2% IGST for inter-State), in respect of all transactions exceeds ₹2,50,000/- (excluding the amount of Central Tax, State Tax, Union Territory Tax and Integrated Tax, if any cess indicated in the invoice).

7. Time period of TDS Payment to the Government

As per Section 51(2) of the CGST Act, the amount of tax so deducted is required to be deposited to the credit of appropriate Government (Central Government for CGST and IGST, State Government for SGST) account within 10 days after the end of month in which such deduction was made.

8. Issuance of TDS Certificate

According to Section 51(4) of the CGST Act, a certificate is required to be issued by deductor to deductee within 5 days of deposit of tax by deductor to the respective Government account.

The certificate to be issued by deductor will have information of:

- (a) Total Contract value.
- (b) Total amount deducted.
- (c) Rate of TDS.
- (d) Amount paid to the appropriate government.

The requirement for the deductor to issue TDS certificate under Section 51 of the CGST Act has been removed with new rules to be prescribed for issuance of such certificates, and accordingly, the provision for fees (penalty) for the delay in issuance of such certificate has been omitted. Vide Notification No. 92/2020-C.T, dated 22.02.2020

9. Consequence of Non-Compliance

As per Section 51(4) of the CGST Act, if any deductor fails to issue the certificate within time- limit of 5 days of deposit of tax, he shall be liable to pay late fee of ₹100/- per day for the period starting from the expiry of 5 days period until it is issued to deductee. However, the maximum late fee will be restricted to ₹ 5,000/-.

10. Credit of TDS

As per Section 51(5) of the CGST Act, the deductee will take the credit of TDS deducted from his payments on the basis of TDS certificate. The deductee will claim the credit in his electronic cash ledger, of the tax deducted and reflected in the return of the deductor filed for the transaction period.

11. Delay in deposit of TDS

According to Section 51(6), if any deductor fails to pay the Government the amount so collected as TDS within 10 days of following month, he will be liable to pay interest in addition to the amount tax deducted, interest for the period starting from the due date of deposit till the final date of deposit of TDS amount.

12. Refund of TDS

As per Section 51 (8), in case of any excess or erroneous deduction of TDS, refund can be sought by deductor or deductee under the relevant Section 54 of the CGST Act.

13. Monthly Return under TDS

The deductor is required to file a monthly return (Form GSTR-7, Rule 66 of CGST Rules, 2017) within 10 days from the end of the month TDS. The details of TDS furnished shall be made available to each of the suppliers electronically through the common portal. The TDS so deposited in the Government account, will be reflected in the electronic cash ledger of the supplier (deductee). The deductor would be able to use the same for payment of tax or any other amount.

14. TDS provision effective

The applicability of TDS provision has been postponed for implementation till 30th September, 2018. The Government has notified vide CBIC Notification No. 50/2018-C.T., dated 13-9-2018 that this provision will be operative from 1st October'2018

15. Provision of TCS

Section 52 of the CGST Act, 2017 has specified the provision for collection of tax at source. Tax Collection at Source (TCS) has similarities with TDS, as well as a few distinctive features. TDS refers to the tax which is deducted when the recipient of goods or services makes some payments under a contract etc. while TCS refers to the tax which is collected by the electronic commerce operator when a supplier supplies some goods or services through its portal and the payment for that supply is collected by the electronic commerce operator.

Explanation.—For the purposes of this sub-section, the expression "net value of taxable supplies" shall mean the aggregate value of taxable supplies of goods or services or both, other than services notified under sub-section (5) of section 9, made during any month by all registered persons through the operator reduced by the aggregate value of taxable supplies returned to the suppliers during the said month.

(2) The power to collect the amount specified in sub-section (1) shall be without prejudice to any other mode of recovery from the operator.

(3) The amount collected under sub-section (1) shall be paid to the Government by the operator within ten days after the end of the month in which such collection is made, in such manner as may be prescribed.

(4) Every operator who collects the amount specified in sub-section (1) shall furnish a statement, electronically, containing the details of outward supplies of goods or services or both effected through it, including the supplies of goods or services or both returned through it, and the amount collected under sub-section (1) during a month, in such form and manner as may be prescribed, within ten days after the end of such month:

Provided that the Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing the statement for such class of registered persons as may be specified therein:

Provided further that any extension of time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.

Explanation:—For the purposes of this sub-section, it is hereby declared that the due date for furnishing the said statement for the months of October, November and December, 2018 shall be the 07th February, 2019.

(5) Every operator who collects the amount specified in sub-section (1) shall furnish an annual statement, electronically, containing the details of outward supplies of goods or services or both effected through it, including the supplies of goods or services or both returned through it, and the amount collected under the said sub-section during the financial year, in such form and manner as may be prescribed, before the thirty first day of December following the end of such financial year.

Provided that the Commissioner may, on the recommendations of the Council and for reasons to be recorded in writing, by notification, extend the time limit for furnishing the annual statement for such class of registered persons as may be specified therein:

Provided further that any extension of time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.

(6) If any operator after furnishing a statement under sub-section (4) discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars in the statement to be furnished for the month during which such omission or incorrect particulars are noticed, subject to payment of interest, as specified in sub-section (1) of section 50:

Provided that no such rectification of any omission or incorrect particulars shall be allowed after the due date for furnishing of statement for the month of September following the end of the financial year or the actual date of furnishing of the relevant annual statement, whichever is earlier.

(7) The supplier who has supplied the goods or services or both through the operator shall claim credit, in his electronic cash ledger, of the amount collected and reflected in the statement of the operator furnished under sub-section (4), in such manner as may be prescribed.

(8) The details of supplies furnished by every operator under sub-section (4) shall be matched with the corresponding details of outward supplies furnished by the concerned supplier registered under this Act in such manner and within such time as may be prescribed.

(9) Where the details of outward supplies furnished by the operator under sub-section (4) do not match with the corresponding details furnished by the supplier under section 37 or section 39, the discrepancy shall be communicated to both persons in such manner and within such time as may be prescribed.

(10) The amount in respect of which any discrepancy is communicated under sub-section (9) and which is not rectified by the supplier in his valid return or the operator in his statement for the month in which discrepancy is communicated, shall be added to the output tax liability of the said supplier, where the value of outward supplies furnished by the operator is more than the value of outward supplies furnished by the supplier, in his return for the month succeeding the month in which the discrepancy is communicated in such manner as may be prescribed.

(11) The concerned supplier, in whose output tax liability any amount has been added under sub-section (10), shall pay the tax payable in respect of such supply along with interest, at the rate specified under sub-section (1) of section 50 on the amount so added from the date such tax was due till the date of its payment.

(12) Any authority not below the rank of Deputy Commissioner may serve a notice, either before or during the course of any proceedings under this Act, requiring the operator to furnish such details relating to—

- (a) supplies of goods or services or both effected through such operator during any period; or
- (b) stock of goods held by the suppliers making supplies through such operator in the godowns or warehouses, by whatever name called, managed by such operator and declared as additional places of business by such suppliers,

as may be specified in the notice.

(13) Every operator on whom a notice has been served under sub-section (12) shall furnish the required information within fifteen working days of the date of service of such notice.

(14) Any person who fails to furnish the information required by the notice served under sub-section (12) shall, without prejudice to any action that may be taken under section 122, be liable to a penalty which may extend to twenty-five thousand rupees.

(*Vide Finance Act, 2023 – Clause 145 has inserted as under*)

(15) The operator shall not be allowed to furnish a statement under sub-section (4) after the expiry of a period of three years from the due date of furnishing the said statement:

Provided that the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow an operator or a class of operators to furnish a statement under sub-section(4), even after the expiry of the said period of three years from the due

date of furnishing the said statement.” With effect from 01.10.2023 notified vide Notification No. 48/2023-CT, dated 01.10.2023

Explanation.—For the purposes of this section, the expression "concerned supplier" shall mean the supplier of goods or services or both making supplies through the operator.

Section 2(45) of the CGST Act, defines Electronic Commerce Operator means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce.

Section 2(44) of the CGST Act, defines ‘Electronic Commerce’ means the supply of goods or services or both, including digital products over digital or electronic network.

16. Procedure of collection of TCS

The goods or services belonging to other suppliers are displayed on the portals of the operators and consumers buy such goods/services through these portals. On placing the order for a particular product/service, the actual supplier supplies the selected product/service to the consumer. The price/consideration for the product/service is collected by the operator from the consumer and passed on to the actual supplier after the deduction of commission by the operator. Every electronic commerce operator, not being an agent, shall collect an amount calculated at the rate of 1% of the net value of taxable supplies made through it where the consideration with respect to such supplies is to be collected by the operator and pay to the Government.

Net value has to be ascertained in terms of a formula as provided under sub-section (1) of Section 52 of the Act.

Net Value of Taxable Supplies = [(Aggregate Value of Taxable Supplies of Goods + Services) – (Section 9(5) Services)] – (Aggregate Value of Returned Taxable Supplies + Goods)]

Example: Suppose a certain product is sold at ₹1,000/- through an Operator by a seller. The Operator would deduct tax @ 1% of the net value of ₹₹1,000/- i.e. ₹10/-.

The said amount will be calculated on the net value of the goods/services supplied through the portal of the operator. For the purposes of considering the "net value of taxable supplies" shall mean the aggregate value of taxable supplies of goods or services, other than services notified under sub-section (5) of Section 9 of the CGST Act, made during any month by all registered taxable persons through the operator reduced by the aggregate value of taxable supplies returned to the suppliers during the said month.

Valuation Methodology: For the purpose of determination of value of supply under GST, Tax collected at source (TCS) under the provisions of the Income Tax Act, 1961 would not be includible as it is an interim levy not having the character of tax.

[Corrigendum to C.B.I & C. Circular No.76/50/2018-GST, dated 31st December 2018 issued vide F.No.CBEC-20/16/04/2018-GST dated 31st December 2018.]

17. Provision of TCS-Monthly Statement

As per 31st GST Council's recommendations due date of filing monthly return in GSTR-8 by e-commerce operators for the months of October, 2018 to December, 2018 shall be extended to 31st January, 2019. (*Order No. 4/2018-C.T., dated 31-12-2018*)

18. Statutory Compliances

Registration of TCS Deductors: The e-commerce operator as well as the supplier supplying goods or services through an operator needs to compulsorily register under GST. The threshold limit of ₹20 lakhs (₹10 lakhs for special category states) is not applicable to them. Section 24(x) of the CGST Act, 2017 makes it mandatory for every e-commerce operator to get registered under GST. Similarly, Section 24(ix) of the CGST Act, 2017 makes it mandatory for every person who supplies goods/services through an operator to get registered under GST.

19. Power to Collect Tax

Section 52(2) of the CGST Act, empowered electronic commerce operator to collect the amount shall be without prejudice to any other mode of recovery from the operator.

20. Time Period for TCS tax Payment

Sub-section (3) of Section 52 of the Act provides that Tax Collected at Source shall be paid to the Government within 10 days after the end of the month of collection.

21. Manner of Payment TCS

Any amount Collects as TCS shall be paid by debiting the e-cash ledger and electronic liability register shall be credited accordingly.

22. Monthly Statement

Every operator who collects the amount of tax shall furnish a statement, electronically, containing all the details relating to:

- (a) Outward supplies of goods and services.
- (b) Returned of goods and services.
- (c) Amount collected during a month.

In **Form GSTR-8** within 10 days from the end of the month in terms of sub-rule (1) of Rule 67 of the rules read with sub-section (4) of Section 52 of the CGST Act.

23. Annual Statement

The every electronic commerce operator who collects tax at source shall furnish Annual Statement, electronically, containing all the details relating to:

- (a) Outward supplies of goods and services,
- (b) Returned of goods and services during the financial year,
- (c) Amount collected during a financial year in Form GSTR-9B by 31st December following the end of such financial year in terms of sub-section (5) of Section 52 of the CGST Act, and read with sub-rule (2) of Rule 80 of the CGST Rules.

The Finance (No. 2) Act, 2019 – In section 52, the following provisos shall be inserted, namely:—

- (a) in sub-section (4), the following provisos have been inserted, namely:—
“Provided that the Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing the statement for such class of registered persons as may be specified therein:
Provided further that any extension of time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.”
- (b) in sub-section (5), the following provisos shall be inserted namely:—
“Provided that the Commissioner may, on the recommendations of the Council and for reasons to be recorded in writing, by notification, extend the time limit for furnishing the annual statement for such class of registered persons as may be specified therein:
Provided further that any extension of time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.”

24. Error in Monthly Statement

If any e-commerce operator who collects the amount under Section 52(1) of the Act, after furnishing a statement found any errors or omissions or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities then he shall rectify the same in the statement of month of such discovery, subject to payment of interest under sub-section (6) of Section 52 of the Act.

25. No rectification will be allowed

After the due date of furnishing the statement for the month of September following the end of financial year, or actual date of furnishing the Annual Statement under Section 44, whichever is earlier.

26. Claim of input Credit

Supplier of goods and services can claim the amount of credit in their e-Cash Ledger as collected and reflected by the e-commerce Operator in Statement under sub-section (7) of Section 52 of the Act.

27. Matching of supplies

The Supplies shall match with the corresponding outward supplies of the registered supplier as the details furnished by the e-commerce operator in **Form GSTR-8** shall be made available electronically to each of the suppliers in Part C of **Form GSTR -2A** on the Common Portal after the due date of filing of **Form GSTR-8** in terms of sub-rule (2) of Rule 67 read with sub-section (8) of Section 52 of the Act.

28. Discrepancy of supplies

When the supplies under sub-section (4) do not match with the corresponding supplies of the supplier then, such discrepancy shall be communicated to both the persons in terms of sub-section (9) of Section 52 of the Act.

29. Payment of differential amount

The amount in respect of which any discrepancy in the value of such supplies, the same would be communicated to both of the under sub-section (9) of Section 52 of the Act. If such discrepancy in value is not rectified within the given time, then such amount would be added to the output tax liability of such supplier. The supplier will have to pay the differential amount of output tax along with interest in terms of sub-section (10) and (11) of Section 52 of the Act.

30. Notice to Electronic Commerce Operator

An officer not below the rank of Deputy Commissioner can issue Notice to supplier through electronic commerce operator during any period, stock of goods lying in warehouses/godowns etc., managed by such operator and declared as additional places of business by such supplier.

31. Reply to Notice

The electronic commerce operator is required to furnish such details within 15 working days of serve of such notice under sub-section (13) of Section 52 of the Act.

32. Recovery proceeding

In case an electronic commerce operator fails to furnish the information required by the notice, besides being liable for penal action under Section 122 of the Act, states that any person committing the offences as stated under the section, shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded or the tax not deducted under Section 51 or short deducted or deducted but not paid to the Government or tax not collected under Section 52 or short collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, whichever is higher, it shall also be liable for penalty up to ₹25,000/-

33. TCS provision effective

The applicability of TCS provision has been postponed for implementation till 30th Sept, 2018. The Government has notified vide CBIC Notification No. 50/2018-C.T., dated 13-9-2018 that this provision will be operative from 1st October, 2018.

Chapter 16

Refund under GST

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1. Introduction

Tax Refund specified in Chapter XI of Goods and Services Tax Act, 2017 and the provisions of tax refund has been incorporated under Section 54 to Section 58 of the said CGST Act. The major Sections/provisions of tax refund as follows:

2. Statutory Provision of Refund of Tax and Interest

Section 54 of CGST Act, 2017 has prescribed the manner of refund/other aspects of refunds are summarized:

A registered person under GST can claim refund of tax and interest, paid on such tax or any other amount paid by him, balance in the electronic cash ledger, may make an application before the expiry of 2 years from the relevant date.

Excludes period 1-3-2020 to 28-02-2022 for computation of period of limitation for filing refund application under Section 54 or 55 of the Act. Notification. No. 13/2022 C.T., dated 05.07.2022 (w.e.f.1.3.2022)

16.01 Provided that a registered person, claiming refund of any balance in the electronic credit cash ledger in accordance with the provisions of sub-section (6) of section 49, may claim such refund in “such form and “manner as may be prescribed.

Refund from electronic cash ledger not through GSTR-3B but through prescribed manner vide Notification No. 18/2022-CT, dated 28.09.2022.

3. Refund related to UNO agency

A specialized agency of the United Nations Organization or Consulate or Embassy of foreign countries or any other person or class of persons, as notified

under Section 55, entitled to a refund of tax paid by it on inward supplies of goods or services or both, may make an application for such refund, in such form and manner as may be prescribed, before the expiry of 6 months from the last day of the quarter in which such supply was received.(Now time limit is extended to two years vide Notification No. 18/2022-Central Tax, dated 28.09.2022 w.e.f. 1st October,2022)

4. Refund of unutilized Input Tax Credit - Section 54 (3) of the CGST Act, 2017

A registered person may claim refund of any unutilized input tax credit at the end of any tax period: No refund of unutilized input tax credit shall be allowed in cases other than—

- (i) zero rated supplies made without payment of tax;
- (ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies).

Provided that no refund of unutilized input tax credit shall be allowed in case,—

- (1) where the goods exported out of India are subjected to export duty;
- (2) No refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies

5. Documents requirement for Refund Claim - Section 54(4) CGST Act, 2017

The refund application shall be accompanied by the following documents:

- (a) Prescribed documentary evidence to establish that a refund is due to the applicant.
- (b) such documentary or other evidence (including the documents referred to in section 33) as the applicant may furnish to establish that the amount of tax and interest, if any, paid on such tax or any other amount paid in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such tax and interest had not been passed on to any other person:

Provided that where the amount claimed as refund is less than two lakh rupees, it shall not be necessary for the applicant to furnish any documentary and other evidences but he may file a declaration, based on the documentary or other evidences available with him, certifying that the incidence of such tax and interest had not been passed on to any other person.

6. Refund Credit to Consumer Welfare Fund - Section 54(5) of CGST Act, 2017

On receipt of refund application, the proper officer is satisfied that the whole or part of the amount claimed as refund is not refundable, he may make an order

accordingly and the amount so determined shall be credited to the Consumer welfare Fund referred in section 57.

7. Sanction of Provisional Refund - Section 54(6) of CGST Act, 2017

The proper officer may, in the case of any claim for refund on account of zero-rated supply of goods or services or both made by registered persons, other than such category of registered persons as may be notified by the Government on the recommendations of the Council, refund on a provisional basis, 90% of the total amount so claimed, excluding the amount of input tax credit provisionally accepted, in such manner and subject to such conditions, limitations and safeguards as may be prescribed and thereafter make an order under sub-section (5) for final settlement of the refund claim after due verification of documents furnished by the applicant.

Section 54 (6) of the CGST Act has been amended by removing reference to the provisionally accepted ITC. This amendment will remove the reference to the provisionally accepted ITC to align the same with the scheme of availment of self-assessed ITC as per Section 41(1) of the CGST Act. Section 54 (6) allows a refund on a provisional basis of ninety percent of the total amount so claimed excluding the amount of input tax credit provisionally accepted, in per case of zero-rated supply. Vide Section 146 of the Finance Act, 2023. This amendment is effective from 01.10.2023 notified vide Notification No.48/2023-CT dated 29.09.2023

8. Time limit for sanction of Refund - Section 54(7) of CGST Act, 2017

The proper officer shall issue the order under sub-section (5) within 60 days from the date of receipt of refund application complete in all respects.

9. Refundable amount to be sanctioned - Section 54(8) of CGST Act, 2017

The refundable amount shall, instead of being credited to the Consumer Welfare Fund, be paid to the applicant, if such amount is relatable to —

- (a) Refund of tax paid on zero-rated supplies of goods or services or both or on inputs or input services used in making such export;
- (b) Refund of unutilized input tax credit under sub-section (3);
- (c) Refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued, or where a refund voucher has been issued;
- (d) Refund of tax in pursuance of Section 77;
- (e) the tax and interest, if any, or any other amount paid by the applicant, if he had not passed on the incidence of such tax and interest to any other person; or
- (f) the tax or interest borne by such other class of applicants as the Government may, on the recommendations of the Council, by notification, specify.

The Finance (No. 2) Act, 2019. - inserted sub-section (8A):

“(8A) The Government may distribute the refund of the State tax in such manner as may be prescribed.” Notified vide Notification No.39/2019-Central Tax dated 31st August, 2019.

10. Obligation to sanction Refund - Section 54(9) of CGST Act, 2017

Appellate Tribunal or any court or in any other provisions of this Act or the rules made thereunder or in any other law for the time being in force, no refund shall be made except in accordance with the provisions of sub-section (8).

11. Withhold of Refund - Section 54(10) of CGST Act, 2017

Where any refund is due to a registered person who has defaulted in furnishing any return or who is required to pay any tax, interest or penalty, which has not been stayed by any court, Tribunal or Appellate Authority by the specified date (last date of filing application), the proper officer may —

- (a) withhold payment of refund due until the said person has furnished the return or paid the tax, interest or penalty, as the case may be;
- (b) deduct from the refund due, any tax, interest, penalty, fee or any other amount which the taxable person is liable to pay but which remains unpaid under this Act or under the existing law.

Explanation.—For the purposes of this sub-section, the expression "specified date" shall mean the last date for filing an appeal under this Act.

**Withholding and deduction of amounts extended to all kinds of refunds
vide Notification No. 18/2022-CT, dated 28.09.2022, w.e.f. 01.10.2022**

12. Refund in case of proceeding is pending before the Commissioner - Section 54(11) of CGST Act, 2017

Where an order giving rise to a refund is the subject matter of an appeal or further proceedings or where any other proceedings under this Act is pending and the Commissioner is of the opinion that grant of such refund is likely to adversely affect the revenue in the said appeal or other proceedings on account of malfeasance or fraud committed, he may, after giving the taxable person an opportunity of being heard, withhold the refund till such time as he may determine.

13. Interest on Refund withhold - Section 54(12) of CGST Act, 2017

Where a refund is withheld under sub-section (11), the taxable person shall, notwithstanding anything contained in Section 56, be entitled to interest at such rate not exceeding 6% as may be notified on the recommendations of the Council, if as a result of the appeal or further proceedings he becomes entitled to refund.

14. Refund of Advance Tax Deposited - Section 54(13) of CGST Act, 2017

The advance tax deposited by a casual taxable person or a non-resident taxable person under sub-section (2) of Section 27 shall not be refunded unless

such person has, in respect of the entire period for which the certificate of registration granted to him had remained in force, furnished all the returns required under Section 39.

15. Minimum Amount of Refund - Section 54(14) of CGST Act, 2017

No refund under sub-section (5) or sub-section (6) shall be paid to an applicant, if the amount is less than ₹1000/-

It is further clarified that:

(1) "refund" includes refund of tax paid on zero-rated supplies of goods or services or both or on inputs or input services used in making such zero-rated supplies, or refund of tax on the supply of goods regarded as deemed exports, or refund of unutilized input tax credit as provided under sub-section (3).

16. Relevant date of Refund

Section 54(14) (2) of CGST Act, 2017 defines "relevant date" means —

- (a) in the case of goods exported out of India where a refund of tax paid is available in respect of goods themselves or, as the case may be, the inputs or input services used in such goods,—
 - (i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India; or
 - (ii) if the goods are exported by land, the date on which such goods pass the frontier; or
 - (iii) if the goods are exported by post, the date of despatch of goods by the Post Office concerned to a place outside India;
- (b) in the case of supply of goods regarded as deemed exports where a refund of tax paid is available in respect of the goods, the date on which the return relating to such deemed exports is furnished;
- (ba) in case of zero-rated supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit where a refund of tax paid is available in respect of such supplies themselves, or as the case may be, the inputs or input services used in such supplies, the due date for furnishing of return under section 39 in respect of such supplies;
- (c) in the case of services exported out of India where a refund of tax paid is available in respect of services themselves or, as the case may be, the inputs or input services used in such services, the date of —
 - (i) receipt of payment in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India, where the supply of services had been completed prior to the receipt of such payment; or
 - (ii) issue of invoice, where payment for the services had been received in advance prior to the date of issue of the invoice;

- (d) in case where the tax becomes refundable as a consequence of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any court, the date of communication of such judgment, decree, order or direction;
- (e) in the case of refund of unutilized input tax credit under clause (ii) of the first proviso to sub-section (3), the due date for furnishing of return under section 39 for the period in which such claim for refund arises;
- (f) in the case where tax is paid provisionally under this Act or the rules made thereunder, the date of adjustment of tax after the final assessment thereof;
- (g) in the case of a person, other than the supplier, the date of receipt of goods or services or both by such person; and
- (h) in any other case, the date of payment of tax.

Refunds in case of export of services: Clause 2(c) of the explanation to Section 54 of the CGST Act, which allows receipt of payment in Indian rupees, were permitted, by the RBI in case of export of services since particularly in the case of exports to Nepal and Bhutan, the payment is received in Indian rupees as per RBI regulations. Accordingly, Section 2(6)(iv) of the IGST Act in this regard was amended.

Under clause 2(e) of the explanation to Section 54. Section 54 of the CGST Act, the relevant date in the case of refunds of unutilized ITC arising out of inverted duty structure, shall be the due date for furnishing of return under Section 39 for the period in which such claims for refund arises. For all other cases of unutilized ITC, relevant date shall be the end of any tax period as mentioned in Section 54(3) of the CGST Act.

Unjust Enrichment: Section 54(8) (a) of the CGST Act has been amended to allow unjust enrichment in case of refund claim arising out of suppliers of goods or services made to SEZ unit/Developer of SEZ.

17. List of UNO agencies for refund of tax - Section 55 of CGST Act, 2017

The Government may, on the recommendations of the Council, by notification, specify any specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947 (46 of 1947), Consulate or Embassy of foreign countries and any other person or class of persons as may be specified in this behalf, who shall, subject to such conditions and restrictions as may be prescribed, be entitled to claim a refund of taxes paid on the notified supplies of goods or services or both received by them.

18. Time limits for payment of Refund - Section 56 of CGST Act, 2017

If any tax ordered to be refunded under sub-section (5) of section 54 to any applicant is not refunded within 60 days from the date of receipt of application under sub-section(1) of that section, interest at such rate not exceeding 6%, as may be specified in the notification issued by the Government on the recommen-

dations of the Council shall be payable in respect of such refund from the date immediately after the expiry of 60 days from the date of receipt of application under the said sub-section till the date of refund of such tax, to be computed in such manner and subject to such conditions and restrictions as may be prescribed.” (vide clause 147 of the Finance Act, 2023) By this amendment provides for an enabling provision to prescribed manner of computation and conditions period of delay for calculation of interest on delayed refunds. Now, it proposed that interest on delayed refund is to be computed from the date of receipt of such application.

Notified vide Notification No.48/2023-CT dated 29.09.2023

Provided that where any claim of refund arises from an order passed by an adjudicating authority or Appellate Authority or Appellate Tribunal or court, from the date of receipt of application consequent to such order, interest at such rate not exceeding 9%, as may be notified by the Government on the recommendations of the Council shall be payable. Interest on delayed refunds, in respect of such refund from the date immediately after the expiry of 60 days from the date of receipt of application till the date of refund.

Explanation.—For the purposes of this section, where any order of refund is made by an Appellate Authority, Appellate Tribunal or any court against an order of the proper officer under sub-section (5) of section 54, the order passed by the Appellate Authority, Appellate Tribunal or by the court shall be deemed to be an order passed under the said sub-section (5).

19. Refund Credited to the Fund - Section 57 of CGST Act, 2017 incorporated there shall be credited to the Fund

- (a) the amount referred to in sub-section (5) of Section 54;
- (b) any income from investment of the amount credited to the Fund; and
- (c) such other monies received by it, in such manner as may be prescribed.

20. Utilization of Fund - Section 58 of CGST Act, 2017 prescribed for utilization of Fund

(1) All sums credited to the Fund shall be utilized by the Government for the welfare of the consumers in such manner as may be prescribed.

(2) The Government or the authority specified by it shall maintain proper and separate account and other relevant records in relation to the Consumer Welfare Fund and prepare an annual statement of accounts in such form as may be prescribed in consultation with the Comptroller and Auditor-General of India.

21. Refund Rules and Procedures

Rule 89 to 97 of CGST Rules, 2017 has specified the various procedure of Refund. There are 9 set of refund rules and 11 refund forms i.e. **FORM GST RFD-01 to FORM GST RFD-11** has been prescribed for refund of tax, interest, penalty, fees, or any other amount. The various provisions of Refund Rules is summarized as under:

22. Application for refund of tax, interest, penalty, fees or any other amount - Rule 89(1) of CGST Rules, 2017

The refund application may be filed in **FORM GST RFD-01** electronically through the Common Portal either directly or through a Facilitation Centre notified by the Commissioner:

Provided that in respect of supplies to a Special Economic Zone unit or a Special Economic Zone developer, the application for refund shall be filed by the—

- (a) supplier of goods after such goods have been admitted in full in the Special Economic Zone for authorised operations, as endorsed by the specified officer of the Zone;
- (b) supplier of services along with such evidence regarding receipt of services for authorised operations as endorsed by the specified officer of the Zone:

Provided further that in respect of supplies regarded as deemed exports, the application may be filed by, -

- (a) the recipient of deemed export supplies; or
- (b) the supplier of deemed export supplies in cases where the recipient does not avail of input tax credit on such supplies and furnishes an undertaking to the effect that the supplier may claim the refund.

Provided also that refund of any amount, after adjusting the tax payable by the applicant out of the advance tax deposited by him under section 27 at the time of registration, shall be claimed in the last return required to be furnished by him.

Explanation.—For the purposes of this sub-rule, — “specified officer” means a “specified officer” or an “authorised officer” as defined under rule 2 of the Special Economic Zone Rules, 2006.

(1A) Any person, claiming refund under section 77 of the Act of any tax paid by him, in respect of a transaction considered by him to be an intra-State supply, which is subsequently held to be an inter-State supply, may, before the expiry of a period of two years from the date of payment of the tax on the inter-State supply, file an application electronically in FORM GST RFD-01 through the common portal, either directly or through a Facilitation Centre notified by the Commissioner:

Provided that the said application may, as regard to any payment of tax on inter-State supply before coming into force of this sub-rule, be filed before the expiry of a period of two years from the date on which this sub-rule comes into force.

23. Documents shall be accompanied with Application as Evidence - Rule 89(2) of CGST Rules, 2017

The application of refund shall be accompanied by any of the following documentary evidences in Annexure 1 in FORM GST RFD-01, as applicable, to establish that a refund is due to the applicant, namely:

- (a) the reference number of the order and a copy of the order passed by the proper officer or an appellate authority or Appellate Tribunal or court resulting in such refund or reference number of the payment of the amount specified in sub-section (6) of section 107 and sub-section (8) of section 112 claimed as refund;
 - (b) a statement containing the number and date of shipping bills or bills of export and the number and date of relevant export invoices, in a case where the refund is on account of export of goods other than Electricity;
 - (ba) a statement containing the number and date of the export invoices, details of energy exported, tariff per unit for export of electricity as per agreement, along with the copy of statement of scheduled energy for exported electricity by Generation Plants issued by the Regional Power Committee Secretariat as a part of the Regional Energy Account (REA) under clause (nnn) of sub-regulation 1 of Regulation 2 of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010 and the copy of agreement detailing the tariff per unit, in case where refund is on account of export of electricity;
 - (c) a statement containing the number and date of invoices and the relevant Bank Realization Certificates or Foreign Inward Remittance Certificates, as the case may be, in a case where the refund is on account of export of services;
As per decision of 28th meeting of the GST Council, the supply of services to qualify as exports, even if payment is received in Indian Rupees, where permitted by the RBI.
 - (d) a statement containing the number and date of invoices as prescribed in rule 46 along with the evidence regarding endorsement in case of supply of goods made to a Special Economic Zone unit or a Special Economic Zone developer;
- **A Statement of invoices to be submitted and endorsement by SEZ officers for refund in case of supplies to SEZ**
- (e) a statement containing the number and date of invoices, the evidence regarding endorsement and the details of payment, along with proof thereof, made by the recipient to the supplier for authorized operations as defined under the SEZ Act, 2005, in a case where the refund is on account of supply of services made to a SEZ unit or a SEZ developer;
 - (f) a declaration to the effect that tax has not been collected from the Special Economic Zone unit or the Special Economic Zone developer, in a case where the refund is on account of supply of goods or services or both made to a Special Economic Zone unit or a Special Economic Zone developer;
- **A Statement of invoices to be submitted for refund in case of deemed exports:**
- (g) a statement containing the number and date of invoices along with such other evidence as may be notified in this behalf, in a case where the refund is on account of deemed exports;

➤ **A Statement of invoices to be submitted for refund in case of accumulated unutilized input tax credit and inverted duty structure:**

- (h) a statement containing the number and date of invoices received and issued during a tax period in a case where the claim pertains to refund of any unutilized input tax credit where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies, other than nil-rated or fully exempt supplies;
- (i) the reference number of the final assessment order and a copy of the said order in a case where the refund arises on account of finalization of provisional assessment;
- (j) a statement showing the details of transactions considered as intra-State supply but which is subsequently held to be inter-State supply;
- (k) a statement showing the details of the amount of claim on account of excess payment of tax ***and interest, if any, or any other amount paid;***
- (ka) a statement containing the details of invoices viz. number, date, value, tax paid and details of payment, in respect of which refund is being claimed along with copy of such invoices, proof of making such payment to the supplier, the copy of agreement or registered agreement or contract, as applicable, entered with the supplier for supply of service, the letter issued by the supplier for cancellation or termination of agreement or contract for supply of service, details of payment received from the supplier against cancellation or termination of such agreement along with proof thereof, in a case where the refund is claimed by an unregistered person where the agreement or contract for supply of service has been cancelled or terminate;
- (kb) a certificate issued by the supplier to the effect that he has paid tax in respect of the invoices on which refund is being claimed by the applicant; that he has not adjusted the tax amount involved in these invoices against his tax liability by issuing credit note; and also, that he has not claimed and will not claim refund of the amount of tax involved in respect of these invoices, in a case where the refund is claimed by an unregistered person where the agreement or contract for supply of service has been cancelled or terminate;

➤ **Self declaration in case of refund amount less than ₹2 lacs**

- (l) a declaration to the effect that the amount claimed as refund has not been paid on to any other person, in a case where the amount of refund claimed does not exceed ₹2 lakh;

Provided that a declaration is not required to be furnished in respect of the cases covered under clause (a) or clause (b) or clause (c) or clause (d) or clause (f) of sub-section (8) of section 54;

➤ **Certification by CA/Cost accountant in case of refund amount more than ₹2 lacs**

(m) a Certificate in Annex 2 of **FORM GST RFD-01** issued by a chartered accountant or a cost accountant to the effect that the incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person, where the amount of refund claimed exceeds ₹2 lakh.

Provided that a certificate is not required to be furnished in respect of cases covered under clause (a) or clause (b) or clause (c) or clause (d) or clause (f) of sub-section (8) of section 54;

Provided further that a certificate is not required to be furnished in cases where refund is claimed by an unregistered person who has borne the incidence of tax.

➤ A statement 3B has been inserted in Form GST RFD-01 to facilitate claiming refund in case of refund arising on account of export of electricity and thereby enabling to upload specified set of documents [(Rule 89(2)]

Notification No. 14/2022 C.T., dated 05.07.2022

24. Debit of Electronic Credit ledger for Input Tax Refund - Rule 89(3) of CGST Rules, 2017

Where the application relates to refund of input tax credit, the electronic credit ledger shall be debited by the applicant in an amount equal to the refund so claimed.

25. Formula for Refund of Input Tax Credit for export - Rule 89(4) of CGST Rules, 2017

In case of zero-rated supply of goods or services or both without payment of tax under bond or letter of undertaking in accordance with the provisions of sub-section (3) of Section 16 of the Integrated Goods and Services Tax Act, refund of input tax credit shall be granted as per the following formula:

Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) × Net ITC/Adjusted Total Turnover.

(A) "Refund amount" means the maximum refund that is admissible;

(B) "Net ITC" means input tax credit availed on inputs and input services during the relevant period other than the input tax credit availed for which refund is claimed under sub-rule (4A) or (4B) or both;

(C) "Turnover of zero-rated supply of goods" means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking or the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier, whichever is less, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both;]

(D) "Turnover of zero-rated supply of services" means the value of zero-rated supply of services made without payment of tax under bond or letter of undertaking, calculated in the following manner, namely:—

Zero-rated supply of services is the aggregate of the payments received during the relevant period for zero-rated supply of services and zero-rated supply of services where supply has been completed for which payment had been received in advance in any period prior to the relevant period reduced by advances received for zero-rated supply of services for which the supply of services has not been completed during the relevant period;

- (E) "Adjusted Total Turnover" means the sum total of the value of-
 - (a) the turnover in a State or a Union territory, as defined under clause (112) of section 2, excluding the turnover of services; and
 - (b) the turnover of zero-rated supply of services determined in terms of clause (D) above and non-zero-rated supply of services, excluding-
 - (i) the value of exempt supplies other than zero-rated supplies; and
 - (ii) the turnover of supplies in respect of which refund is claimed under sub-rule (4A) or sub-rule (4B) or both, if any, during the relevant period.

(F) "Relevant period" means the period for which the claim has been filed.

(4A) In the case of supplies received on which the supplier has availed the benefit of the Government of India, Ministry of Finance, notification No. 48/2017-Central Tax dated the 18th October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R 1305 (E) dated the 18th October, 2017, refund of input tax credit, availed in respect of other inputs or input services used in making zero-rated supply of goods or services or both, shall be granted.

(4B) Where the person claiming refund of unutilised input tax credit on account of zero rated supplies without payment of tax has—

- (a) received supplies on which the supplier has availed the benefit of the Government of India, Ministry of Finance, notification No. 40/2017-Central Tax (Rate), dated the 23rd October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R 1320 (E), dated the 23 October, 2017 or notification No. 41/2017 Integrated Tax (Rate), dated the 23 October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R 1321(E), dated the 23rd October, 2017; or
- (b) availed the benefit of notification No. 78/2017-Customs, dated the 13 October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R 1272(E), dated the 13 October, 2017 or notification No. 79/2017-Customs, dated the 13 October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R 1299 (E), dated the 13 October, 2017,

the refund of input tax credit, availed in respect of inputs received under the said notifications for export of goods and the input tax credit availed

in respect of other inputs or input services to the extent used in making such export of goods, shall be granted.

Explanation to Rule 89(4) – Export without payment of tax under LUT. Value of exported goods to be lesser of the two values i.e. (a) FOB value either in Shipping Bill/Bill of export or

- (b) value declared in Tax invoice or Bill of supply.

Notification No. 14/2022 C.T., dated 05.07.2022

26. Relevant date for claiming refund

- Sub-rule 1A inserted in rule 89(1) of CGST Rules (Notification No. 35/2021-Central Tax dated 24.09.2021)
- (1A) Any person, claiming refund under section 77 of the Act of any tax paid by him, in respect of a transaction considered by him to be an intra-State supply, which is subsequently held to be an inter-State supply, may, before the expiry of a period of two years from the date of payment of the tax on the inter-State supply, file an application electronically in FORM GST RFD-01 through the common portal, either directly or through a Facilitation Centre notified by the Commissioner: Provided that the said application may, as regard to any payment of tax on inter-State supply before coming into force of this sub-rule, be filed before the expiry of a period of two years from the date on which this sub-rule comes into force.”

Thus, refund under section 77 of CGST Act/Section 19 of IGST Act, 2017 can be claimed before the expiry of two years from the date of payment of tax under the correct head;

- Any refund applications filed, whether pending or disposed off, before issuance of notification No.35/2021-Central Tax, dated 24.09.2021, would also be dealt in accordance with the provisions of rule 89 (1A) of the CGST Rules, 2017.
- Refund under section 77 of the CGST Act/section 19 of the IGST Act would not be available where the taxpayer has made tax adjustment through issuance of credit note under section 34 of the CGST Act in respect of the said transaction.

27. Formula for Refund of input tax credit on account of inverted duty structure - Rule 89(5) of CGST Rules, 2017

In the case of refund on account of inverted duty structure, refund of input tax credit shall be granted as per the following formula:—

Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services) x Net ITC ÷ Adjusted Total Turnover} - tax payable on such inverted rated supply of goods and services x Net ITC ÷ ITC availed on inputs and input services.

Notification No. 14/2022 C.T., dated 05.07.2022

Explanation.—For the purposes of this sub-rule, the expressions –

- (a) “Net ITC” shall mean input tax credit availed on inputs during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both; and
- (b) “Adjusted Total turnover” shall have the same meaning as assigned to it in sub-rule (4).”;

C.B.I. & C. vide Notification No. 5/2017-C.T. (Rate), dated 28-6-2017 clarified that the unutilized accumulated Input Tax credit on inward supplies due to inverted duty structure on or up to the month of July2018 will lapse.

28. Acknowledgement of Refund Application - Rule 90 of CGST Rules, 2017

- (1) An acknowledgement in **FORM GST RFD-02** shall be made available to the applicant through the Common Portal electronically.
- (2) The application for refund, other than from electronic mode, an acknowledgement in **FORM GST RFD-02** shall be made available to the applicant through the Common Portal electronically within 15 days duly verified by the proper officer.
- (3) In case any deficiencies, the proper officer shall communicate the same to the applicant in **FORM GST RFD-03** through the Common Portal electronically, requiring him to file a fresh refund application after rectification of such deficiencies.

Provided that the time period, from the date of filing of the refund claim in **FORM GST RFD-01** till the date of communication of the deficiencies in **FORMGST RFD-03** by the proper officer, shall be excluded from the period of two years as specified under subsection (1) of Section 54, in respect of any such fresh refund claim filed by the applicant after rectification of the deficiencies.

- (4) The deficiencies have to be communicated in **FORM GST RFD-03** under the State Goods and Service Tax Rules, 2017, the same shall also deemed to have been communicated under this rule along with the deficiencies communicated under sub-rule (3).
- (5) The applicant may, at any time before issuance of provisional refund sanction order in **FORM GST RFD-04** or final refund sanction order in **FORM GST RFD-06** or payment order in **FORM GST RFD-05** or refund withhold order in **FORM GST RFD-07** or notice in **FORM GST RFD-08**, in respect of any refund application filed in **FORM GSTRFD-01**, withdraw the said application for refund by filing an application in **FORM GST RFD-01W**.
- (6) On submission of application for withdrawal of refund in **FORM GST RFD-01W**, any amount debited by the applicant from electronic credit ledger or electronic cash ledger, as the case may be, while filing application for refund in **FORMGST RFD-01**, shall be credited back to the ledger from which such debit was made.

29. Grant of provisional refund - Rule 91 of CGST Rules, 2017

- (1) The provisional refund shall be granted subject to the following conditions:

- (a) the claimant has no dispute or prosecution under any offence, during any period of 5 years immediately preceding the tax period or under an existing law where the amount of tax evaded exceeds ₹ 250 lakh.
- (b) the GST compliance rating, where available, of the applicant is not less than five on a scale of ten;
- (c) no proceedings of any appeal, review or revision is pending on any of the issues which form the basis of the refund and if pending, the same has not been stayed by the appropriate authority or court.

(2) The proper officer, after due scrutiny of the claim, shall make an order in **FORM GST RFD-04**, sanctioning the amount of refund due to the said applicant on a provisional basis within a period not exceeding 7 days from the date of acknowledgement.

Provided that the order issued in **FORM GST RFD-04** shall not be required to be revalidated by the proper officer.

(3) The proper officer shall issue a consolidated payment advice in **FORM GST RFD-05** for the amount sanctioned and the same shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund on the basis of a consolidated payment advice:

Provided that the payment order in **FORM GST RFD-05** shall be required to be revalidated where the refund has not been disbursed within the same financial year in which the said payment order was issued.

(4) The Central Government shall disburse the refund based on the consolidated payment advice issued under sub-rule (3).

30. Order sanctioning refund - Rule 92 of CGST Rules, 2017

(1) Where, upon examination of the application, the proper officer is satisfied that a refund due and payable to the applicant, he shall make an order in **FORM GST RFD-06**, sanctioning the amount of refund to which the applicant is entitled, mentioning therein the amount, if any, refunded to him on a provisional basis, amount adjusted against any outstanding demand and the balance amount refundable.

(1A) Where, upon examination of the application of refund of any amount paid as tax other than the refund of tax paid on zero-rated supplies or deemed export, the proper officer is satisfied that a refund under sub-section (5) of section 54 of the Act is due and payable to the applicant, he shall make an order in **FORM RFD-06** sanctioning the amount of refund to be paid, in cash, proportionate to the amount debited in cash against the total amount paid for discharging tax liability for the relevant period, mentioning therein the amount adjusted against any outstanding demand under the Act or under any existing law and the balance amount refundable and for the remaining amount which has been debited from the electronic credit ledger for making payment of such tax, the proper officer shall issue **FORMGST PMT-03** re-crediting the said amount as Input Tax Credit in electronic credit ledger.

(2) Where the proper officer is satisfied, for reasons to be recorded in writing, that the whole or any part of the amount claimed as refund is not admissible or is not payable to the applicant, he shall issue a notice in Part A **FORM GST RFD-07** informing him to the reasons for withholding of such refund:

Provided that where the proper officer or the Commissioner is satisfied that the refund is no longer liable to be withheld, he may pass an order for release of withheld refund in Part B of **FORM GST RFD- 07**

(3) Where the proper officer is satisfied, for reasons to be recorded in writing, that the whole or any part of the amount claimed as refund is not admissible or is not payable to the applicant, he shall issue a notice in **FORMGST RFD-08** to the applicant, requiring him to furnish a reply in **FORM GST RFD-09** within a period of fifteen days of the receipt of such notice and after considering the reply, make an order in **FORM GST RFD-06** sanctioning the amount of refund in whole or part, or rejecting the said refund claim and the said order shall be made available to the applicant electronically and the provisions of sub-rule (1) shall, *mutatis mutandis*, apply to the extent refund is allowed:

Provided that no application for refund shall be rejected without giving the applicant an opportunity of being heard.

(4) Where the proper officer is satisfied that the amount refundable under sub-rule (1) or sub-rule (1A) or sub-rule(2) is payable to the applicant under sub-section (8) of section 54, he shall make an order in **FORM GST RFD-06** and issue a payment order in **FORMGST RFD-05** for the amount of refund and the same shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund on the basis of a consolidated payment advice]:

Provided that the order issued in **FORM GST RFD-06** shall not be required to be revalidated by the proper officer:

Provided further that the payment order in **FORM GST RFD-05** shall be required to be revalidated where the refund has not been disbursed within the same financial year in which the said payment order was issued.

(4A) The Central Government shall disburse the refund based on the consolidated payment advice issued under sub-rule (4).

(5) Where the proper officer is satisfied that the amount is not refundable, to the applicant under Section 54(8) of the CGST Act, he shall make an order in **FORM GST RFD-06** and issue a payment order in **FORM GST RFD-05**, for the amount of refund to be credited to the Consumer Welfare Fund.

31. Credit of the amount of rejected refund claim - Rule 93 of CGST Rules, 2017

(1) Where any deficiencies have been communicated under sub-rule (3) of rule 2, the amount debited under sub-rule (3) of Rule 1 shall be re-credited to the electronic credit ledger.

(2) Where any amount claimed as refund is rejected under Rule 4, either fully or partly, the amount debited, to the extent of rejection, shall be re-credited to the electronic credit ledger by an order made in **FORM GST PMT-03**.

Explanation.—For the purposes of this rule, a refund shall be deemed to be rejected, if the appeal is finally rejected or if the claimant gives an undertaking in writing to the proper officer that he shall not file an appeal.

32. Order sanctioning interest on delayed refunds - Rule 94 of CGST Rules, 2017

Where any interest is due and payable to the applicant under Section 56, the proper officer shall make an order along with a payment order in **FORM GST RFD-05**, specifying therein the amount of refund which is delayed, the period of delay for which interest is payable and the amount of interest payable, and such amount of interest shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund.

32.1 Exclusion of certain periods from delay of sanctioning interest on refunds under rule 94 of CGST Rules.

The CBIC vide **Notification No. 38/2023-Central Tax dated August 04, 2022** has issued ‘the Central Goods and Services Tax (Second Amendment) Rules, 2023’ to further amend the Central Goods and Services Tax, Rules, 2017 (“**the CGST Rules**”) making amendments in Rule 94.

In the said rules, rule 94 shall, with effect from the 1st day of October, 2023, be renumbered as sub-rule (1) and after the sub-rule as so renumbered, the following sub-rule shall be inserted, namely:—

“(2) *The following periods shall not be included in the period of delay under sub-rule (1), namely:—*

- (a) *any period of time beyond fifteen days of receipt of notice in FORM GST RFD-08 under sub-rule (3) of rule 92, that the applicant takes to-*
 - (i) *furnish a reply in FORM GST RFD-09, or*
 - (ii) *submit additional documents or reply;*

and
- (b) *any period of time taken either by the applicant for furnishing the correct details of the bank account to which the refund is to be credited or for validating the details of the bank account so furnished, where the amount of refund sanctioned could not be credited to the bank account furnished by the applicant.”*

33. Quarterly Submission of Refund Application - Rule 95 of CGST Rules, 2017

(1) Any person eligible to claim refund of tax paid by him on his inward supplies as per notification issued Section 55 shall apply for refund in **FORM GST RFD-10** once in every quarter, electronically on the Common Portal, either

directly or from a Facilitation Centre notified by the Commissioner, along with a statement of inward supplies of goods or services or both in **FORM GSTR-11**.

(2) An acknowledgement for receipt of the application for refund shall be issued in **FORM GST RFD-02**.

(3) Refund of tax paid by the applicant shall be available if-

- (a) the inward supplies of goods or services or both were received from a registered person against a tax invoice.
- (b) name and GSTIN or UIN of the applicant is mentioned on the tax invoice; and
- (c) such other restrictions or conditions as may be specified in the notification are satisfied.

Provided 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 authorised representative of the applicant, is submitted along with the refund application in **FORM GST RFD-10**.

(4) The provisions of Rule 4 shall, *mutatis mutandis*, apply for the sanction and payment of refund under this rule.

(5) Where an express provision in a treaty or other international agreement, to which the President or the Government of India is a party, is inconsistent with the provisions of these rules, such treaty or international agreement shall prevail.

➤ **95A- Omitted w.e.f. 01'st July'2019 – RFD-10B omitted.**

Notification No. 14/2022 C.T., dated 05.07.2022

34. Refund of Integrated Tax paid on goods or services exported out of India - Rule 96 of CGST Rules, 2017

(1) The shipping bill filed by an exporter of goods shall be deemed to be an application for refund of integrated tax paid on the goods exported out of India and such application shall be deemed to have been filed only when:—

- (a) the person in charge of the conveyance carrying the export goods duly file a departure manifest or an export manifest or an export report covering the number and the date of shipping bills or bills of export; and
- (b) the applicant has furnished a valid return in **FORM GSTR-3B**.

Provided that if there is any mismatch between the data furnished by the exporter of goods in shipping Bill and those furnished in FORM GSTR-1, such application for refund of integrated tax paid on the goods exported out of India shall be deemed to have been filed on such date when such mismatch in respect of the said shipping bill is rectified the exporter.

- (c) the applicant has undergone Aadhaar authentication in the manner provided in rule 10B

(2) The details of the relevant export invoices of goods contained in **FORM GSTR-1** shall be transmitted electronically by the common portal to the system designated by the Customs and the said system shall electronically transmit to the common portal, a confirmation that the goods covered by the said invoices have been exported out of India.

(3) Upon the receipt of the information regarding the furnishing of a valid return in **FORM GSTR-3** or **FORM GSTR-3B**, as the case may be from the common portal, the system designated by the Customs shall process the claim for refund in respect of export of goods and an amount equal to the integrated tax paid in respect of each shipping bill or bill of export shall be electronically credited to the bank account of the applicant mentioned in his registration particulars and as intimated to the Customs authorities.

(4) The claim for refund shall be withheld where,—

- (a) a request has been received from the jurisdictional Commissioner of Central Tax, State Tax or Union Territory Tax to withhold the payment of refund due to the person claiming refund in accordance with the provisions of sub-section (10) or sub-section (11) of Section 54; or
- (b) the proper officer of Customs determines that the goods were exported in violation of the provisions of the Customs Act, 1962 or
- (c) the Commissioner in the Board or an officer authorised by the Board, on the basis of data analysis and risk parameters, is of the opinion that verification of credentials of the exporter, including the availment of ITC by the exporter, is considered essential before grant of refund, in order to safeguard the interest of revenue.

(5) Omitted.

(5A) Where refund is withheld in accordance with the provisions of clause (a) or clause (c) of sub-rule (4), such claim shall be transmitted to the proper officer of Central tax, State tax or Union territory tax, as the case may be, electronically through the common portal in a system generated **FORM GST RFD-01** and the intimation of such transmission shall also be sent to the exporter electronically through the common portal, and notwithstanding anything to the contrary contained in any other rule, the said system generated form shall be deemed to be the application for refund in such cases and shall be deemed to have been filed on the date of such transmission.

(5B) Where refund is withheld in accordance with the provisions of clause (b) of sub-rule (4) and the proper officer of the Customs passes an order that the goods have been exported in violation of the provisions of the Customs Act, 1962 (52 of 1962), then, such claim shall be transmitted to the proper officer of Central tax, State tax or Union territory tax, as the case may be, electronically through the common portal in a system generated **FORM GST RFD-01** and the intimation of such transmission shall also be sent to the exporter electronically through the common portal, and notwithstanding anything to the contrary

contained in any other rule, the said system generated form shall be deemed to be the application for refund in such cases and shall be deemed to have been filed on the date of such transmission.

(5C) The application for refund in **FORM GST RFD-01** transmitted electronically through the common portal in terms of sub-rules (5A) and (5B) shall be dealt in accordance with the provisions of rule 89.

(6) Omitted.

(7) Omitted

(8) The Central Government may pay refund of the integrated tax to the Government of Bhutan on the exports to Bhutan for such class of goods as may be notified in this behalf and where such refund is paid to the Government of Bhutan, the exporter shall not be paid any refund of the integrated tax. Inserted vide Notification No. 51/2017-C.T., dated 28-10-2017.

(9) The application for refund of integrated tax paid on the services exported out of India shall be filed in **FORM GST RFD-01** and shall be dealt with in accordance with the provisions of rule 89.

(10) The persons claiming refund of Integrated Tax paid on export of goods or services should not have-

- (a) received supplies on which the supplier has availed the benefit of notification No. 48/2017-C.T., dated 18th October, 2017 or Notification No. 40/2017-C.T. (Rate), dated 23rd October, 2017 or Notification No. 41/2017-I.T. (Rate), dated 23rd October, 2017 has been availed; or
- (b) availed the benefit under notification No. 78/2017-Customs, dated the 13th October, 2017, or notification No. 79/2017-Customs, dated the 13th October, 2017 except so far it relates to receipt of capital goods by such person against Export Promotion Capital Goods Scheme.

Explanation.—For the purpose of this sub-rule, the benefit of the notifications mentioned therein shall not be considered to have been availed only where the registered person has paid Integrated Goods and Services Tax and Compensation

35. Refund of Integrated Tax paid on export of goods or services under bond or Letter of Undertaking - Rule 96A of CGST Rules

(1) Any registered person availing the option to supply goods or services for export without payment of integrated tax shall furnish, prior to export, a bond or a Letter of Undertaking in **FORM GST RFD-11** to the jurisdictional Commissioner, binding himself to pay the tax due along with the interest specified under sub-section (1) of Section 50 within a period of—

- (a) fifteen days after the expiry of three months, or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export, if the goods are not exported out of India; or
- (b) fifteen days after the expiry of one year, or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for

export, if the payment of such services is not received by the exporter in convertible foreign exchange or in Indian rupees, wherever permitted by the Reserve Bank of India.

(2) The details of the export invoices contained in **FORM GSTR-1** furnished on the common portal shall be electronically transmitted to the system designated by Customs and a confirmation that the goods covered by the said invoices have been exported out of India shall be electronically transmitted to the common portal from the said system.

Provided that where the date for furnishing the details of outward supplies in **FORM GSTR-1** for a tax period has been extended in exercise of the powers conferred under section 37 of the Act, the supplier shall furnish the information relating to exports as specified in Table 6A of **FORM GSTR-1** after the return in **FORM GSTR-3B** has been furnished and the same shall be transmitted electronically by the common portal to the system designated by the Customs:

Provided further that the information in Table 6A furnished under the first proviso shall be auto-drafted in **FORM GSTR-1** for the said tax period.

(3) Where the goods are not exported within the time specified in sub-rule (1) and the registered person fails to pay the amount mentioned in the said sub-rule, the export as allowed under bond or Letter of Undertaking shall be withdrawn forthwith and the said amount shall be recovered from the registered person in accordance with the provisions of Section 79.

(4) The export as allowed under bond or Letter of Undertaking withdrawn in terms of sub-rule (3) shall be restored immediately when the registered person pays the amount due.

(5) The Board, by way of notification, may specify the conditions and safeguards under which a Letter of Undertaking may be furnished in place of a bond.

(6) The provisions of sub-rule (1) shall apply, *mutatis mutandis*, in respect of zero-rated supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit without payment of Integrated Tax.

36. Recovery of refund of unutilised input tax credit or integrated tax paid on export of goods where export proceeds not realised - Rule 96B of CGST Rules

(1) Where any refund of unutilised input tax credit on account of export of goods or of integrated tax paid on export of goods has been paid to an applicant but the sale proceeds in respect of such export goods have not been realised, in full or in part, in India within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), including any extension of such period, the person to whom the refund has been made shall deposit the amount so refunded, to the extent of non-realisation of sale proceeds, along with applicable interest within thirty days of the expiry of the said period or, as the case may be, the extended period, failing which the amount refunded shall be recovered in

accordance with the provisions of section 73 or 74 of the Act, as the case may be, as is applicable for recovery of erroneous refund, along with interest under section 50:

Provided that where sale proceeds, or any part thereof, in respect of such export goods are not realised by the applicant within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), but the Reserve Bank of India writes off the requirement of realisation of sale proceeds on merits, the refund paid to the applicant shall not be recovered.

(2) Where the sale proceeds are realised by the applicant, in full or part, after the amount of refund has been recovered from him under sub-rule (1) and the applicant produces evidence about such realisation within a period of three months from the date of realisation of sale proceeds, the amount so recovered shall be refunded by the proper officer, to the applicant to the extent of realisation of sale proceeds, provided the sale proceeds have been realised within such extended period as permitted by the Reserve Bank of India.

36.1 Bank Account for credit of refund - Rule 96C of CGST Rules

For the purposes of sub-rule (3) of rule 91, sub-rule (4) of rule 92 and rule 94, "bank account" shall mean such bank account of the applicant which is in the name of applicant and obtained on his Permanent Account Number:

Provided that in case of a proprietorship concern, the Permanent Account Number of the proprietor shall also be linked with the Aadhaar number of the proprietor

Refund under GST

As per 31st GST Council's recommendation made a scheme of single authority for disbursement of the refund amount sanctioned by either the Centre or the State tax authorities would be implemented on pilot basis. The modalities for the same shall be finalized shortly.

All the supporting documents/invoices in relation to a claim for refund in **FORM GST RFD-01A** shall be uploaded electronically on the common portal at the time of filing of the refund application itself, thereby obviating the need for a taxpayer to physically visit a tax office for submission of a refund application. GSTN will enable this functionally on the common portal shortly.

The following types of refunds shall also be made available through **FORM GST RFD-01A**.

- (i) Refund on account of Assessment/Provisional Assessment/Appeal/Any other order.
- (ii) Tax paid on an intra-State supply which is subsequently held to be inter-State supply and *vice-versa*.
- (iii) Excess payment of Tax, and
- (iv) Any other refund.

In case of application for refund in Form **GST RFD-01A** (except those relating to refund of excess balance in the cash ledger) which are generated on the common portal before the roll out of the functionally described as above, and which have not been submitted in the jurisdictional tax office within 60 days of the generation of ARN, the claimants shall be sent communications on their registered email ids containing information on where to submit the said refund applications. If the applications are not submitted within 15 days of the date of the email, the said refund applications shall be summarily rejected, and the debited amount, if any, shall be re-credited to the electronic credit ledger of the claimant.

All the supporting documents/invoices in relation to a claim for refund in **FORM GST RFD-01A** shall be uploaded electronically on the common portal at the time of filing of the refund application itself, thereby obviating the need for a taxpayer to physically visit a tax office for submission of a refund application.

GSTN will enable this functionality on the common portal shortly.

[Notification No. 74/2018-C.T., dated 31-12-2018]

37. CBIC Vide its Notification No. 15/2021-Central Tax, dated 18-05-2021 has made amendment CGST Rules, 2017 in respect refund for the following manner

- Inserted proviso under Rule 90(3) of the CGST Rules- The time period from the date of filing of the refund claim in FORM GST RFD-01 till the date of communication of the deficiencies in FORM GST RFD-03 by the proper officer, is to be excluded from the period of 2 years in case, fresh refund claim is filed after rectification of the deficiencies.
- Inserted sub-rule (4) to Rule 90 of the CGST Rules- Allowed registered person to withdraw the application of refund claim, by filing application in FORM GST RFD-01W before issuance of provisional refund sanction order in FORM GST RFD-04 or final refund sanction order in FORM GST RFD-06 or payment order in FORM GST RFD-05 or refund withhold order in FORM GST RFD-07 or notice in FORM GST RFD-08.
- Inserted sub-rule (5) to Rule 90 of the CGST Rules- On submission of application in FORM GST RFD-01W, any amount debited from electronic credit ledger or electronic cash ledger, shall be credited back to the ledger from which such debit was made.
- Omitted proviso to Rule 92(1) of the CGST Rules which dealt with the order giving details of the adjustment in Part A of FORM GST RFD-07, where the amount of refund is completely adjusted against any outstanding demand.
- Substituted ‘Part B’ in Rule 92(1) of the CGST Rules with ‘Part A’ - The proper officer or the Commissioner shall pass an order in ‘Part A’ instead of ‘Part B’ of FORM GST RFD-07, informing the person, the reasons for withholding the refund.

- Inserted new proviso to Rule 92(2) of the CGST Rules w.r.t. passing of an order for release of withheld refund in Part B of FORM GST RFD-07, where the proper officer or the Commissioner is satisfied that the refund is no longer liable to be withheld.
- Amended Rule 96(6) of the CGST Rules with regard to passing of an order in ‘Part A’ instead of ‘Part B’ of FORM GST RFD-07, upon transmission of the intimation for withholding refund.
- Amended Rule 96(7) of the CGST Rules- Now, the jurisdictional officer, shall proceed to refund the amount by passing an order in FORM GST RFD-06 after passing an order for release of withheld refund in Part B of FORM GST RFD-07, where the registered person becomes entitled to refund of the amount withheld.
- Inserted FORM GST RFD-01W i.e., the application for withdrawal of refund application.

38. Structure and Function of Consumer Welfare Fund - Rule 97 of CGST Rules

(1) All amounts of duty/Central Tax/Integrated Tax/Union Territory Tax/Cess and Income from investment along with other monies specified in sub-section (2) of Section 12C of the Central Excise Act, 1944 (1 of 1944), Section 57 of the Central Goods and Services Tax Act, 2017 (12 of 2017) read with Section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), Section 21 of the Union Territory Goods and Services Tax Act, 2017 (14 of 2017) and Section 12 of the Goods and Services Tax (Compensation to States) Act, 2017 (15 of 2017) shall be credited to the Fund :

Provided that an amount equivalent to fifty per cent. of the amount of integrated tax determined under sub-section (5) of Section 54 of the Central Goods and Services Tax Act, 2017, read with Section 20 of the Integrated Goods and Services Tax Act, 2017, shall be deposited in the Fund.

Provided further that an amount equivalent to fifty per cent. of the amount of cess determined under sub-section (5) of section 54 read with section 11 of the Goods and Services Tax (Compensation to States) Act, 2017 (15 of 2017), shall be deposited in the Fund

(2) Where any amount, having been credited to the Fund, is ordered or directed to be paid to any claimant by the proper officer, appellate authority or court, the same shall be paid from the Fund.

(3) Accounts of the Fund maintained by the Central Government shall be subject to audit by the Comptroller and Auditor General of India.

(4) The Government shall, by an order, constitute a Standing Committee (hereinafter referred to as the “Committee”) with a Chairman, a Vice-Chairman, a Member Secretary and such other members as it may deem fit and the Committee shall make recommendations for proper utilisation of the money credited to the Fund for welfare of the consumers.

(5) (a) The Committee shall meet as and when necessary, generally four times in a year;

(b) the Committee shall meet at such time and place as the Chairman, or in his absence, the Vice-Chairman of the Committee may deem fit;

(c) the meeting of the Committee shall be presided over by the Chairman, or in his absence, by the Vice-Chairman;

(d) the meeting of the Committee shall be called, after giving at least ten days, notice in writing to every member;

(e) the notice of the meeting of the Committee shall specify the place, date and hour of the meeting and shall contain statement of business to be transacted thereat;

(f) no proceeding of the Committee shall be valid, unless it is presided over by the Chairman or Vice-Chairman and attended by a minimum of three other members.

(6) The Committee shall have powers—

- (a) to require any applicant to get registered with any authority as the Central Government may specify;
- (b) to require any applicant to produce before it, or before a duly authorised officer of the Central Government or the State Government, as the case may be, such books, accounts, documents, instruments, or commodities in custody and control of the applicant, as may be necessary for proper evaluation of the application;
- (c) to require any applicant to allow entry and inspection of any premises, from which activities claimed to be for the welfare of consumers are stated to be carried on, to a duly authorised officer of the Central Government or the State Government, as the case may be;
- (d) to get the accounts of the applicants audited, for ensuring proper utilisation of the grant;
- (e) to require any applicant, in case of any default, or suppression of material information on his part, to refund in lump-sum along with accrued interest, the sanctioned grant to the Committee, and to be subject to prosecution under the Act;
- (f) to recover any sum due from any applicant in accordance with the provisions of the Act;
- (g) to require any applicant, or class of applicants to submit a periodical report, indicating proper utilization of the grant;
- (h) to reject an application placed before it on account of factual inconsistency, or inaccuracy in material particulars;
- (i) to recommend minimum financial assistance, by way of grant to an applicant, having regard to his financial status, and importance and utility of the nature of activity under pursuit, after ensuring that the financial assistance provided shall not be misutilised;

- (j) to identify beneficial and safe sectors, where investments out of Fund may be made, and make recommendations, accordingly;
- (k) to relax the conditions required for the period of engagement in consumer welfare activities of an applicant;
- (l) to make guidelines for the management, and administration of the Fund.

(7) The Committee shall not consider an application, unless it has been inquired into, in material details and recommended for consideration accordingly, by the Member Secretary.

(7A) The Committee shall make available to the Board 50 % of the amount credited to the Fund each year, for publicity or consumer awareness on Goods and Services Tax, provided the availability of funds for consumer welfare activities of the Department of Consumer Affairs is not less than twenty-five crore rupees per annum.”

(8) The Committee shall make recommendations:—

- (a) for making available grants to any applicant;
- (b) for investment of the money available in the Fund;
- (c) for making available grants (on selective basis) for reimbursing legal expenses incurred by a complainant, or class of complainants in a consumer dispute, after its final adjudication;
- (d) for making available grants for any other purpose recommended by the Central Consumer Protection Council (as may be considered appropriate by the Committee);
- (e)Omitted

39. Manual filing and processing - Rule 97A of CGST Rules

- Notwithstanding anything contained in this Chapter, in respect of any process or procedure prescribed herein, any reference to electronic filing of an application, intimation, reply, declaration, statement or electronic issuance of a notice, order or certificate on the common portal shall, in respect of that process or procedure, include manual filing of the said application, intimation, reply, declaration, statement or issuance of the said notice, order or certificate in such Forms as appended to these rules.

40. Single Authority Disbursement of Refund

GST Council in its 37th meeting has taken decision of Integrated refund system with disbursal by single authority and the same has been successfully deployed from 26th September, 2019 on the Common portal. It is pertinent to mention that vide Finance (No. 2) Act, 2019 in Section 54 of the CGST Act, after sub-section (8), 8A has been inserted and by which the Central Government may disburse the refund amount to the taxpayers in respect of refund of the State tax as well.

Since the implementation of GST, there has been dual system of disbursal of refund amount to the taxpayers or claimants. The Central tax authority has been sanctioning the Central tax (CGST), whereas State tax (SGST) by the State tax authority. So the taxpayers were required to approach to the both central and state tax authorities to get his refund amount. The dual authority for refund is very time consuming and slow disbursal of refund amount to the claimants. For which the Government has taken initiative for 100% online refund process and disbursal through a single authority, successfully deployed on GST portal from 26th September, 2019. C.B.I & C, has clarified refund procedures vide its master Circular No. 125/44/2019-GST, dated 18-11-2019 in suppression of earlier Circulars. However, the provisions of the said Circulars shall continue to apply for all refund applications filed on the common portal before 26-09-2019.

41. Filing of refund applications in FORM GST RFD-01

With effect from 26-09-2019, the applications for the following types of refunds shall be filed in **FORM GST RFD-01** on the Common portal and the same shall be processed electronically:

- (a) Refund of unutilized input tax credit (ITC) on account of exports without payment of tax;
- (b) Refund of tax paid on export of services with payment of tax;
- (c) Refund of unutilized ITC on account of supplies made to SEZ Unit/SEZ Developer without payment of tax;
- (d) Refund of tax paid on supplies made to SEZ Unit/SEZ Developer with payment of tax;
- (e) Refund of unutilized ITC on account of accumulation due to inverted tax structure;
- (f) Refund to supplier of tax paid on deemed export supplies;
- (g) Refund to recipient of tax paid on deemed export supplies;
- (h) Refund of excess balance in the electronic cash ledger;
- (i) Refund of excess payment of tax;
- (j) Refund of tax paid on intra-State supply which is subsequently held to be inter-State supply and *vice versa*;
- (k) Refund on account of assessment/provisional assessment/appeal/any other order;
- (l) Refund on account of “any other” ground or reason.

42. Online refund processing and single authority disbursement

The online processing of refund applications and single authority disbursement has been implemented. The taxpayers have to follow the changes in various forms. The following modalities shall be followed for all refund applications filed in **FORM GST RFD-01** on the common portal with effect from 26-09-2019.

43. Refund Application: (FORM GST RFD-01)

The applicants were required to file refund application in **FORM GST RFD-01** on the Common portal. The facility of uploading these other documents/invoices shall be available on the common portal where each of maximum 5MB, may be uploaded along with the refund application. No requirement to take print out of application and submit it physically to the jurisdictional tax office along with all supporting documents. The Application Reference Number (ARN) will be generated only after application completed process. The bank account details mentioned in the refund application shall be validated by PFMS after filing of **FORM GST RFD-01**. The taxpayers must ensure that the bank account details selected in the refund application are valid and correct. As soon as the ARN is generated, the refund application along with all supporting documents shall be transferred electronically to the jurisdictional proper officer who shall be able to view it on the system.

44. Compliance of Returns filing

Any refund claim for a tax period may be filed only after furnishing all the returns in **FORM GSTR-1** and **FORM GSTR-3B** which were due to be furnished on or before the date on which the refund application is being filed. In case of composition taxpayers, a non-resident taxable person, or Input Service Distributor (ISD), shall have to furnish returns in **FORM GSTR-4** (along with **FORM GST CMP-08**), **FORM GSTR-5** or **FORM GSTR-6** as the case may be.

45. Acknowledgement: (FORM GST RFD-02)

The proper officer shall issue acknowledgement in **FORM GST RFD-02** electronically to the taxpayer within 15 days of generation of ARN. The taxpayer shall be able to view the acknowledgement in **FORM GST RFD-02** on his dashboard. The taxpayer will also receive communication through email and SMS.

46. Deficiency memo: (FORM GST RFD-03)

The proper officer shall issue deficiency memo in **FORM GST RFD-03** electronically to the taxpayer in case of incomplete application within 15 days of deficiencies are noticed. With the issuance of **FORM GST RFD-03**, the ITC/cash will get recrated to the electronic credit/cash ledger of the taxpayer. The taxpayer has to file fresh application and distinct ARN shall be generated. It is also clarified that after correction of deficiencies, fresh application shall be filed within 2 years of the relevant date.

47. Provisional refund Order: (FORM GST RFD-04)

The proper officer shall issue **FORM GST RFD-04** electronically to the tax payer for provisional refund of 90 per cent. There is no prohibition under the law preventing a proper officer from sanctioning the entire amount within 7 days of issuance of acknowledgement through issuance of **FORM GST RFD-06**. No further scrutiny is not required; if the proper officer is fully satisfied that refund claim on account of zero-rated supplies is in order.

48. No adjustment of Refund

It is clarified that no adjustment or withholding of refund, shall be allowed refund which has been provisionally sanctioned. In cases where there is an outstanding recoverable amount due from the applicant, the proper officer, instead of granting refund on provisional basis, may process and sanction refund on final basis at the earliest and recover the amount from the amount so sanctioned.

49. Scrutiny of Application

In case of refund claim on account of export of goods without payment of tax, the shipping bill details shall be checked by the proper officer through ICEGATE SITE and check details of EGM, shipping bill number and date. While processing refund claims, information contained in Table-9 of **FORM GSTR-1** of the relevant tax period and **FORM GSTR-3B**, if any correction or deficiency of data furnished by the taxpayer.

50. Payment Order: (FORM GST RFD-05)

The proper officer shall issue payment order in **FORM GST RFD-05** electronically to the taxpayer. The sanctioned refund amounts, as entered in the payment orders issued by the Central and State/UT tax officers, shall be disbursed through the Public Financial Management System (PFMS) of the Controller General of Accounts (CGA), Ministry of Finance, Government of India. The bank account details mentioned in the refund application shall be validated by PFMS after issuance of **FORM GST RFD-05** by the proper officer. If the bank account details mentioned by an applicant in the refund application submitted in **FORM GST RFD-01** are invalidated, an error message shall be transmitted by PFMS to the common portal. On receiving such an error message, an applicant can rectify invalidated bank account details filing a non-core amendment in **FORM GST REG-14**. The proper officer will be able to issue payment order in **FORM GST RFD-05** only after the selected bank account has been validated.

51. Final Refund Sanction/Rejection Order: (FORM GST RFD-06)

In case of rejection of refund claim of unutilized/accumulated ITC due to ineligibility of the input tax credit under CGST Act and rules made thereunder, the proper officer shall have to issue show cause notice in **FORM GST RFD-08**. If the reply of the taxpayer is not satisfactory then by following the principles of natural justice the proper officer shall issue **FORM GST RFD-06** electronically to the taxpayer for rejection of refund. The amount so rejected shall be re-credited to electronic credit ledger of the applicant using **FORM GST PMT-03**.

52. Withholding Order: (FORM GST RFD-07B)

The proper officer shall issue withholding order in **FORM GST RFD-07B** electronically to the taxpayer. The taxpayer shall be able to view the withhold order in **FORM GST RFD-07B** on his dashboard. The taxpayer will receive communication through email and SMS.

53. Show Cause Notice: (FORM GST RFD-08)

The tax officer shall issue FORM GST RFD-08 electronically to the taxpayer. The taxpayer shall be able to view the show cause notice in FORM GST RFD-08 on his dashboard. The taxpayer is expected to give reply to the SCN within 15 days of receipt of the SCN. If the taxpayer doesn't respond within 15 days of the issuance of SCN, the tax officer can take action on the refund application. The taxpayer will receive communication through email and SMS.

54. Reply to Show Cause Notice by the Taxpayer: (FORM GST RFD-09)

The taxpayer is required to reply the SCN electronically/online in **FORM GST RFD-09** form which would be available on his dashboard. The taxpayer shall be able to reply to the SCN and upload supporting documents electronically through FORM GST RFD-09. The proper officer may not process the reply to the SCN if not given electronically in **FORM GST RFD-09** by the taxpayer.

55. Order for Recredit of Rejected Amount: (FORM GST PMT-03)

The proper officer shall issue order for recredit of rejected amount in **FORM GST PMT-03** electronically. With the issuance of **FORM GST PMT-03**, the inadmissible ITC shall get recrated to the electronic credit ledger of the taxpayer automatically. The taxpayer is required to give an undertaking that he will not file an appeal against the refund order if he/she desires to get a recredit of the rejected amount. This undertaking has to be submitted to the tax officer manually. The taxpayer shall be able to view the recredit order in FORM GST PMT-03 on his dashboard.

56. Processing of Refunds at the level of Central DDO

Once the records (**FORM GST RFD-05**) in R1 form (after bank account validation by PFMS) are received by the DDO, the Bill will be prepared by DDO. The designated DDO will prepare the electronic bill in the PFMS system putting his digital signature before forwarding the same to the e-PAO (Refund) of Pr. CCA (CBIC).

57. Processing at the level of e-PAO (Refunds)

The e-PAO (Refund) of Pr. CCA (CBIC) will process the Bills for refund payment and its disbursement by issuing Payment authorization to the accredited bank (SBI) of CBIC for putting his digital signature. The Voucher will be sent to SBI by PFMS for payment.

58. Processing by Accredited Bank of CBIC

SBI which is integrated with PFMS will honour the payment authorization made by e-PAO GST (Refund) and will make payments in the Taxpayers/ Applicant Bank account as per the following schedule:

1. If the payment authorization is received by SBI from e-PAO GST Refund during the working hours of the bank, the same will be further pushed to the beneficiary's bank during the same day.
2. If SBI receives the payment/authorization after the close of the working hours during the day, the same will be processed for payment on the next

working day. In no case, it will be postponed without any valid reasons which will be communicated to the e-PAO GST (Refund) immediately.

3. The SBI after making the payments in the banks accounts of Taxpayer/Applicant will seek reimbursement from the Govt. account in RBI. The reimbursement will be sought after getting successful confirmation of the transactions from the beneficiary's bank and not before that. SBI will provide the confirmation/status of the payment transactions to e-PAO GST Refund by one of the following messages:

1. Confirmation of successful credit in the taxpayer's/applicant's bank account,
2. Failure of the transactions at the end of the taxpayer's/applicant's bank along with the specific reasons/failure code.

The unsuccessful/failed transaction at the end of taxpayer's/applicant's bank will be treated as cancelled upon information received from SBI. SBI will not claim reimbursement of such failed transaction from the Govt. Account in RBI.

C.B.I & C, Circular No. 125 - Annexure A: Specified the list of all statements/declarations/undertakings/certificates and other supporting documents to be provided along with the refund application.

Annexure-B - The manner of statement of invoices to be submitted with application for refund of unutilized ITC.

59. Refund- IGST refunds for exporters – Standard Operating Procedure (SOP) to be followed

C.B.I & C, Circular No. 131/I/2020-GST, dated 23-01-2020

Standard Operating Procedure (SOP) to be followed by exporters– regarding

As you are aware, several cases of monetization of credit fraudulently obtained or ineligible credit through refund of Integrated Goods & Services Tax (IGST) on exports of goods have been detected in past few months. On verification, several such exporters were found to be non-existent in a number of cases. In all these cases it has been found that the Input Tax Credit (ITC) was taken by the exporters on the basis of fake invoices and IGST on exports was paid using such ITC.

2. To mitigate the risk, the Board has taken measures to apply stringent risk parameters-based checks driven by rigorous data analytics and Artificial Intelligence tools based on which certain exporters are taken up for further verification. Overall, in a broader time frame the percentage of such exporters selected for verification is a small fraction of the total number of exporters claiming refunds. The refund scrolls in such cases are kept in abeyance till the verification report in respect of such cases is received from the field formations. Further, the export consignments/shipments of concerned exporters are subjected to 100 % examination at the customs port.

3. While the verifications are caused to mitigate risk, it is necessary that genuine exporters do not face any hardship. In this context it is advised that exporters whose scrolls have been kept in abeyance for verification would be informed at the earliest possible either by the jurisdictional CGST or by Customs. To expedite the verification, the exporters on being informed in this regard or on their own volition should fill in information in the format attached as Annexure 'A' to this Circular and submit the same to their jurisdictional CGST authorities for verification by them. If required, the jurisdictional authority may seek further additional information for verification. However, the jurisdictional authorities must adhere to timelines prescribed for verification.

3.1 Verification shall be completed by jurisdiction CGST office within 14 working days of furnishing of information in proforma by the exporter. If the verification is not completed within this period, the jurisdiction officer will bring it the notice of a nodal cell to be constituted in the jurisdictional Pr. Chief Commissioner/Chief Commissioner Office.

3.2 After a period of 14 working days from the date of submission of details in the prescribed format, the exporter may also escalate the matter to the Jurisdictional Pr. Chief Commissioner/Chief Commissioner of Central Tax by sending an email to the Chief Commissioner concerned (email IDs of jurisdictional Chief Commissioners are in Annexure B).

3.3 The Jurisdictional Pr. Chief Commissioner/Chief Commissioner of Central Tax should take appropriate action to get the verification completed within next 7 working days.

4. In case, any refund remains pending for more than one month, the exporter may register his grievance at www.cbic.gov.in/issue by giving all relevant details like GSTIN, IEC, Shipping Bill No., Port of Export & CGST formation where the details in prescribed format had been submitted etc.. All such grievances shall be examined by a Committee headed by Member GST, CBIC for resolution of the issue. Annexure-A the details to be provided by the exporter for verification.

* * *

On recommendations made in 39 GST Council Meeting held on March 14, 2020 amendment to allow for refund to be sanctioned in both cash and credit in case of excess payment of tax. The CBIC vide ***Notification No. 16/2020-Central Tax dated March 23, 2020*** has amended Central Goods and Services Tax Rules, 2017 ("CGST Rules") in following manner:

60. Re-credit of amount paid/debited in e-credit ledger Rule 86 of the CGST Rules - Vide Notification No. 16/2020-C.T, dated 23.3.2020

Sub-rule (4A) is inserted after sub-rule (4):

"(4A) Where a registered person has claimed refund of any amount paid as tax wrongly paid or paid in excess for which debit has been made from the electronic credit ledger, the said amount, if found admissible, shall be re-credited to the electronic credit ledger by the proper officer by an order made in FORM GST PMT-03."

61. Rule 92 of the CGST Rules: Order sanctioning refund

- Sub-rule (1A) is inserted after sub-rule (1):

“(1A)Where, upon examination of the application of refund of any amount paid as tax other than the refund of tax paid on zero-rated supplies or deemed export, the proper officer is satisfied that a refund under sub-section (5) of section 54 of the Act is due and payable to the applicant, he shall make an order in FORM RFD-06 sanctioning the amount of refund to be paid, in cash, proportionate to the amount debited in cash against the total amount paid for discharging tax liability for the relevant period, mentioning therein the amount adjusted against any outstanding demand under the Act or under any existing law and the balance amount refundable and for the remaining amount which has been debited from the electronic credit ledger for making payment of such tax, the proper officer shall issue FORM GST PMT-03 re-crediting the said amount as Input Tax Credit in electronic credit ledger.”

In sub-rule (4) and (5) after “amount refundable under sub-rule (1)”, “or sub-rule (1A)” is inserted. Vide Notification No. 16/2020-C.T, dated 23.3.2020.

62. Rule 96 of the CGST Act - Refund of integrated tax paid on goods or services exported out of India

Following explanation is added to clause (b) of sub-rule (10) w.e.f. 23.10.2017:

“Explanation.—For the purpose of this sub-rule, the benefit of the notifications mentioned therein shall not be considered to have been availed only where the registered person has paid Integrated Goods and Services Tax and Compensation Cess on inputs and has availed exemption of only Basic Customs Duty (BCD) under the said notifications.”

* * *

On recommendations made in 39 GST Council Meeting held on March 14, 2020 amendment to provide for recovery of refund on export of goods where export proceeds are not realized within the time prescribed under FEMA. The CBIC vide **Notification No. 16/2020-Central Tax dated March 23, 2020** has amended Central Goods and Services Tax Rules, 2017 (“CGST Rules”) in following manner:

63. Rule 96B is inserted after Rule 96A of the CGST Rules

“96B. Recovery of refund of unutilised input tax credit or integrated tax paid on export of goods where export proceeds not realised.—(1) Where any refund of unutilised input tax credit on account of export of goods or of integrated tax paid on export of goods has been paid to an applicant but the sale proceeds in respect of such export goods have not been realised, in full or in part, in India within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), including any extension of such period, the person to whom the refund has been made shall deposit the amount so refunded, to the extent of non-realisation of sale proceeds, along with applicable interest within thirty days of the expiry of the said period or, as the case may be, the extended period,

failing which the amount refunded shall be recovered in accordance with the provisions of section 73 or 74 of the Act, as the case may be, as is applicable for recovery of erroneous refund, along with interest under section 50:

Provided that where sale proceeds, or any part thereof, in respect of such export goods are not realised by the applicant within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), but the Reserve Bank of India writes off the requirement of realisation of sale proceeds on merits, the refund paid to the applicant shall not be recovered.

(2) Where the sale proceeds are realised by the applicant, in full or part, after the amount of refund has been recovered from him under sub-rule (1) and the applicant produces evidence about such realisation within a period of three months from the date of realisation of sale proceeds, the amount so recovered shall be refunded by the proper officer, to the applicant to the extent of realisation of sale proceeds, provided the sale proceeds have been realised within such extended period as permitted by the Reserve Bank of India.” (vide Notification No. 16/2020-C.T., dated 23.3.2020)

64. CBIC clarified certain issues related to refund under GST:

The CBIC issued ***Circular No. 135/05/2020- GST dated March 31, 2020*** after receiving various representations seeking clarification on some of the issues relating to GST refunds:

1. Bunching of refund claims across Financial Years:

Issue: The restriction on clubbing of tax periods across different financial years was put in vide para 11.2 of the Circular No. 37/11/2018-GST dated March 15, 2018. The said circular was rescinded being subsumed in the Master Circular on Refunds No. 125/44/2019-GST dated November 18, 2019 (“**Master Refund Circular**”) and the said restriction on the clubbing of tax periods across financial years for claiming refund thus has been continued vide Paragraph 8 of the Master Refund Circular. The restriction imposed vide para 8 of the Master Refund Circular prohibits the refund of Input Tax Credit (“ITC”) accrued.

Clarification: Restriction on clubbing of tax periods across Financial Years has been removed. Accordingly, Master Refund Circular is modified to that extent i.e. the restriction on bunching of refund claims across financial years shall not apply.

2. Refund of accumulated ITC on account of reduction in GST Rate:

Issue: Applicants are seeking refund of unutilized ITC on account of inverted duty structure where the inversion is due to change in the GST rate on the same goods. This can be explained through an illustration. An applicant trading in goods has purchased, say goods “X” attracting 18% GST. However, subsequently, the rate of GST on “X” has been reduced to, say 12%. It is being claimed that accumulation of ITC in such a case is also covered as accumulation on account of inverted duty structure and such

applicants have sought refund of accumulated ITC under Section 54(3)(ii) of the Central Goods and Services Tax Act, 2017 (“CGST Act”).

Clarification: The refund of accumulated ITC under Section 54(3)(ii) of the CGST Act is available where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies. It is noteworthy that, the input and output being the same in such cases, though attracting different tax rates at different points in time, do not get covered under the provisions of Section 54(3)(ii) of the CGST Act. Therefore, refund of accumulated ITC under Section 54(3)(ii) of the CGST Act would not be applicable in cases where the input and the output supplies are the same.

3. **Change in manner of refund of tax paid on supplies other than zero rated supplies:-**

Issue: Master Refund Circular, in para 3, categorizes the refund applications to be filed in FORM GST RFD-01 as under:

- “(a) *Refund of unutilized input tax credit (ITC) on account of exports without payment of tax*
1. Refund of tax paid on export of services with payment of tax;
 2. Refund of unutilized ITC on account of supplies made to SEZ Unit/SEZ Developer without payment of tax;
 3. Refund of tax paid on supplies made to SEZ Unit/SEZ Developer with payment of tax;
 4. Refund of unutilized ITC on account of accumulation due to inverted tax structure;
 5. Refund to supplier of tax paid on deemed export supplies;
 6. Refund to recipient of tax paid on deemed export supplies;
 7. Refund of excess balance in the electronic cash ledger;
 8. Refund of excess payment of tax;
 9. Refund of tax paid on intra-State supply which is subsequently held to be inter State supply and *vice versa*;
 10. Refund on account of assessment/provisional assessment/appeal/any other order;
 11. Refund on account of “any other” ground or reason.”

For the refund of tax paid falling in categories specified at S. No. (i) to (l) above i.e. refund claims on supplies other than zero rated supplies, no separate debit of ITC from electronic credit ledger is required to be made by the applicant at the time of filing refund claim, being claim of tax already paid. However, the total tax would have been normally paid by the applicant by debiting tax amount from both electronic credit ledger and electronic cash ledger. At present, in these cases, the amount of admissible refund, is paid in cash even when such payment of tax or any part thereof, has been made through ITC.

As this could lead to allowing unintended encashment of credit balances, vide notification No. 16/2020-Central Tax dated March 23, 2020, sub-rule (4A) has been inserted in Rule 86 of the Central Goods and Services Tax Rules, 2017 (“CGST Rules”) which reads as under:

“(4A) Where a registered person has claimed refund of any amount paid as tax wrongly paid or paid in excess for which debit has been made from the electronic credit ledger, the said amount, if found admissible, shall be re-credited to the electronic credit ledger by the proper officer by an order made in FORM GST PMT-03.”

Further, vide the same notification; sub-rule (1A) has also been inserted in Rule 92 of the CGST Rules. The same is reproduced hereunder:

“(1A) Where, upon examination of the application of refund of any amount paid as tax other than the refund of tax paid on zero-rated supplies or deemed export, the proper officer is satisfied that a refund under sub-section (5) of section 54 of the Act is due and payable to the applicant, he shall make an order in FORM RFD-06 sanctioning the amount of refund to be paid, in cash, proportionate to the amount debited in cash against the total amount paid for discharging tax liability for the relevant period, mentioning therein the amount adjusted against any outstanding demand under the Act or under any existing law and the balance amount refundable and for the remaining amount which has been debited from the electronic credit ledger for making payment of such tax, the proper officer shall issue FORM GST PMT-03 re-crediting the said amount as Input Tax Credit in electronic credit ledger.”

Clarification: The combined effect of the abovementioned changes is that any such refund of tax paid on supplies other than zero rated supplies will now be admissible proportionately in the respective original mode of payment i.e. in cases of refund, where the tax to be refunded has been paid by debiting both electronic cash and credit ledgers (other than the refund of tax paid on zero-rated supplies or deemed export), the refund to be paid in cash and credit shall be calculated in the same proportion in which the cash and credit ledger has been debited for discharging the total tax liability for the relevant period for which application for refund has been filed. Such amount shall be accordingly paid by issuance of order in FORM GST RFD-06 for amount refundable in cash and FORM GST PMT-03 to re-credit the amount attributable to credit as ITC in the electronic credit ledger.

4. **Guidelines for refunds of ITC under Section 54(3) of the CGST Act:-**

Issue: In terms of para 36 of Master Refund Circular, the refund of ITC availed in respect of invoices not reflected in FORM GSTR-2A was also admissible and copies of such invoices were required to be uploaded. However, in wake of insertion of Rule 36(4) of the CGST Rules vide notification No. 49/2019-GST dated October 9, 2019, various references were received from the field formations regarding admissibility of refund of the ITC availed on the invoices which are not reflecting in the FORM GSTR-2A of the applicant.

Clarification: The refund of accumulated ITC shall be restricted to the ITC as per those invoices, the details of which are uploaded by the supplier in FORM GSTR-1 and are reflected in the FORM GSTR-2A of the applicant. Accordingly, para 36 of the Master Refund Circular stands modified to that extent.

5. New Requirement to mention HSN/SAC in Annexure ‘B’

Issue: References were received from the field formations that HSN wise details of goods and services are not available in FORM GSTR-2A and therefore it becomes very difficult to distinguish ITC on capital goods and/or input services out of total ITC for a relevant tax period. It has been recommended that a column relating to HSN/SAC Code should be added in the statement of invoices relating to inward supply as provided in Annexure-B of the Master Refund Circular so as to easily identify between the supplies of goods and services.

Clarification: Distinction is important in view of the provisions relating to refund where refund of credit on Capital goods and/or services is not permissible in certain cases, it has been decided to amend the said statement. Accordingly, Annexure-B of the Master Refund Circular stands modified to that extent.

A suitably modified statement format is attached for applicants to upload the details of invoices reflecting in their FORM GSTR-2A. The applicant is, in addition to details already prescribed, now required to mention HSN/SAC code which is mentioned on the inward invoices. In cases where supplier is not mandated to mention HSN/SAC code on invoice, the applicant need not mention HSN/SAC code in respect of such an inward supply.

* * *

The CBIC vide Notification No. 16/2020- Central Tax dated March 23, 2020 has amended Central Goods and Services Tax Rules, 2017 (“CGST Rules”) in following manner:

Rule 89 of the CGST Act- Application for refund of tax, interest, penalty, fees or any other amount

Amendment has been made for ceiling to fix for the value of the export supply for the purpose of calculation of refund on zero rated supplies.

Clause (C) of the sub-rule (4) shall be substituted as:

“(C) “Turnover of zero-rated supply of goods” means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking or the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier, whichever is less, other than the turnover of supplies in respect of which refund is claimed under sub-rule (4A) or (4B) or both;”

Rule 141 of the CGST Rules- Procedure in respect of seized goods

In sub-clause (2) of Rule 141 of the CGST Rules the word “Commissioner” is replaced by “proper officer”.

In Form GST RFD-01, after the declaration under rule 89(2)(g), the following undertaking shall be inserted, namely:—

“UNDERTAKING”

I hereby undertake to deposit to the Government the amount of refund sanctioned along with interest in case of non-receipt of foreign exchange remittances as per the proviso to section 16 of the IGST Act, 2017 read with rule 96B of the CGST Rules 2017.

Signature—

Name—

Designation/Status”.

(Vide Notification No. 16/2020 C.T, dated 23.3.2020)

* * *

Clarifications on refund related issues

Circular No. 45/19/2018-GST, dated 30-5-2018

Clarifications on refund related issues – Reg.

The Board vide Circular No. 17/17/2017-GST, dated 15th November 2017, No. 24/24/2017-GST, dated 21st December 2017 and No. 37/11/2018-GST, dated 15th March, 2018 has laid down the procedure for manual filing and processing of different types of refund claims under GST and clarified the exports related refund issues.

2. Representations have been received seeking clarification on certain refund related issues. In order to clarify these issues and with a view to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred by Section 168(1) of the Central Goods and Services Tax Act, 2017 (CGST Act for short) hereby clarifies the issues raised as below:

3. Claim for refund filed by an Input Service Distributor, a person paying tax under Section 10 or a non-resident taxable person :

3.1 Doubts have been raised in case of claims for refund filed by an Input Service Distributor (ISD for short), a person paying tax under Section 10 of the CGST Act (composition taxpayer for short) or a non-resident taxable person in light of para 2.0 of Circular No. 24/24/2017-GST, dated 21-12-2017 which mandates that the refund claim for a tax period may be filed only after filing the details in **FORM GSTR-1** for the said tax period and that it is also to be ensured that a valid return in **FORM GSTR-3B** has been filed for the last tax period before the one in which the refund application is being filed.

3.2 In this regard, attention is invited to sub-section (1) of Section 37 of the CGST Act read with Rule 59 of the Central Goods and Services Tax Rules, 2017

(CGST Rules for short) which mandates that every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of Section 10 or Section 51 or Section 52, shall furnish the details of outward supplies of goods or services or both effected during a tax period in **FORM GSTR-1**. Further, as per sub-section (2) of Section 39 of the CGST Act read with Rule 62 of the CGST Rules, a composition taxpayer is required to furnish the return in **FORM GSTR-4**; as per sub-section (4) of Section 39 of the CGST Act read with Rule 65 of the CGST Rules, an ISD is required to furnish the return in **FORM GSTR-6** and as per sub-section (5) of Section 39 of the CGST Act read with Rule 63 of the CGST Rules, a non-resident taxable person is required to furnish the return in **FORM GSTR-5**.

3.3 Thus, it is clarified that in case of a claim for refund of balance in the electronic cash ledger filed by an ISD or a composition taxpayer; and the claim for refund of balance in the electronic cash and/or credit ledger by a non-resident taxable person, the filing of the details in **FORM GSTR-1** and the return in **FORM GSTR-3B** is not mandatory. Instead, the return in **FORM GSTR-4** filed by a composition taxpayer, the details in **FORM GSTR-6** filed by an ISD and the return in **FORM GSTR-5** filed by a non-resident taxable person shall be sufficient for claiming the said refund.

4. Application for refund of integrated tax paid on export of services and supplies made to a Special Economic Zone developer or a Special Economic Zone unit :

4.1 It has been represented that while filing the return in **FORM GSTR-3B** for a given tax period, certain registered persons committed errors in declaring the export of services on payment of integrated tax or zero rated supplies made to a Special Economic Zone developer or a Special Economic Zone unit on payment of integrated tax. They have shown such supplies in the Table under column 3.1(a) instead of showing them in column 3.1(b) of **FORM GSTR-3B** whilst they have shown the correct details in Table 6A or 6B of **FORM GSTR-1** for the relevant tax period and duly discharged their tax liabilities. Such registered persons are unable to file the refund application in **FORM GST RFD-01A** for refund of integrated tax paid on the export of services or on supplies made to a SEZ developer or a SEZ unit on the GST common portal because of an in-built validation check in the system which restricts the refund amount claimed (integrated tax/cess) to the amount of integrated tax/cess mentioned under column 3.1(b) of **FORM GSTR-3B** (zero rated supplies) filed for the corresponding tax period.

4.2 In this regard, it is clarified that for the tax periods commencing from 1-7-2017 to 31-3-2018, such registered persons shall be allowed to file the refund application in **FORM GST RFD-01A** on the common portal subject to the condition that the amount of refund of integrated tax/cess claimed shall not be more than the aggregate amount of integrated tax/cess mentioned in the Table under columns 3.1(a), 3.1(b) and 3.1(c) of **FORM GSTR-3B** filed for the corresponding tax period.

5. Refund of unutilized input tax credit of compensation cess availed on inputs in cases where the final product is not subject to the levy of compensation cess:

5.1 Doubts have been raised whether an exporter is eligible to claim refund of unutilized input tax credit of compensation cess paid on inputs, where the final product is not leviable to compensation cess. For instance, cess is levied on coal, which is an input for the manufacture of aluminum products, whereas cess is not levied on aluminum products.

5.2 In this regard, Section 16(2) of the Integrated Goods and Services Tax Act, 2017 (IGST Act for short) states that, subject to the provisions of Section 17(5) of the CGST Act, credit of input tax may be availed for making zero rated supplies. Further, as per Section 8 of the Goods and Services Tax (Compensation to States) Act, 2017, (hereafter referred to as the Cess Act), all goods and services specified in the Schedule to the Cess Act are leviable to cess under the Cess Act; and vide Section 11(2) of the Cess Act, Section 16 of the IGST Act is mutatis mutandis made applicable to inter-State supplies of all such goods and services. Thus, it implies that all supplies of such goods and services are zero rated under the Cess Act. Moreover, as Section 17(5) of the CGST Act does not restrict the availment of input tax credit of compensation cess on coal, it is clarified that a registered person making zero rated supply of aluminum products under bond or LUT may claim refund of unutilized credit including that of compensation cess paid on coal.

5.3 Such registered persons may also make zero-rated supply of aluminum products on payment of integrated tax but they cannot utilize the credit of the compensation cess paid on coal for payment of integrated tax in view of the proviso to Section 11(2) of the Cess Act, which allows the utilization of the input tax credit of cess, only for the payment of cess on the outward supplies. Accordingly, they cannot claim refund of compensation cess in case of zero-rated supply on payment of Integrated Tax.

6. Whether bond or Letter of Undertaking (LUT) is required in the case of zero rated supply of exempted or non-GST goods and whether refund can be claimed by the exporter of exempted or non-GST goods?

6.1 As per Section 16(2) of the IGST Act, credit of input tax may be availed for making zero rated supplies; notwithstanding that such supply is an exempt supply. Whereas, as per Section 2(47) of the CGST Act, exempt supply includes non-taxable supply. Further, as per Section 16(3) of the IGST Act, a registered person making zero rated supply shall be eligible to claim refund when he either makes supply of goods or services or both under bond or letter of undertaking (LUT) or makes such supply on payment of integrated tax.

6.2 However, in case of zero rated supply of exempted or non-GST goods, the requirement for furnishing a bond or LUT cannot be insisted upon. It is thus, clarified that in respect of refund claims on account of export of non-GST and exempted goods without payment of integrated tax; LUT/bond is not required. Such registered persons exporting non GST goods shall comply with the

requirements prescribed under the existing law (i.e. Central Excise Act, 1944 or the VAT law of the respective State) or under the Customs Act, 1962, if any.

6.3 Further, the exporter would be eligible for refund of unutilized Input Tax Credit of Central Tax, State Tax, Union Territory Tax, Integrated Tax and Compensation Cess in such cases.

7. What is the scope of the restriction imposed by Rule 96(10) of the CGST Rules, regarding non-availment of the benefit of Notification Nos. 48/2017-C.T., dated the 18-10-2017, 40/2017-C.T. (Rate), dated 23-10-2017, 41/2017-I.T. (Rate), dated 23-10-2017, 78/2017-Cus., dated 13-10-2017 or 79/2017-Cus., dated 13-10-2017.

7.1 Sub-rule (10) of Rule 96 of the CGST Rules seeks to prevent an exporter, who is receiving goods from suppliers availing the benefit of certain specified notifications under which they supply goods without payment of tax or at reduced rate of tax, from exporting goods under payment of integrated tax. This is to ensure that the exporter does not utilise the input tax credit availed on other domestic supplies received for making the payment of integrated tax on export of goods.

7.2 However, the said restriction is not applicable to an exporter who has procured goods from suppliers who have not availed the benefits of the specified notifications for making their outward supplies. Further, the said restriction is also not applicable to an exporter who has procured goods from suppliers who have, in turn, received goods from registered persons availing the benefits of these notifications since the exporter did not directly procure these goods without payment of tax or at reduced rate of tax.

7.3 Thus, the restriction under sub-rule (10) of Rule 96 of the CGST Rules is only applicable to those exporters who are directly receiving goods from those suppliers who are availing the benefit under Notification No. 48/2017-C.T., dated the 18th October, 2017, Notification No. 40/2017-C.T. (Rate), dated the 23rd October, 2017, or Notification No. 41/2017-I.T. (Rate), dated the 23rd October, 2017 or Notification No. 78/2017-Cus., dated the 13th October, 2017 or Notification No. 79/2017-Cus., dated the 13th October, 2017.

7.4 Further, there might be a scenario where a manufacturer might have imported capital goods by availing the benefit of Notification No. 78/2017-Cus., dated 13-10-2017 or 79/2017-Cus., dated 13-10-2017. Thereafter, goods manufactured from such capital goods may be supplied to an exporter. It is hereby clarified that this restriction does not apply to such inward supplies of an exporter.

65. Corrigenda to Circular No. 45/19/2018-GST, dated 30th May, 2018 issued vide F. No. CBEC/20/16/4/2018-GST - Regarding. Corrigendum No. CBEC/20/06/03/2019-GST, dated 18-7-2019

In para 4.2 of the Circular No. 45/19/2018-GST, dated 30th May, 2018 [2018 (13) G.S.T.L. C3],

for

“4.2 In this regard, it is clarified that for the tax periods commencing from *1-7-2017 to 31-3-2018*, such registered persons shall be allowed to file the refund application in **FORM GST RFD-01A** on the common portal subject to the condition that the amount of refund of integrated tax/cess claimed shall not be more than the aggregate amount of integrated tax/cess mentioned in the Table under columns 3.1(a), 3.1(b) and 3.1(c) of **FORM GSTR-3B** filed for the corresponding tax period.”

read,

“4.2 In this regard, it is clarified that for the tax periods commencing from *1-7-2017 to 30-6-2019*, such registered persons shall be allowed to file the refund application in **FORM GST RFD-01A** on the common portal subject to the condition that the amount of refund of integrated tax/cess claimed shall not be more than the aggregate amount of integrated tax/cess mentioned in the Table under columns 3.1(a), 3.1(b) and 3.1(c) of **FORM GSTR-3B** filed for the corresponding tax period.”

66. Circular No. 110/29/2019-GST, dated 3-10-2019-Eligibility to file a refund application in FORM GST RFD-01 for a period and category under which a NIL refund application has already been filed - Regarding

Several registered persons have inadvertently filed a NIL refund claim for a certain period under a particular category on the common portal in **FORM GST RFD-01A/RFD-01** in spite of the fact that they had a genuine claim for refund for that period under the said category. Once a NIL refund claim is filed, the common portal does not allow the registered person to re-file the refund claim for that period under the said category. Representations have been received requesting that registered persons may be allowed to re-file the refund claim for the period and the category under which the NIL claim has inadvertently been filed. The matter has been examined and in order to clarify this issue and to ensure uniformity in the implementation of the provisions of the law across field formations, the Board, in exercise of its powers conferred by section 168(1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”), hereby clarifies the issues raised as below:

2. Whenever a registered person proceeds to claim refund in **FORM GST RFD-01A/RFD-01** under a category for a particular period on the common portal, the system pops up a message box asking whether he wants to apply for ‘NIL’ refund for the selected period. This is to ensure that all refund applications under a particular category are filed chronologically. However, certain registered persons may have inadvertently opted for filing of ‘NIL’ refund. Once a ‘NIL’ refund claim has been filed for a period under a particular category, the common portal does not allow the registered person to re-file the refund claim for that period under the said category.

3. It is now clarified that a registered person who has filed a NIL refund claim in **FORM GST RFD-01A/RFD-01** for a given period under a particular

category, may again apply for refund for the said period under the same category only if he satisfies the following two conditions:

- (a) The registered person must have filed a NIL refund claim in **FORM GST RFD-01A/RFD-01** for a certain period under a particular category; and
- (b) No refund claims in **FORM GST RFD-01A/RFD-01** must have been filed by the registered person under the same category for any subsequent period.

It may be noted that condition (b) shall apply only for refund claims falling under the following categories:

- (i) Refund of unutilized input tax credit (ITC) on account of exports without payment of tax;
- (ii) Refund of unutilized ITC on account of supplies made to SEZ Unit/SEZ Developer without payment of tax;
- (iii) Refund of unutilized ITC on account of accumulation due to inverted tax structure;

In all other cases, registered persons shall be allowed to re-apply even if the condition (b) is not satisfied

4. Registered persons satisfying the above conditions may file the refund claim under "Any Other" category instead of the category under which the NIL refund claim has already been filed. However, the refund claim should pertain to the same period for which the NIL application was filed. The application under the "Any Other" category shall also be accompanied by all the supporting documents which would be required to be otherwise submitted with the refund claim.

5. On receipt of the claim, the proper officer shall calculate the admissible refund amount as per the applicable rules and in the manner detailed in para 3 of Circular No. 59/33/2018-GST, dated 4-9-2018 [2018 (16) G.S.T.L. C13], wherever applicable. Further, upon scrutiny of the application for completeness and eligibility, if the proper officer is satisfied that the whole or any part of the amount claimed is payable as refund, he shall request the taxpayer in writing, if required, to debit the said amount from his electronic credit ledger through **FORM GST DRC-03**. Once the proof of such debit is received by the proper officer, he shall proceed to issue the refund order in **FORM GST RFD-06** and the payment order in **FORM GST RFD-05**.

67. Clarification on issue of claiming refund under inverted duty structure where the supplier is supplying goods under some concessional notification

- As per Circular No. 135/05/2020-GST, dated 31-3-2020, it was clarified that refund on account of inverted duty structure would not be admissible in cases where the input and output supply are same. (Clause (ii) of sub-section (3) of section 54 of the CGST Act. Refund of accumulated ITC not applicable)

It is clarified, refund of accumulated input tax credit on account of inverted structure as per clause (ii) of sub-section (3) of section 54, would be allowed in cases where accumulation of input tax credit is on account of rate of tax on outward supply being less than the rate of tax on inputs as per some concessional notification, either Nil rated or fully exempted.

Vide Circular No. 173/05/2022-GST., dated 6-7-2022

68. Circular No. 104/23/2019-GST, dated 28-6-2019-Processing of refund applications in FORM GST RFD-01A submitted by taxpayers wrongly mapped on the common portal - Regarding.

Doubts have been raised in respect of processing of a refund application by a jurisdictional tax authority (either Centre or State) to whom the application has been electronically transferred by the common portal in cases where the said tax authority is not the one to which the taxpayer has been administratively assigned. The matter has been examined. In order to ensure uniformity in the implementation of the provisions of the law across field formations, the Board, in exercise of its powers conferred by section 168(1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”), hereby clarifies the issues in succeeding paras.

2. It has been reported by the field formations that administrative assignment of some of the taxpayers to the Central or the State tax authority has not been updated on the common portal in accordance with the decision taken by the respective tax authorities, in pursuance of the guidelines issued by the GST Council Secretariat, vide Circular No. 1/2017, dated 20-9-2017 [2017 (7) G.S.T.L. C21], regarding division of taxpayer base between the Centre and States to ensure Single Interface under GST. For example, a taxpayer M/s. XYZ Ltd. was administratively assigned to the Central tax authority but was mapped to the State tax authority on the common portal.

3. Prior to 31-12-2018, refund applications were being processed only after submission of printed copies of **FORM GST RFD-01A** in the respective jurisdictional tax offices. Subsequent to the issuance of Circular No. 79/53/2018-GST, dated 31-12-2018 [2019 (20) G.S.T.L. C33], copies of refund applications are no longer required to be submitted physically in the jurisdictional tax office. Now, the common portal forwards the refund applications submitted on the said portal to the jurisdictional proper officer of the tax authority to whom the taxpayer has been administratively assigned. In case of the example cited in para 2 above, as the applicant was wrongly mapped with the State tax authority on the common portal, the application was transferred by the common portal to the proper officer of the State tax authority despite M/s. XYZ Ltd. being administratively assigned to the Central tax authority. As per para 2(e) of Circular No. 79/53/2018-GST, dated 31-12-2018, the proper officer of the State tax authority should electronically reassign the said application to the designated jurisdictional proper officer. It has, however, been reported that the said re-assignment facility is not yet available on the common portal.

4. Doubts have been raised as to whether, in such cases, application for refund can at all be processed by the proper officer of the State tax authority or the Central tax authority to whom the refund application has been wrongly transferred by the common portal.

5. The matter has been examined and it is clarified that in such cases, where reassignment of refund applications to the correct jurisdictional tax authority is not possible on the common portal, the processing of the refund claim should not be held up and it should be processed by the tax authority to whom the refund application has been electronically transferred by the common portal. After the processing of the refund application is complete, the refund processing authority may inform the common portal about the incorrect mapping with a request to update it suitably on the common portal so that all subsequent refund applications are transferred to the correct jurisdictional tax authority.

69. Circular No. 139/09/2020-GST dated 10-06-2020

Clarification on refund related issues - Reg.

Various representations have been received seeking clarification on the issue relating to refund of accumulated ITC in respect of invoices whose details are not reflected in the FORM GSTR-2A of the applicant. In order to clarify these issues and to ensure uniformity in the implementation of the provisions of law in this regard across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”), hereby clarifies the issues detailed hereunder:

1. Circular No. 135/05/2020 – GST dated the 31st March, 2020 states that:

“5. Guidelines for refunds of Input Tax Credit under Section 54(3)

5.1 In terms of para 36 of circular No. 125/44/2019-GST dated 18.11.2019, the refund of ITC availed in respect of invoices not reflected in FORM GSTR-2A was also admissible and copies of such invoices were required to be uploaded. However, in wake of insertion of sub-rule (4) to rule 36 of the CGST Rules, 2017 vide notification No. 49/2019-GST dated 09.10.2019, various references have been received from the field formations regarding admissibility of refund of the ITC availed on the invoices which are not reflecting in the FORM GSTR-2A of the applicant.

5.2 The matter has been examined and it has been decided that the refund of accumulated ITC shall be restricted to the ITC as per those invoices, the details of which are uploaded by the supplier in FORM GSTR-1 and are reflected in the FORM GSTR-2A of the applicant. Accordingly, para 36 of the circular No. 125/44/2019-GST, dated 18.11.2019 stands modified to that extent.”

3.1 Representations have been received that in some cases, refund sanctioning authorities have rejected the refund of accumulated ITC in respect of ITC availed on Imports, ISD invoices, RCM etc. citing the above-mentioned Circular on the basis that the details of the said invoices/documents are not reflected in FORM GSTR-2A of the applicant.

3.2 In this context it is noteworthy that before the issuance of Circular No. 135/05/2020- GST dated 31st March, 2020, refund was being granted even in respect of credit availed on the strength of missing invoices (not reflected in FORM GSTR-2A) which were uploaded by the applicant along with the refund application on the common portal. However, vide Circular No. 135/05/2020 – GST dated the 31st March, 2020, the refund related to these missing invoices has been restricted. Now, the refund of accumulated ITC shall be restricted to the ITC available on those invoices, the details of which are uploaded by the supplier in FORM GSTR-1 and are reflected in the FORM GSTR-2A of the applicant.

4. The aforesaid circular does not in any way impact the refund of ITC availed on the invoices/documents relating to imports, ISD invoices and the inward supplies liable to Reverse Charge (RCM supplies) etc.. It is hereby clarified that the treatment of refund of such ITC relating to imports, ISD invoices and the inward supplies liable to Reverse Charge (RCM supplies) will continue to be same as it was before the issuance of Circular No. 135/05/2020- GST dated 31st March, 2020.

70. C.B.I. & C, Circular No. 162/18/2021-GST dated 25.09.2021

Clarification in respect of refund of tax specified in section 77(1) of the CGST Act and section 19(1) of the IGST Act –Regarding.

Representations have been received seeking clarification on the issues in respect of refund of tax wrongfully paid as specified in section 77(1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”) and section 19(1) of the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as “IGST Act”). In order to clarify these issues and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the CGST Act, hereby clarifies the issues detailed hereunder:

2.1 Section 77 of the CGST Act, 2017 reads as follows:

“77. Tax wrongfully collected and paid to Central Government or State Government.—(1) A registered person who has paid the Central tax and State tax or, as the case may be, the Central tax and the Union territory tax on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall be refunded the amount of taxes so paid in such manner and subject to such conditions as may be prescribed.

(2) A registered person who has paid integrated tax on a transaction considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall not be required to pay any interest on the amount of central tax and State tax or, as the case may be, the Central tax and the Union territory tax payable.”

Section 19 of IGST Act, 2017 reads as follows:

“19. Tax wrongfully collected and paid to Central Government or State Government.—(1) A registered person who has paid integrated tax on a supply considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall be granted refund of the amount of integrated tax so paid in such manner and subject to such conditions as may be prescribed.

(2) A registered person who has paid central tax and State tax or Union territory tax, as the case may be, on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall not be required to pay any interest on the amount of integrated tax payable.”

3. Interpretation of the term “subsequently held”

3.1 Doubts have been raised regarding the interpretation of the term “subsequently held” in the aforementioned sections, and whether refund claim under the said sections is available only if supply made by a taxpayer as inter-State or intra-State, is subsequently held by tax officers as intra-State and inter-State respectively, either on scrutiny/assessment/audit/investigation, or as a result of any adjudication, appellate or any other proceeding or whether the refund under the said sections is also available when the inter-State or intra-State supply made by a taxpayer, is subsequently found by taxpayer himself as intra-State and inter-State respectively

3.2 In this regard, it is clarified that the term “subsequently held” in section 77 of CGST Act, 2017 or under section 19 of IGST Act, 2017 covers both the cases where the inter-State or intra-State supply made by a taxpayer, is either subsequently found by taxpayer himself as intra-State or inter-State respectively or where the inter-State or intra-State supply made by a taxpayer is subsequently found/held as intra-State or inter-State respectively by the tax officer in any proceeding. Accordingly, refund claim under the said sections can be claimed by the taxpayer in both the above mentioned situations, provided the taxpayer pays the required amount of tax in the correct head.

4. The relevant date for claiming refund under section 77 of the CGST Act/Section 19 of IGST Act, 2017

4.1 Section 77 of the CGST Act and Section 19 of the IGST Act, 2017 provide that in case a supply earlier considered by a taxpayer as intra-State or inter-State, is subsequently held as inter-State or intra-State respectively, the amount of central and state tax paid or integrated tax paid, as the case may be, on such supply shall be refunded in such manner and subject to such conditions as may be prescribed. In order to prescribe the manner and conditions for refund under section 77 of the CGST Act and section 19 of the IGST Act, sub-rule (1A) has been inserted after sub-rule (1) of rule 89 of the Central Goods and Services Tax Rules, 2017(hereinafter referred to as “CGST Rules”) vide notification No.

35/2021-Central Tax dated 24.09.2021. The said sub-rule (1A) of rule 89 of CGST Rules, 2017 reads as follows:

“(1A) Any person, claiming refund under section 77 of the Act of any tax paid by him, in respect of a transaction considered by him to be an intra-State supply, which is subsequently held to be an inter-State supply, may, before the expiry of a period of two years from the date of payment of the tax on the inter-State supply, file an application electronically in FORM GST RFD-01 through the common portal, either directly or through a Facilitation Centre notified by the Commissioner:

Provided that the said application may, as regard to any payment of tax on inter-State supply before coming into force of this sub-rule, be filed before the expiry of a period of two years from the date on which this sub-rule comes into force.”

4.2 The aforementioned amendment in the rule 89 of CGST Rules, 2017 clarifies that the refund under section 77 of CGST Act/Section 19 of IGST Act, 2017 can be claimed before the expiry of two years from the date of payment of tax under the correct head, i.e. integrated tax paid in respect of subsequently held inter-State supply, or central and state tax in respect of subsequently held intra-State supply, as the case may be. However, in cases, where the taxpayer has made the payment in the correct head before the date of issuance of notification No.35/2021-Central Tax dated 24.09.2021, the refund application under section 77 of the CGST Act/section 19 of the IGST Act can be filed before the expiry of two years from the date of issuance of the said notification. i.e. from 24.09.2021.

4.3 Application of sub-rule (1A) of rule 89 read with section 77 of the CGST Act/section 19 of the IGST Act is explained through following illustrations.

A taxpayer “A” has issued the invoice dated 10.03.2018 charging CGST and SGST on a transaction and accordingly paid the applicable tax (CGST and SGST) in the return for March, 2018 tax period. The following scenarios are explained hereunder:

| Sl.No. | Scenario | Last date for filing the refund claim |
|---------------|--|--|
| 1 | Having realized on his own that the said transaction is an inter-State supply, “A” paid IGST in respect of the said transaction on 10.05.2021. | Since “A” has paid the tax in the correct head before issuance of notification No. 35/2021-Central Tax, dated 24.09.2021, the last date for filing refund application in FORM GST RFD-01 would be 23.09.23 (two years from date of notification) |
| 2 | Having realized on his own that the said transaction is an inter-State supply, “A” paid IGST in respect of the said transaction on 10.11.2021 i.e. after issuance of | Since “A” has paid the correct tax on 10.11.2021, in terms of rule 89 (1A) of the CGST Rules, the last date for filing refund application in FORM GST RFD-01 would be 09.11.2023 (two years from the date of payment) |

| Sl.No. | Scenario | Last date for filing the refund claim |
|--------|---|--|
| | notification No. 35/2021-Central Tax dated 24.09.2021 | of tax under the correct head, i.e. integrated tax) |
| 3 | Proper officer or adjudication authority or appellate authority of "A" has held the transaction as an inter-State supply and accordingly, "A" has paid the IGST in respect of the said transaction on 10.05.2019 | Since "A" has paid the tax in the correct head before issuance of notification No. 35/2021-Central Tax, dated 24.09.2021, the last date for filing refund application in FORM GST RFD-01 would be 23.09.23 (two years from date of notification) |
| 4 | Proper officer or adjudication authority or appellate authority of "A" has held the transaction as an inter-State supply and accordingly, "A" has paid the IGST in respect of the said transaction on 10.11.2022 i.e. after issuance of notification No. 35/2021-Central Tax dated 24.09.2021 | Since "A" has paid the correct tax on 10.11.2022, in terms of rule 89 (1A) of the CGST Rules, the last date for filing refund application in FORM GST RFD-01 would be 09.11.2024 (two years from the date of payment of tax under the correct head, i.e. integrated tax) |

The examples above are only indicative one and not an exhaustive list. Rule 89 (1A) of the CGST Rules would be applicable for section 19 of the IGST Act also, where the taxpayer has initially paid IGST on a specific transaction which later on is held as intra-State supply and the taxpayer accordingly pays CGST and SGST on the said transaction. It is also clarified that any refund applications filed, whether pending or disposed off, before issuance of notification No.35/2021-Central Tax, dated 24.09.2021, would also be dealt in accordance with the provisions of rule 89 (1A) of the CGST Rules, 2017.

4.4 Refund under section 77 of the CGST Act/section 19 of the IGST Act would not be available where the taxpayer has made tax adjustment through issuance of credit note under section 34 of the CGST Act in respect of the said transaction

71. C.B.I & C, Circular No. 166/22/2021-GST

Clarification on certain refund related issues- reg.

Various representations have been received from taxpayers and other stakeholders seeking clarification in respect of certain issues relating to refund. The issues have been examined. In order to ensure uniformity in the implementation of the provisions of the law across field formations, the Board, in

exercise of its powers conferred by section 168(1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”), hereby clarifies each of these issues as under:

| S.No | Issue | Clarification |
|------|--|--|
| 1 | Whether the provisions of subsection (1) of section 54 of the CGST Act regarding time period, within which an application for refund can be filed, would be applicable in cases of refund of excess balance in electronic cash ledger? | No, the provisions of sub-section (1) of section 54 of the CGST Act regarding time period, within which an application for refund can be filed, would not be applicable in cases of refund of excess balance in electronic cash ledger. |
| 2 | Whether certification/declaration under Rule 89(2)(l) or 89(2)(m) of CGST Rules, 2017 is required to be furnished along with the application for refund of excess balance in electronic cash ledger? | No, furnishing of certification/declaration under Rule 89(2)(l) or 89(2)(m) of the CGST Rules, 2017 for not passing the incidence of tax to any other person is not required in cases of refund of excess balance in electronic cash ledger as unjust enrichment clause is not applicable in such cases |
| 3 | Whether refund of TDS/TCS deposited in electronic cash ledger under the provisions of section 51/52 of the CGST Act can be refunded as excess balance in cash ledger? | The amount deducted/collected as TDS/TCS by TDS/TCS deductors under the provisions of section 51/52 of the CGST Act, as the case may be, and credited to electronic cash ledger of the registered person, is equivalent to cash deposited in electronic cash ledger. It is not mandatory for the registered person to utilise the TDS/TCS amount credited to his electronic cash ledger only for the purpose for discharging tax liability. The registered person is at full liberty to discharge his tax liability in respect of the supplies made by him during a tax period, either through debit in electronic credit ledger or through debiting electronic cash ledger, as per his choice and availability of balance in the said ledgers. Any amount, which remains unutilized in electronic cash ledger, after discharge of tax dues and other dues payable under |

| S.No | Issue | Clarification |
|------|--|--|
| 4 | Whether relevant date for the refund of tax paid on supplies regarded as deemed export by recipient is to be determined as per clause (b) of Explanation (2) under section 54 of CGST Act and if so, whether the date of return filed by the supplier or date of return filed by the recipient will be relevant for the purpose of determining relevant date for such refunds? | <p>CGST Act and rules made thereunder, can be refunded to the registered person as excess balance in electronic cash ledger in accordance with the proviso to sub-section (1) of section 54, read with sub-section (6) of section 49 of CGST Act.</p> <p>Clause (b) of Explanation (2) under Section 54 of CGST Act reads as under:</p> <p>“(b) in the case of supply of goods regarded as deemed exports where a refund of tax paid is available in respect of the goods, the date on which the return relating to such deemed exports is furnished;”</p> <p>On perusal of the above, it is clear that clause (b) of Explanation (2) under section 54 of the CGST Act is applicable for determining relevant date in respect of refund of amount of tax paid on the supply of goods regarded as deemed exports, irrespective of the fact whether the refund claim is filed by the supplier or by the recipient.</p> <p>Further, as the tax on the supply of goods, regarded as deemed export, would be paid by the supplier in his return, therefore, the relevant date for purpose of filing of refund claim for refund of tax paid on such supplies would be the date of filing of return, related to such supplies, by the supplier.</p> |

72. Prescribing manner of re-credit in electronic credit ledger using FORM GST PMT-03A

- The taxpayer shall deposit the amount of erroneous refund along with applicable interest and penalty, through FORM GST DRC-03 by debit of amount from electronic cash ledger.
- The proper officer accordingly in such instances to re-credit the amounts to electronic credit ledger by passing an order in FORM GST PMT-03A, within period of 30 days.

Vide Circular No. 174/06/2022-GST, dated 6-7-2022

73. Manner of filing refund of unutilized ITC on account of export of electricity

- Applicant would be required to file application for refund in FORM GST RFD-01(any other category)
- The details of Statement 3B to be uploaded
- The details of calculation of the refund amount in Statement -3A to be uploaded
- Relevant date of filing refund, sub-section (1) of section 54 of the CGST Act, time period 2 years, be the last date of the month, in which the electricity has been exported.
- Processing of refund claim by the proper officer : Rule 89(4) provides for the formula for calculation of refund of unutilized ITC on account of zero-rated supplies:

Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) x Net ITC/Adjusted turnover.

Once the proof of such debit is received by the proper officer, he shall proceed to issue the refund order in FORM GST RFD-06 and payment order in FORM GST RFD-05

Vide Circular No. 175/07/2022-GST, dated 6-7-2022

* * *

Withdrawal of Circular No. 106/25/2019-GST, dated 29-06-2019 in respect of Refund of taxes paid on inward supply of indigenous goods when supplied to outgoing international tourist against foreign exchange by retail outlets at departure area of International Airport beyond immigration countries. Rule 95A has been omitted, retrospectively w.e.f.1.7.2019 vide Notification No. 14/2022-Central Tax dated 5-7-2022.

Vide Circular No. 176/08/2022-GST, dated 6-7-2022

* * *

74. Whether exemption under Sl. No. 9B of notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 covers services associated with transit cargo both to and from Nepal and Bhutan

GST on supply of services associated with transit cargo to Nepal and Bhutan was exempted w.e.f 29.09.2017 based on recommendations of the 20thGST Council Meeting. The opening sentence of the Agenda Item 7(ix) placed before the GST Council on this issue, makes it clear that the proposal was to exempt supply of services associated with transit cargo both to and from Nepal and Bhutan.

Accordingly, as recommended by the GST Council, it is clarified that exemption under Sl. No. 9B of Notification 12/2017-Central Tax (Rate) covers services associated with transit cargo both to and from Nepal and Bhutan.

It is also clarified that movement of empty containers from Nepal and Bhutan, after delivery of goods there, is a service associated with the transit cargo to Nepal and Bhutan and is therefore covered by the exemption.

Needless to say that the cargo has to be transshipped/transited to Nepal and Bhutan, as per Regulations under the Customs Act read with the Treaties for Trade & Transit with Nepal & Bhutan. Under the regulations/procedures, the container number, which is a unique alpha numeric identifier for the container, is declared. Further, the Customs broker/shipping line/carrier is responsible for making available a track and trace facility for locating goods brought for transhipment.

With respect to transit or transhipment of cargo to Nepal, specific regulations namely Transhipment of Cargo to Nepal under Electronic Cargo Tracking System Regulations, 2019 have been notified. It is relevant to mention here that as per these regulations also, the authorized carrier has to execute a general bond for an amount as directed by the proper officer. The authorized carrier also has to procure ECTS (Electronic Cargo Tracking System) from a bi-laterally appointed managed service provider. In order to discharge the bond, the proper officer of customs has to extract trip reports from the ECTS web application as proof of completion of transhipment. The reconciliation of transhipment of consignments shall be carried out on the basis of trip report, by the proper officer at the Ports of Kolkata, Haldia or Visakhapatnam, as the case may be, and then only the general bond submitted by the authorised carrier will be re-credited or discharged.

As can be seen from the above, the regulations governing transit/transhipment have to be followed in addition to the ensuring that an electronic track and trace facility is in place. This facility uses container numbers to locate the cargo. Thus, it is verifiable that the empty container returning from Nepal or Bhutan is the same container which was used to deliver goods to Nepal or Bhutan.

Vide Circular No. 177/09/2022-GST, dated 03.08.2022

* * *

Clarification on refund related issues

Attention is invited to sub-section (3) of section 54 of CGST Act, 2017, which provides for the refund of unutilized input tax credit incases where credit is accumulated on account of rate of tax of inputs being higher than the rate of tax on output supplies i.e. on account of inverted duty structure. Sub-rule (5) of rule 89 of CGST Rules, 2017 prescribes the formula for grant of refund in cases of inverted duty structure. Vide Notification No. 14/2022-Central Tax dated 05.07.2022, amendment has been made in the formula prescribed under sub-rule (5) of rule 89 of the CGST Rules, 2017. Further, vide Notification No. 09/2022-Central Tax (Rate) dated 13.07.2022, which has been made effective from 18.07.2022, the restriction has been placed on refund of unutilised input tax credit on account of inverted duty structure in case of supply of certain goods falling under chapter 15 and 27.

2. Representations have been received from the trade and the field formations seeking clarification on various issues pertaining to the implementation of the above notifications. In order to clarify the issues and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168(1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”), hereby clarifies the issues as under:

| S. No | Issue | Clarification |
|-------|--|---|
| 1 | Whether the formula prescribed under sub-rule (5) of rule 89 of the CGST Rules, 2017 for calculation of refund of unutilised input tax credit on account of inverted duty structure, as amended vide Notification No. 14/2022-Central Tax dated 05.07.2022, will apply only to the refund applications filed on or after 05.07.2022, or whether the same will also apply in respect of the refund applications filed before 05.07.2022 and pending with the proper officer as on 05.07.2022? | Vide Notification No. 14/2022-Central Tax dated 05.07.2022, amendment has been made in sub-rule (5) of rule 89 of CGST Rules, 2017, modifying the formula prescribed therein. The said amendment is not clarificatory in nature and is applicable prospectively with effect from 05.07.2022. Accordingly, it is clarified that the said amended formula under sub-rule (5) of rule 89 of the CGST Rules, 2017 for calculation of refund of input tax credit on account of inverted duty structure would be applicable in respect of refund applications filed on or after 05.07.2022. The refund applications filed before 05.07.2022 will be dealt as per the formula as it existed before the amendment made vide Notification No. 14/2022-Central Tax dated 05.07.2022 |
| 2 | Whether the restriction placed on refund of unutilised input tax credit on account of inverted duty structure in case of certain goods falling under chapter 15 and 27 vide Notification No. 09/2022-Central Tax (Rate) dated 13.07.2022, which has been made effective from 18.07.2022, would apply to the refund applications pending as on 18.07.2022 also or | Vide Notification No. 09/2022-Central Tax (Rate) dated 13.07.2022, under the powers conferred by clause (ii) of the first proviso to sub-section (3) of section 54 of the CGST Act, 2017, certain goods falling under chapter 15 and 27 have been specified in respect of which no refund of unutilised input tax credit shall be allowed, where the |

| S. No | Issue | Clarification |
|-------|--|--|
| | whether the same will apply only to the refund applications filed on or after 18.07.2022 or whether the same will be applicable only to refunds pertaining to prospective tax periods? | credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on the output supplies of such specified goods (other than nil rated or fully exempt supplies). The said notification has come into force with effect from 18.07.2022. The restriction imposed vide Notification No. 09/2022-Central Tax (Rate) dated 13.07.2022 on refund of unutilised input tax credit on account of inverted duty structure in case of specified goods falling under chapter 15 and 27 would apply prospectively only. Accordingly, it is clarified that the restriction imposed by the said notification would be applicable in respect of all refund applications filed on or after 18.07.2022, and would not apply to the refund applications filed before 18.07.2022. |

C.B.I & C, Circular No. 181/13/2022-GST**RATE OF INTEREST:**

In exercise of the powers conferred by sub-sections (1) and (3) of section 50, sub-section (12) of section 54 and section 56 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby fixes the rate of interest per annum, for the purposes of the sections as specified in column (2) of the Table below, as mentioned in the corresponding entry in column (3) of the said Table:

| Serial No. | Section | Rate of Interest % |
|------------|--------------------------------|--------------------|
| 1 | Sub-section (1) of section 50 | 18 |
| 2 | Sub-section (3) of section 50 | 24 |
| 3 | Sub-section (12) of section 54 | 6 |
| 4 | Section 56 | 6 |
| 5 | Proviso to section 56 | 9 |

Notification No.13/2017-CT, dated 28.06.2017 and Notification No.3/IGST, dated 28.06.2017

75. Case Laws

Refund will be allowed if duty incidence not passes on to other party:

The Hon'ble Supreme Court Landmark judgment on the topic of Refund claim in the case of *M/s. Mafatlal Industries Ltd. v UOI*, reported in 1997 (89) E.L.T. 247 (S.C), wherein it was held that all refund claims including arising as a consequence of appellate orders or orders made by High Court/supreme Court to be filed under Section 11B. No order of refund is to be sanctioned unless the claimant proved that he has not passed on the burden of duty to another. Even the Refund claim is not cover under Section 11B of Central Excise Act,1944 and arise out of writ petitions, the decision would be governed under Section 11B then it will be allowed if duty incidence not passed on to other party.

* * *

No time-bar in case of consequential refund

The Apex Court in the case of *Commissioner of Central Excise, Shilling v Woodcrafts Products Ltd.*, reported in 2002 (143) E.L.T. 247 (S.C.), held that in case of consequential refund, the time-bar under Section 11B Central Excise Act, 1944 will not be applicable for recovery of refunded amount, even if the case finally decided in the favour of the Department.

Therefore, unless the claimant of any types of refund proved that the incidence of duty/tax he has not been passed on to the buyer or service recipient then the refund claim amount of duty/tax, if it has been sanctioned but to be credited to Consumer Welfare Fund.

* * *

Refund is allowed on the basis of certification of CA, that burden of duty has not been transferred to Customer.

The decision of the Hon'ble High Court of *Andhra Pradesh in the case of Commissioner of Customs v Crane Betel Nut Powder Works* reported in 2012 (279) E.L.T. 487 (A.P.), wherein the issue was that the Deputy Commissioner, Central Excise vide his order held that the assessees were eligible for the refund under the provisions of Section 11B of the Act but were not entitled for refund since it was not proved that the assessee had passed on the duty burden to the buyers. Consequently, Deputy Commissioner ordered the amount to be credited to the Consumer Welfare Fund. The respondent-assessee filed an appeal before the Commissioner of Appeals, who allowed the appeal on several grounds and material on records provided by the respondent-assessee. The revenue filed an appeal before the CESTAT, Bangalore, which was dismissed by the order impugned. Aggrieved thereby, the revenue filed an appeal before the High Court under Section 35G of the Act, the Hon'ble High Court while dismissing the appeal at the stage of admission and opined at para 7 of the Order is reproduced as under:

“7. As both the Commissioner of Appeals and the CESTAT have upheld the order of refund on the ground that there is no variation in the price of the product both before and after the period the duty was paid by the assessee;

and the respondent-assessee had produced a detailed Chartered Accountant's Certificate before adjudicating the authority; and in view of the fact that the Revenue failed to marshal any countervailing evidence to counteract the material produced by the assessee to disclose the passing of the duty liability to the consumer, the respondent-assessee is liable for refund."

* * *

Refund of pre-deposit not hit by unjust enrichment.

The decision of the Hon'ble High Court of Delhi in the case of *Commissioner of Customs v Ericsson India Pvt. Ltd.* reported in 2016 (332) E.L.T. 697 (Del.), while dismissing the appeal of revenue and held that Refund of pre-deposit was not hit by unjust enrichment, as assessee had discharged his initial burden by filing balance sheet as well as certificate of Chartered Accountant showing that incidence of said ad hoc payment was not passed on to the buyers and, therefore, the principle of unjust enrichment was not applicable. The deposit made along with interest was ordered to be released to the respondent within ten days. [para 3 & 4].

The decision of Tribunal in the case of *Larsen & Toubro Ltd. v Commissioner of Central Excise*, reported in 2015 (330) E.L.T. 749 (Tri.-Mumbai), held that the appellant have discharged the presumption of unjust enrichment as required for the purpose of getting refund. The appellant have produced a copy of their Ledger account as well as certificate of C.A. and the same have not been disputed by the Revenue. Thus, the tribunal held that the learned Commissioner (Appeals) is in error in rejecting the refund, holding that once duty is shown in invoice, it is deemed to be passed on, as the presumption is rebuttable. Thus, the appeal is allowed. The assessee is held, entitled to refund. [para 5].

Thus, C.A certificate is a substantial proof, which is issued by the statutory auditor of the Company with due verification of financial records/balance sheet and accounts ledger of the company, which may not be disputed by the revenue to satisfy the test of unjust enrichment. There are number of decision of various judicial forums to justify the position that CA certificate is substantive evidence to satisfy the test of unjust enrichment as under:

3E Infotech v CESTAT, Chennai 2018 (18) G.S.T.L. 410 (Mad.);

MIRC Electronics Ltd v CCE, Ahmadabad in 2013 (287) E.L.T. 225 (Tri. - Ahmd.);

CCE v Birla Ericson 2012 (286) E.L.T. 600 (Tri. - Del);

SAIL v CCE, Chennai 2012 (284) E.L.T. 212 (Tri. - Chennai) and

M/s. Interplex India Pvt. Ltd. v CCE, reported in 2013 (290) E.L.T. 386 (Tri. - Ahmd.)

Hero Motocorp Ltd. v Commissioner of Customs (Import & General) 2014 (302) E.L.T.501 (Del.)

IVRCL Infrastructures & projects Ltd v Union of India 2010 (257) E.L.T.33 (Bom.)

* * *

Department has no right to point out any deficiency in refund application after 15 days: Delhi HC

[*Jian International v Commissioner of Delhi Goods and Services Tax reported in 2020 (39) G.S.T.L. 385 (Delhi)*]

The petitioner has filed GST refund application on 4-11-2019 which has not been processed till date. He filed writ petition seeking grant of refund amount along with interest.

The Hon'ble High Court observed that as per Rules 90(2) and (3) of the Central Goods and Services Tax Rules, 2017 ('CGST Rules') the department has to either point out discrepancy/deficiency in FORM RFD-03 or acknowledge the refund application in FORM RFD-02, within fifteen days from the date of filing of the refund application. In case deficiencies are found, then the same are communicated to the assessee, requiring the assessee to file a fresh refund application after rectifying those deficiencies. In the present case, the petitioner's refund application is pending for processing. Neither acknowledgement nor deficiency memo has been issued within timeline of 15 days. Hence, refund application would be presumed to be complete in all respects as per Rule 89 of CGST Rules.

The Court has provided that if it allows the department to issue deficiency memo now, then it would amount to processing of refund application beyond the statutory timelines. This would also be construed as rejection of the petitioner's initial refund application as it would require a fresh refund application to be filed by the petitioner after rectifying the alleged deficiencies. Further, it would not only delay the petitioner's right to seek refund, but also impair its right to claim interest from the relevant date of filing the initial refund application.

The High Court held that the department has lost the right to point out any deficiency in the petitioner's refund application at this belated stage. The Court directed the department to pay the refund amount to the petitioner along with interest within two weeks

* * *

Rule 90(3) which treats 'Rectified Refund Application' as fresh application, challenged before Delhi HC

[*Insitel Services Pvt. Ltd v Union of India* (2020) 119 taxmann.com 371 (Delhi)]

The writ petition was filed challenging Rule 90(3) of the Central Goods and Services Tax Rules, 2017 ('CGST Rules') to the extent wherein rectification of deficiencies are treated as submission of fresh application for the purpose of computing limitation period for refund claim and grant of interest on delayed refund under the Central Goods and Services Tax Act, 2017 ('CGST Act').

The petitioner further submitted that refund application is automatically treated as rejected and the second refund application is treated as a fresh application and the interest amount is calculated only from the date of the second refund application or subsequent applications which are filed after receiving the deficiency memos. Thus, the applicants are deprived of their right to claim interest on refund from the date of the initial application. Hence, the refund procedure in Rule 90(3) of the CGST Rules is arbitrary, illegal and ultra vires.

Given the above submissions of the applicant, the Hon'ble High Court had issued notice to the govt. in this regard.

* * *

Unutilised accumulated input tax credit of notified goods on account of inverted duty structure shall not lapse: High Court

In the case of *Shabnam Petrofils (P.) Ltd. v Union of India*-reported in 2019 (29) G.S.T.L. 225 (Guj.) observed that certain goods or services have been notified by the department in respect of which refund of accumulated ITC, on account of inverted rate structure, shall not be available. The said notification, as amended by a subsequent notification, provided that accumulated ITC lying unutilised on the inward supplies received up to 31-07-2018, would lapse. The High Court held that no inherent power could be inferred from the provision of refund under the CGST Act, 2017 which could empower the Central Government to lapse unutilised ITC accumulated on account of inverted rate structure. Thus, it has been held that accumulated ITC lying unutilised in respect of notified goods, on account of inverted duty structure, would not lapse.

* * *

Refund claims – Circular No. 125/44/2019-GST not applicable for manual filings: The Bombay High Court has held that CBIC Circular No. 125/44/2019-GST, dated 18 November 2019 would not apply to an application for refund which is filed manually. Noting the Rule 97A of the CGST Act, 2017, the Court held that the circular cannot affect or control the statutory rule or derogate from it. Observing that the Rule 97A started with a non-obstante clause, it held that despite Rule 89 providing for electronic filing of applications for refund on the common portal, any reference to electronic filing of an application on the common portal shall include manual filing of the said refund application. [*Laxmi Organic Industries Ltd v Union of India* 2021 VIL 833 BOM]

* * *

Interest payment on delayed refund under Section 56 of the CGST Act, 2017

The Hon'ble Apex Court in the case of *Union of India & Ors v M/s Willwood Chemicals Pvt. Ltd*, reported in 2022 (137) taxmann.com 334 (S.C.), wherein held that refunds of unutilized input tax credit on export of goods under bond or letter of undertaking or refund of integrated tax paid on export goods are eligible to interest at rate of 6 per cent per annum for delay in refund and original order passed by the Appellate authority rate is 9% per annum

* * *

IGST paid on Ocean freight to be refunded with interest as per the Supreme Court decision in case of *M/s Mohit Minerals Pvt. Ltd*

The Hon'ble High Court of Gujarat in the case of *M/s ADI Enterprises v Union of India*, reported in 2022 (64) G.S.T.L. 392 (Guj.), wherein held that IGST Paid on ocean freight was to be refunded with interest consequent to dismiss of department's appeal against High Court order holding levy of such IGST as ultra vires in case of *Mohit Minerals Pvt. Ltd*, reported in 2020(33) G.S.T.L. 321 (Guj).

Chapter 17

Assessment

Synopsis

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1. Introduction

The word “assessment” has been defined under sub-section (11) of Section 2 of the Central Goods and Services Tax Act, 2017 and “assessment” means determination of tax liability under this Act and includes self-assessment, re-assessment, provisional assessment, summary assessment and best judgment assessment.

Chapter XII of the Central Goods and Services Tax Act, 2017 has been provided the various principles of assessment.

2. Self assessment

Section 59 of CGST Act, 2017 has specified that every registered person shall self-assess taxes payable and furnish a return for each tax period under Section 39.

3. Provisional Assessment - Section 60 CGST Act

A supplier can ascertain the amount of his tax liability against supply of goods and services only after assessment. The essential determinants of the tax

liability are generally the applicable tax rate and the value. There are certain situations when these determinants may not be easily ascertainable and may be subject to the outcome of a process that requires certain parameters to finalize the tax liability and that point of time, to carry out an assessment and determine the exact duty liability, the GST law provides the procedure of provisional assessment.

4. Basic premises of provisional assessment

The Assistant Commissioner/Dy. Commissioner of Central Tax provisionally determines the amount of tax payable by the supplier and is subject to final determination. On provisional assessment, the supplier can pay tax on provisional basis but only after he executes a bond with security, binding them for payment of the difference between the amount of tax as may be finally assessed and the amount of tax provisionally assessed. On finalization of the provisional assessment, any amount that has been paid on the basis of such assessment is to be adjusted against the amount that has been finally determined as payable. In case of short payment, the same has to be paid with interest and in case of excess payment, the same will be refunded with interest.

5. Statutory provisions of provisional assessment

Section 60 of CGST Act, 2017 has prescribed the provisions of Provisional assessment and the same are summarized as under:

- (1) where the taxable person is unable to determine the value of goods or services or both or determine the rate of tax applicable there to, he may request the proper officer in writing giving reasons for payment of tax on a provisional basis and the proper officer shall pass an order, within a period not later than 90 days from the date of receipt of such request, allowing payment of tax on provisional basis at such rate or on such value as may be specified by him.
- (2) The payment of tax on provisional basis may be allowed, if the taxable person executes a bond in such form as may be prescribed, and with such surety or security as the proper officer may deem fit, binding the taxable person for payment of the difference between the amount of tax as may be finally assessed and the amount of tax provisionally assessed.
- (3) The proper officer shall, within a period not exceeding 6 months from the date of the communication of the provisional order, pass the final assessment order after taking into account such information as may be required for finalizing the assessment.
Provided that the period specified in this sub-section may, on sufficient cause being shown and for reasons to be recorded in writing, be extended by the Joint Commissioner or Additional Commissioner for a further period not exceeding six months and by the Commissioner for such further period not exceeding four years.
- (4) The registered person shall be liable to pay interest on any tax payable on the supply of goods or services or both under provisional assessment but

not paid on the due date at the rate specified, from the first day after the due date of payment of tax in respect of the said supply of goods or services or both till the date of actual payment, whether such amount is paid before or after the issuance of order for final assessment.

- (5) Where the registered person is entitled to a refund consequent to the order of final assessment under sub-section (3), subject to the provisions of sub-section (8) of section 54 of CGST Act, 2017, interest shall be paid on such refund as provided in section 56 of CGST Act, 2017.

6. Procedure of Provisional Assessment

The procedure of provisional assessment has been specified under Rule 98 of CGST Rules, 2017 and the detailed procedures are summarized as under:

- (1) In case a supplier is unable to determine the value of goods or services or both or to determine the rate of tax applicable thereto, he can request to the Asst. Commissioner/or Dy. Commissioner of Central Tax in writing, giving reasons for payment of tax on a provisional basis. The supplier requesting for payment of tax on a provisional basis has to furnish an application along with the documents in support of his request, electronically in **FORM GST ASMT-01** on the Common Portal, either directly or through a Facilitation Centre notified by the Commissioner.
- (2) The Asst. Commissioner/Dy. Commissioner of Central Tax will scrutinize the application in FORM GST ASMT-01. In case, additional information or documents in support is required by the Asstt. Commissioner/Dy. Commissioner of Central Tax to decide the case, then AC/DC may issue a notice in **FORM GST ASMT-02** to the supplier requesting to furnish additional information or documents in support of his request. The supplier has to file a reply to the notice in **FORM GST ASMT-03**, and if he desires can also appear in person before the Asstt. Commissioner/Dy. Commissioner of Central Tax to explain his case.
- (3) The Asstt. Commissioner/Dy. Commissioner of Central Tax will then issue an order in **FORM GST ASMT-04**, within a period not later than 90 days from the date of receipt of the request, allowing the payment of tax on a provisional basis. The order will indicate the basis and the amount (this amount shall be include the amount integrated tax, central tax, State tax or Union territory tax and cess payable in respect of the transaction) for which the bond is to be executed along with the security to be furnished. The security will not exceed 25% of the amount covered under the bond.
- (4) The supplier has to execute the bond in **FORM GST ASMT-05** along with a security in the form of a bank guarantee for an amount as mentioned in **FORM GST ASMT-04**.

Provided that a bond furnished to the proper officer under the State Goods and Services Tax Act or Integrated Goods and Services Tax Act

shall be deemed to be a bond furnished under the provisions of the Act and the rules made thereunder.

Explanation.—For the purposes of this rule, the expression "amount" shall include the amount of integrated tax, central tax, State tax or Union territory tax and cess payable in respect of the transaction.

- (5) The proper officer shall issue a notice in **FORM GST ASMT-06**, calling for information and records required for finalization of assessment under sub-section (3) of section 60 and shall issue a final assessment order, specifying the amount payable by the registered person or the amount refundable, if any, in **FORM GST ASMT-07**.
- (6) The applicant may file an application in **FORM GST ASMT-08** for the release of the security furnished under sub-rule (4) after issue of the order under sub-rule (5).
- (7) The proper officer shall release the security furnished under sub-rule (4), after ensuring that the applicant has paid the amount specified in sub-rule (5) and issue an order in **FORM GST ASMT-09** within a period of seven working days from the date of the receipt of the application under sub-rule (6).

7. Finalization of provisional assessment

- (1) The provisional assessment will be finalized, within a period not exceeding six months from the date of issuance of **FORM GST AMT - 04**. The Asstt. Commissioner/Dy. Commissioner of Central Tax will issue a notice in **FORM GST ASMT-06**, calling for information and records required for finalization of assessment and shall issue a final assessment order, specifying the amount payable by the registered person or the amount refundable, if any, in **FORM GST ASMT-07**.
- (2) On sufficient cause being shown and for reasons to be recorded in writing, the time limit for finalization of provisional assessment can be, extended by the Joint Commissioner or Additional Commissioner for a further period not exceeding 6 months and by the Commissioner for such further period not exceeding 4 years.

8. Interest Liability

In case any tax amount becomes payable subsequent to finalization of the provisional assessment, then interest at the specified rate will also be payable by the supplier from the first day after the due date of payment of the tax till the date of actual payment, whether such amount is paid before or after the issuance of order for final assessment.

In case any tax amount becomes refundable subsequent to finalization of the provisional assessment, then interest (subject to the eligibility of refund and absence of unjust enrichment) at the specified rate will be payable to the supplier.

9. Release of Security consequent to Finalization of Assessment

Once the order in **FORM GST ASMT-07** is issued, the supplier has to file an application in **FORM GST ASMT-08** for the release of the security furnished. On receipt of this application the Asstt. Commissioner/Dy. Commissioner of Central Tax will issue an order in order in **FORM GST ASMT-09** within a period of 7 working days from the date of receipt of the application, releasing the security after the amount payable if any as specified in **FORM GST ASMT-07** has been paid.

10. Scrutiny of returns - Section 61 of CGST Act

Section 61 of GST Act, 2017 has prescribed scrutiny of returns by the proper officer and sub-section of the Act as under:

1. The proper officer may scrutinize the return and related particulars furnished by the registered person to verify the correctness of the return and inform him the discrepancies if any found during the scrutiny. The proper officer, shall issue a notice to the said person in **FORM GST ASMT-10**, informing him of such discrepancy and seeking his explanation thereto within such time, not exceeding thirty days from the date of service of the notice or such further period as may be permitted by him and also, where possible, quantifying the amount of tax, interest and any other amount payable in relation to such discrepancy.
2. If the registered person explained the discrepancies and found acceptable, then no further action shall be taken against the registered person.
3. If no satisfactory explanation is furnished within a period of 30 days and after accepting discrepancies the registered person fails to comply the same in his return for the month in which discrepancy is accepted, then the proper officer may initiate appropriate action to determine the tax and other dues. Action including those under section 65 or section 66 or section 67 or proceed to determine the tax and other dues under section 73 or section 74.

11. Assessment of non-filers of returns - Section 62 of CGST Act

Section 62 of GST Act, 2017 has prescribed the action plan to catch hold of non-filers returns by the registered person and assessment of these returns:

1. Notwithstanding anything to the contrary contained in section 73 or section 74, Where a registered person fails to furnish the return in terms under section 39 or section 45 of the Act, even after the service of a notice under section 46 of the Act, the proper officer may proceed to assess the tax liability of the said person to the best of his judgment taking into account all the relevant material which is available or which he has gathered and issue an assessment order within a period of 5 years from the date specified under section 44 furnishing of the annual return for the financial year to which the tax not paid relates.

2. Where the registered person furnishes a valid return within 60 days of the service of the assessment order under sub-section (1), the said assessment order shall be deemed to have been withdrawn but the liability for payment of interest under section 50(1) or for payment of late fee under section 47 shall continue.

Provided that where the registered person fails to furnish a valid return within sixty days of the service of the assessment order under sub-section (1), he may furnish the same within a further period of sixty days on payment of an additional late fee of one hundred rupees for each day of delay beyond sixty days of the service of the said assessment order and in case he furnishes valid return within such extended period, the assessment order shall be deemed to have been withdrawn, but the liability to pay interest under sub-section (1) of section 50 or to pay late fee under section 47 shall continue.” (vide Section 148 of the Finance Act, 2023) This is effective from 01.10.2023 Notified vide Notification No. 48/2023-CT dated 29.09.2023.

12. Assessment of un-registered persons - Section 63 of CGST Act

Section 63 of CGST Act, 2017 prescribed that where a taxable person fails to obtain registration under section 29(2) of the Act, even though liable to do so or whose registration has been cancelled, but who was liable to pay tax, the proper officer may proceed to assess the tax liability of such taxable person to the best of his judgment for the relevant tax periods and issue an assessment order giving the person an opportunity of being heard within a period of five years from the date specified under section 44 of the Act, for furnishing of the annual return for the financial year to which the tax not paid relates:

Provided that no such assessment order shall be passed without giving the person an opportunity of being heard.

13. Summary assessment in certain special cases - Section 64 of CGST Act

Section 64 of CGST Act, 2017 has prescribed the provision of Summary assessment in certain special cases and sub-section as under:

1. The proper officer may, on any evidence showing a tax liability of a person coming to his notice, with the previous permission of Additional Commissioner or Joint Commissioner, proceed to assess the tax liability of such person to protect the interest of revenue and issue an assessment order, if he has sufficient grounds to believe that any delay in doing so may adversely affect the interest of revenue:

Provided that where the taxable person to whom the liability pertains is not ascertainable and such liability pertains to supply of goods, the person in charge of such goods shall be deemed to be the taxable person liable to be assessed and liable to pay tax and any other amount due under this section.

2. On an application made by the taxable person within thirty days from the date of receipt of order passed under sub-section (1) or on his own

motion, if the Additional Commissioner or Joint Commissioner considers that such order is erroneous, he may withdraw such order and follow the procedure laid down in Section 73 or Section 74 of CGST Act, 2017.

14. Provisions of Assessment Rules

Rules 98 to 100 of CGST Rules, 2017 has specified the various provisions of assessment and there are 18 Nos. FORMS have been prescribed from **FORM GST ASMT-01 TO FORM GST ASMT-18** under assessment rules. The key features of the assessment rules as under:

15. Provisional Assessment - Rule-98 of CGST Rules

- (1) Every registered person requesting for payment of tax on a provisional basis in accordance of sub-section (1) of section 60 of the GST Act, shall furnish an application in **FORM GST ASMT-01**, along with the documents in support of his request, electronically through the Common Portal (GSTN).
- (2) The proper officer may, on receipt of the application under sub-rule (1), issue a notice in **FORM GST ASMT-02** requiring the registered person to appear in person or furnish additional information or documents in support of his request and the applicant shall file a reply to the notice in **FORM GST ASMT-03**.

16. Issue of Order

The proper officer shall issue an order in **FORM GST ASMT-04**, either rejecting the application, stating the grounds for such rejection or allowing payment of tax on provisional basis indicating the value or the rate or both on the basis of which the provisional assessment is to be made and the amount for which the bond is to be executed and security to be furnished not exceeding 25% of the amount covered under the bond.

17. Execution of Bond

The registered person shall execute a bond in accordance with the provisions of sub-section (2) of Section 60 of CGST Act, in **FORM GST ASMT-05** along with a security in the form of a bank guarantee for an amount as determined under sub-rule (3) and amount shall include the Integrated Tax, Central Tax, State Tax or Union Territory Tax and Cess payable in respect of such transaction.

18. Issue of Assessment Order

The proper officer shall issue a notice in **FORM GST ASMT-06**, calling for information and records required for finalization of assessment under sub-section (3) of Section 60 of CGST Act and shall issue a final assessment order, specifying the amount payable by the registered person or the amount refundable, if any, in **FORM GST ASMT-07**.

19. Release of Security

The applicant may file an application in **FORM GST ASMT-08** for release of security furnished under sub-rule (4) after issue of order under sub-rule (5).

The proper officer shall release the security furnished under sub-rule (4), after ensuring that the applicant has paid the amount specified in sub-rule (5) and issue an order in **FORM GST ASMT-09** within a period of 7 working days from the date of receipt of the application under sub-rule (6).

20. Scrutiny of returns - Rule 99 of CGST Rules

(1) Where any return furnished by a registered person is selected for scrutiny, the proper officer shall scrutinize the same in accordance with the provisions of Section 61 of the GST Act, with reference to the information available with him, and in case of any discrepancy, he shall issue a notice to the said person in **FORM GST ASMT-10**, informing him of such discrepancy and seeking his explanation thereto within such time, not exceeding 15 days from the date of service of the notice, as may be specified in the notice and also quantifying the amount of tax, interest and any other amount payable in relation to such discrepancy.

(2) The registered person may accept the discrepancy mentioned in the notice issued under sub-rule (1), and pay the tax, interest and any other amount arising from such discrepancy and inform the same or furnish an explanation for the discrepancy in **FORM GST ASMT-11** to the proper officer.

(3) Where the explanation furnished by the taxable person or the information submitted under sub-rule (2) is found to be acceptable, the proper officer shall inform the registered person accordingly in **FORM GST ASMT-12**.

21. Assessment in certain cases - Rule 100 of CGST Rules

(1) The order of assessment made under sub-section (1) of section 62 of the GST Act, shall be issued in **FORM GST ASMT-13** and a summary thereof shall be uploaded electronically in **FORM GST DRC-07**.

(2) The proper officer shall issue a notice to an unregistered taxable person in accordance with the provisions of section 63 of CGST Act, in **FORM GST ASMT-14** containing the grounds on which the assessment is proposed to be made on best judgment basis and shall also serve a summary thereof electronically in **FORM GST DRC-01** after allowing a time of 15 days to such person to furnish his reply, if any, pass an order in **FORM GST ASMT-15** and summary thereof shall be uploaded electronically in **FORM GST DRC-07**.

(3) The order of summary assessment under sub-section (1) of Section 64 of CGST Act shall be issued in **FORM GST ASMT-16** and a summary of the order shall be uploaded electronically in **FORM GST DRC-01**.

(4) The person referred to in sub-section (2) of Section 64 of CGST Act, may file an application for withdrawal of the summary assessment order in **FORM GST ASMT-17**.

(5) The order of withdrawal or, as the case may be, rejection of the application under sub-section (2) of Section 64 of CGST Act shall be issued in **FORM GST ASMT-18**.

Chapter 18

Audit under GST

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1. Introduction

Generally, the term audit means verification or scrutiny of records by a third party or Government agencies to ascertain the correct transaction of a business entity and to know genuinely about discharge of tax liability by the assessee. The procedure and frame work for the provisions of Audit under GST has been incorporated under Chapter XIII of Goods and Services Tax Act, 2017. Section 65 of CGST Act, has specified the provisions of Audit by tax authorities, the sub-sections as under:

2. Audit by Tax Authorities - Section 65 of CGST Act, 2017

The Commissioner or any officer authorised by him, by way of a general or a specific order, may undertake audit of any registered person for such period, at such frequency and in such manner as may be prescribed. The officers so authorised may conduct audit at the place of business of the registered person or in their office.

3. Notice for Audit before 15 days of intimation

The registered person shall be informed by way of a notice not less than 15 working days prior to the conduct of audit in such manner as may be prescribed.

4. Duration of Audit within 3 months

The audit so authorised by the Commissioner shall be completed within a period of 3 months from the date of commencement of the audit:

Provided that where the Commissioner is satisfied that audit in respect of such registered person cannot be completed within 3 months, he may, for the reasons to be recorded in writing, extend the period by a further period not exceeding 6 months.

5. Assistance from Registered person

During the course of audit, the authorised officer may require the registered person,—

- (i) to afford him the necessary facility to verify the books of account or other documents as he may require;
- (ii) to furnish such information as he may require and render assistance for timely completion of the audit.

6. Information on completion of Audit

On conclusion of audit, the proper officer shall, within 30 days, inform the registered person, whose records are audited, about the findings, his rights and obligations and the reasons for such findings.

7. Recovery of any Dues

Where the audit conducted as per permission of the Commissioner, results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilized, the proper officer may initiate action under Section 73 or Section 74 of CGST Act, 2017.

8. Special Audit Procedures - Section 66 of CGST Act

Section 66 of CGST Act, has specified the provision of Special Audit and the various procedures summarized as under:

- (1) If at any stage of scrutiny, inquiry, investigation or any other proceedings before him, any officer not below the rank of Assistant Commissioner, having regard to the nature and complexity of the case and the interest of revenue, is of the opinion that the value has not been correctly declared or the credit availed is not within the normal limits, he may, with the prior approval of the Commissioner, direct such registered person by a communication in writing to get his records including books of account examined and audited by a chartered accountant or a cost accountant as may be nominated by the Commissioner.
- (2) The chartered accountant or cost accountant so nominated shall, within the period of 90 days, submit a report of such audit duly signed and certified by him to the said Assistant Commissioner mentioning therein such other particulars as may be specified:

Provided that the Assistant Commissioner may, on an application made to him in this behalf by the registered person or the chartered accountant or cost accountant or for any material and sufficient reason, extend the said period by a further period of 90 days.

- (3) The provisions of Audit by Tax Authorities shall have effect notwithstanding that the accounts of the registered person have been audited under any other provisions of this Act or any other law for the time being in force.
- (4) The registered person shall be given an opportunity of being heard in respect of any material gathered on the basis of special audit by Tax

authorities which is proposed to be used in any proceedings against him under this Act or the rules made thereunder.

- (5) The expenses of the examination and audit of records as per authorised by the Commissioner, including the remuneration of such chartered accountant or cost accountant, shall be determined and paid by the Commissioner and such determination shall be final.
- (6) Where the special audit conducted under sub-section (1) results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilized, the proper officer may initiate action under Section 73 or Section 74 of the GST Act, 2017

9. Audit Rules

Rules 101 and 102 of CGST Rules has specified the various procedures of Audit as under:

- (1) The period of audit to be conducted under sub-section (1) of Section 65 of CGST Act, shall be a financial year or part thereof or multiples thereof.
- (2) Where it is decided to undertake the audit of a registered person in accordance with the provisions of Section 65 of CGST Act, the proper officer shall issue a notice in **FORM GST ADT-01** within the time specified in sub-section (3) of the said section.
- (3) The proper officer authorised to conduct audit of the records and books of account of the registered person shall, with the assistance of the team of officers and officials accompanying him, verify the documents on the basis of which the books of account are maintained and the returns and statements furnished under the Act and the rules made thereunder, the correctness of the turnover, exemptions and deductions claimed, the rate of tax applied in respect of supply of goods or services or both, the input tax credit availed and utilized, refund claimed, and other relevant issues and record the observations in his audit notes.
- (4) The proper officer may inform the registered person of the discrepancies, if any, noticed as observations of the audit and the said person may file his reply and the proper officer shall finalize the findings of the audit after due consideration of the reply furnished.
- (5) On conclusion of the audit, the proper officer shall inform the findings of audit to the registered person in accordance with the provisions of sub-section (6) of Section 65 of CGST Act, in **FORM GST ADT-02**.

10. Special Audit - Rule 102 of CGST Rules

- (1) Where special audit is required to be conducted under Section 66 of GST Act, the officer referred to in the said section shall issue a direction in **FORM GST ADT-03** to the registered person to get his records audited by the chartered accountant or cost accountant specified in the said direction.

- (2) On conclusion of special audit, the registered person shall be informed of the findings of special audit in **FORM GST ADT-04**.

11. Case Law

GST Audit: Issuance of Final Report shall be after considering Reply of Assessee: Orissa High Court

The Hon'ble High Court of Orissa in the case of *M/s Simon India Ltd v CT and GST Officer*, reported in 2022-VIL-747-ORI, held that there was no opportunity granted to the petitioner to file a reply to the draft audit report and paradoxically, on the same day that draft audit report was issued, the final audit report was also issued so both reports on the same day is not valid. As the time-limits prescribed were getting breached, the High Court directed the Commissioner to extend the period for completion of audit and the taxpayer was directed to file reply to draft audit report.”

Chapter 19

Inspection, Search, Seizure and Arrest

Synopsis

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1. Introduction

The provisions of Inspection, Search, Seizure and Arrest are adopted in any tax system to ensure smooth tax administration in the Country. These deterrent provisions are required to protect the Government's revenue and safeguard Government's legitimate dues. Thus, these provisions act as a mechanism to curb evasion from tax and encourage to genuine taxpayers to pay their tax in time. It is pertinent to mention that the options of Inspection, Search, Seizure and Arrest are exercised, only in exceptional circumstances and as a last resort, to recover government revenues from the tax evaders.

2. Officer empowered to exercise Inspection, Search and Seizure

Section 67 to Section 72 of CGST Act, 2017 deals with the provision of Inspection, Search and Seizure, wherein the power of exercising the said activities has been assigned to the officer, not below the rank of joint Commissioner of GST.

3. Reasons for initiating action of Inspection, Search and Seizure - Section 67 of CGST Act

(1) The joint Commissioner of GST, under exceptional circumstances can initiate action of inspection, search, seizure and arrest under the following reasons:

- (a) a taxable person has suppressed any transaction relating to supply of goods or services or both or the stock of goods in hand, or has claimed input tax credit in excess of his entitlement under this Act or has indulged in contravention of any of the provisions of this Act or the rules made thereunder to evade tax under this Act; or
- (b) any person engaged in the business of transporting goods or an owner or operator of a warehouse or a godown or any other place is keeping goods which have escaped payment of tax or has kept his accounts or goods in such a manner as is likely to cause evasion of tax payable under this Act.

he may authorise in writing any other officer of central tax to inspect any places of business of the taxable person or the persons engaged in the business of transporting goods or the owner or the operator of warehouse or godown or any other place.

4. Authorisation to inspection, search and Seizure by the Joint Commissioner - Section 67(2) of CGST Act

(2) Where the proper officer is below the rank of joint Commissioner to carry inspection, in that case the Joint Commissioner shall issue an authorisation in **FORM GST INS-01** authorizing any other officer subordinate to him to conduct the inspection or search or seizure of goods, documents, books or things liable to confiscation in any places of business of the taxable person or the persons engaged in the business of transporting goods or the owner or the operator of warehouse or godown or any other place and liable for seizure accordance to Rule 139 of CGST Rules, the proper officer or an authorised officer shall make an order of seizure in **FORM GST INS-02**.

Provided that where it is not practicable to seize any such goods, the proper officer, or any officer authorised by him, may serve on the owner or the custodian of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer:

Provided further that the documents or books or things so seized shall be retained by such officer only for so long as may be necessary for their examination and for any inquiry or proceedings under this Act.

(3) The documents, books or things or any other documents, books or things produced by a taxable person or any other person, which have not been relied upon for the issue of notice under this Act or the rules made thereunder, shall be returned to such person within a period not exceeding thirty days of the issue of the said notice.

5. Extraordinary power of search**➤ For search of premises to break upon Almirha or concealed places:**

(4) The officer so authorised shall have the power to seal or break open the door of any premises or to break open any *almirah*, electronic devices, box, receptacle in which any goods, accounts, registers or documents of the person are suspected to be concealed, where access to such premises, *almirah*, electronic devices, box or receptacle is denied.

➤ Owner seized goods may entrust upon for safe keep:

(5) The proper officer or an authorised officer may entrust upon the owner or the custodian of goods, from whose custody such goods or things are seized, the custody of such goods or things for safe upkeep and the said person shall not remove, part with, or otherwise deal with the goods or things except with the previous permission of such officer.

➤ Goods so seized shall be released upon execution bond:

(6) The goods so seized under sub-section (2) shall be released, on a provisional basis, upon execution of a bond and furnishing of a security, in such manner and of such quantum, respectively, as may be prescribed or on payment of applicable tax, interest and penalty payable, as the case may be.

➤ Goods so seized shall be returned to the person within six months:

(7) Where any goods are seized under sub-section (2) and no notice in respect thereof is given within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized:

Provided that the period of six months may, on sufficient cause being shown, be extended by the proper officer for a further period not exceeding six months.

➤ Perishable or hazardous goods may be disposed of:

(8) The Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, by notification, specify the goods or class of goods which shall, as soon as may be after its seizure under sub-section (2), be disposed of by the proper officer in such manner as may be prescribed.

➤ Preparation of an inventory of seized goods:

(9) Where any goods, being goods specified under sub-section (8), have been seized by a proper officer, or any officer authorised by him under sub-section (2), he shall prepare an inventory of such goods in such manner as may be prescribed.

➤ Criminal procedure is applicable to search and seizure:

(10) The provisions of the Code of Criminal Procedure, 1973, relating to search and seizure, shall, so far as may be, apply to search and seizure under

this section subject to the modification that sub-section (5) of section 165 of the said Code shall have effect as if for the word "Magistrate", wherever it occurs, the word "Commissioner" were substituted.

➤ **A receipt should be issued for the seize documents:**

(11) Where the proper officer has reasons to believe that any person has evaded or is attempting to evade the payment of any tax, he may, for reasons to be recorded in writing, seize the accounts, registers or documents of such person produced before him and shall grant a receipt for the same, and shall retain the same for so long as may be necessary in connection with any proceedings under this Act or the rules made thereunder for prosecution.

➤ **Check business premises authorisation is required:**

(12) The Commissioner or an officer authorised by him may cause purchase of any goods or services or both by any person authorised by him from the business premises of any taxable person, to check the issue of tax invoices or bills of supply by such taxable person, and on return of goods so purchased by such officer, such taxable person or any person in charge of the business premises shall refund the amount so paid towards the goods after cancelling any tax invoice or bill of supply issued earlier.

6. Order of prohibition - Rule 139(4) of CGST Rules

Where it is not practicable to seize any such goods, the proper officer or the authorised officer may serve on the owner or the custodian of the goods, an order of prohibition in **FORM GST INS-03** that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer.

7. Inventory of seized goods - Rule 139(5) of CGST Rules

The officer seizing the goods, documents, books or things shall prepare an inventory of such goods or documents or books or things containing, *inter alia*, description, quantity or unit, make, mark or model, where applicable, and get it signed by the person from whom such goods or documents or books or things are seized.

8. Procedure of released of seized goods - Rule 140 of CGST Rules

As per Rule 140(1) of CGST Rules, 2017, the seized goods may be released on a provisional basis upon execution of a bond for the value of the goods in **FORM GST INS-04** and furnishing of a security in the form of a bank guarantee equivalent to the amount of applicable tax, interest and penalty payable.

(2) In case the person to whom the goods were released provisionally fails to produce the goods at the appointed date and place indicated by the proper officer, the security shall be enchased and adjusted against the tax, interest and penalty and fine, if any, payable in respect of such goods.

Where any goods are seized and no notice in respect thereof is given within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized:

Provided that the period of six months may, on sufficient cause being shown, be extended by the proper officer for a further period not exceeding six months.

9. Recovery of dues in case of perishable seized goods - Rule 141 of CGST Rules

(1) Where the goods or things seized are of perishable or hazardous nature, and if the taxable person pays an amount equivalent to the market price of such goods or things or the amount of tax, interest and penalty that is or may become payable by the taxable person, whichever is lower, such goods or, as the case may be, things shall be released forthwith, by an order in **FORM GST INS-05**, on proof of payment.

(2) Where the taxable person fails to pay the amount in respect of the said goods or things, the proper officer may dispose of such goods or things and the amount realized thereby shall be adjusted against the tax, interest, penalty, or any other amount payable in respect of such goods or things.

10. Applicability of Cr. P.C. 1973

The provisions of the Code of Criminal Procedure, 1973, relating to search and seizure, shall, so far as may be, apply to search and seizure under this section subject to the modification that sub-section (5) of section 165 of the said Code shall have effect as if for the word "Magistrate", wherever it occurs, the word "Commissioner" were substituted.

11. Seize of Accounts

Where the proper officer has reasons to believe that any person has evaded or is attempting to evade the payment of any tax, he may, for reasons to be recorded in writing, seize the accounts, registers or documents of such person produced before him and shall grant a receipt for the same, and shall retain the same for so long as may be necessary in connection with any proceedings under this Act or the rules made thereunder for prosecution.

12. Disposal of purchase goods

The Commissioner or an officer authorised by him may cause purchase of any goods or services or both by any person authorised by him from the business premises of any taxable person, to check the issue of tax invoices or bills of supply by such taxable person, and on return of goods so purchased by such officer, such taxable person or any person in charge of the business premises shall refund the amount so paid towards the goods after cancelling any tax invoice or bill of supply issued earlier.

13. Inspection of goods in movement

Section 68 of CGST Act, deals with the provision of Inspection. Inspection can also be carried of the vehicle or conveyance carrying GST paid goods during movement of goods in transit. The person in charge of the conveyance has to produce documents/devices for verification and cooperate the proper officer for

inspection of goods. Inspection of conveyance can be done without authorisation of joint Commissioner and in the following principle.

- (a) Any conveyance carrying consignment of value is exceeding ₹50,000/-, may be stopped by the proper officer in transit for verification of documents/devices prescribed for movement of such consignment.
- (b) Upon verification of the consignment if it is found that the goods were removed without proper documents or the goods supplied in contravention of the CGST Act, then the same goods can be detained or seized for recovery of dues.
- (c) To avoid harassment and minimize hardship to the trade, no vehicle shall be held up more than 30 minutes. In that case transporter can give details feedback on the portal. This will ensure accountability and transparency for all such verifications.

14. Power of Arrest - Section 69 of CGST Act

Section 69 of CGST Act, deals with the provision of arrest. Where the Commissioner has reasons to believe that a person has committed any offence specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) of section 132 which is punishable under clause (i) or (ii) of sub-section (1), or sub-section (2) of the said section, he may, by order, authorise any officer of central tax to arrest such person.

➤ **Arrested person produce before a Magistrate within 24 hrs of arrest.**

(2) Where a person is arrested under sub-section (1) for an offence specified under sub- section (5) of section 132, the officer authorised to arrest the person shall inform such person of the grounds of arrest and produce him before a Magistrate within twenty-four hours.

For smooth tax administration the provision of arrest has been incorporated under GST law. The objective of arrest to curb or control unscrupulous tax evaders. The GST law has sufficient inbuilt safeguards to ensure that the provision of arrest can be used only under authorisation from the Commissioner. The authorisation of arrest can be issued by the Commissioner when the evasion of tax amount is exceeding ₹200 lakhs or more than the specified limit. However, the monetary limit shall not be applicable, if the offences are committed again even after being convicted earlier i.e. repeat offender of the similar nature of offences can be arrested irrespective of the tax amount involved in the case.

➤ **Person arrested if evasion of tax amount involving of ₹200 lakhs and tax involved more than ₹500 lakhs offence is cognizable/non-bailable:**

Further, even though a person can be arrested for specified offences involving tax amount exceeding ₹200 lakhs, however, where the tax involved is less than rupees ₹500 lakhs, the offences are classified as non-cognizable and bailable and all such arrested persons shall be released on Bail by Deputy/Assistant Commissioner. But in case of arrests for specified offences where the tax amount involved is more than ₹500 lakhs, the offence is

classified as cognizable and non-bailable and such cases the bail can be considered by a judicial Magistrate only.

15. Procedure to be observed after arrest

The officer of authorised to arrest the person shall inform such person about the grounds of arrest and produce him before a Magistrate within twenty-four hours.

- **In case of non-cognizable offence can be released on bail otherwise cognizable offence bail shall be granted by Magistrate.**

Subject to the provision of the Code of Criminal Procedure, 1973 and depending upon the nature of offence,

- (a) he shall be released on bail or in default of bail, he shall be forwarded to the custody of the Magistrate.
- (b) Where the case of a non-cognizable and bailable offence, the Deputy Commissioner or the Assistant Commissioner shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers and be subject to the same provisions as an officer-in-charge of a police station.

16. Power to summons persons to give evidence for investigation

Section 70 of CGST Act, prescribed that the proper officer shall have the power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry in the same manner as provided in the case of a civil court under the provisions of the Code of Civil procedure, 1908.

Every such inquiry shall be deemed to be a “judicial proceedings “within the meaning of Section 193 and Section 228 of the Indian Penal Code, 1860.

- **Every inquiry is judicial proceedings under section 193 and 228 of the IPC, 1860.**

17. Access to business Premises

Section 71 of CGST Act, specified that the proper officer not below the rank of Joint Commissioner, shall have access to any place of business of a registered person to inspect books of account, documents, computers, computer programs, computer software whether installed in a computer or otherwise and such other things as he may require and which may be available at such place, for the purposes of carrying out any audit, scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.

- **Access to business premises authorised by officer not the below the rank of Joint Commissioner:**

Every person in charge of place of business shall, on demand, make available to the authorised officer or the audit party deputed by the proper officer or a cost accountant or chartered accountant nominated for audit of records.

- (i) such records as prepared or maintained by the registered person and declared to the proper officer in such manner as may be prescribed;
- (ii) trial balance or its equivalent;
- (iii) statements of annual financial accounts, duly audited, wherever required;
- (iv) cost audit report, if any, under Section 148 of the Companies Act, 2013;
- (v) the Income Tax audit report, if any, under Section 44AB of the Income Tax Act, 1961; and
- (vi) any other relevant record,

for the scrutiny by the officer or audit party or the chartered accountant or cost accountant within a period not exceeding fifteen working days from the day when such demand is made, or such further period as may be allowed by the said officer or the audit party or the chartered accountant or cost accountant.

18. Officers to assist authorised officer

Section 72 of CGST Act, specified that all officers of Police, Railways, Customs, and those officers engaged in the collection of land revenue, including village officers, officers of State tax and officers of Union territory tax shall assist the proper officers to access to business premises for audit of book account or records maintained by the registered person.

As per the direction of the Commissioner, the Government may, by notification, empower and require any other class of officers to assist the proper officers for the purpose of audit of records or Books of accounts.

19. Guidelines storage and handling of valuable seized goods

The Government of India has issued a Instruction No. 17/2018-Cus., dated October 15, 2018 for handling and storage of valuable goods that are seized or confiscated by the department. A Multi – Disciplinary Committee was constituted by the board and has made the following recommendations to the board for prevention of theft, replacement, pilferage of gold at various formations. The gist of the instruction are summarized below for the ease of understanding.

- (i) Implementing the recommendations of the Multi-Disciplinary Committee.
- (ii) Putting in place an ‘e-malkhana’ system on the lines of Delhi Airport Customs.
- (iii) Issuing Standard Operating Procedures (SOPs) which may, *inter alia*, include the instructions and guidelines issued by the Board in the matter from time to time, the procedures laid out for implementation of the recommendations of the Multi-Disciplinary Committee, the procedures required to be followed for implementing ‘e-malkhana’ type of system, etc. While issuing SOPs, the existing SOPs and Standing Orders issued by other Customs formations may also be taken into account to include

the best practices being followed elsewhere and to further strengthen and secure the internal systems and procedures.

- (iv) While implementing the aforesaid instructions, the formations may introduce additional measures/features to further strengthen their handling and storage systems and may also take into account specific factors that may have a bearing on their safety and security procedures.

20. C.BI & C, Circulars/Instruction

In case of Seized goods only 14 days allow to pay penalty in transit checking:

Circular No. 41/15/2018 dated 13.04.2018 This circular is revised in view of the amendment carried out in section 129 of the CGST Act, 2017 vide section 27 of the CGST (Amendment) Act, 2018 allowing 14 days for owner/transporter to pay tax/penalty for seized goods. Accordingly, the original and the amended relevant para of the circular are detailed hereunder:

In case the proposed tax and penalty are not paid within fourteen days from the date of the issue of the order of detention in FORM GST MOV-06, the action under section 130, of CGST Act shall be initiated by serving a notice in FORM GST MOV-10, proposing confiscation of the goods and conveyance and imposition of penalty. Further, FORM GST MOV-08 and FORM GST MOV-09, annexed to the circular are revised as below: FORM GST MOV-08 (para 4). And if all taxes, interest, penalty, fine and other lawful charges demanded by the proper officer are duly paid within fourteen days of the date of detention being made in writing by the said proper officer, this obligation shall be void. FORM GST MOV-09 (para 10). You are hereby directed to make the payment forthwith/not later than fourteen days from the date of the issue of the order of detention in FORM GST MOV-06, failing which action under section 130 of the Central/State Goods and Services Tax Act/section 21 of the Union Territory Goods and Services Tax Act or section 20 of the Integrated Goods and Services Act shall be initiated.

(CBIC, Circular No. 88/07/2019-GST dated 1st February, 2019)

* * *

CBIC, issued Instructions No. 01/2020-21 [GST-Investigation] dated February 02, 2021 regarding procedures to be followed during Search Operation.

Specific instances have come to the notice of the Board and Central Vigilance Commission wherein proper procedures have apparently not been followed during search proceedings and/or the Panchnamas/statements have not been recorded as per extant guidelines & instructions. Such discrepancies weaken the judicial scrutiny of the case at later stage. Accordingly, the instructions contained in the Central Excise Intelligence and Investigation Manual (2004), which hold good even in GST regime, are hereby re-iterated for compliance by 0001/filed formations.

Section 67 of the Central Goods and Services Tax Act, 2017 contains the provisions for search. Similar provisions are contained in Section 18 of Central

Excise Act. 1944. These provisions prescribe that all the searches be carried out in accordance with the provisions of Code of Criminal Procedure. 1973. Thus, the following guidelines must be adhered to while carrying out search proceedings:

1. The officer issuing authorization for search should have valid and justifiable reasons for authorizing a search, which shall be duly recorded in the file. Search should be carried out only with a proper search authorization issued by the Competent Authority.
2. The instructions related to generation of DIN for each search authorization, shall be scrupulously followed by the officer authorising search.
3. The premises of a person cannot be searched on the authority of a search warrant issued for the premises of some other person. Where a search warrant, through oversight, has been issued in the name of a person who is already dead the authorised officer should report to the Competent Authority and get a Fresh warrant issued in the names of the legal heirs.
4. In case of search of a residence, a lady officer shall necessarily be part of the search team.
5. The search shall be made in the presence of two or more independent witnesses who would preferably be respectable inhabitants of the locality, and if no such inhabitants are available or willing, the inhabitants of any other locality should be asked to be witness to the search. PSU employees, Bank employees etc. may be included as witnesses during sensitive search operations to maintain transparency and credibility. The witnesses should be informed about the purpose of the search and their duties.
6. The officers conducting the search shall first identify themselves by showing their identity cards to the person-in-charge of the premises. Also, before the start of the search, the officers, as well as the independent witnesses, shall offer their personal search. After the conclusion of the search, all the officers and the witnesses should again offer themselves for their personal search.
7. The search authorization shall be executed before the start of the search and the same shall be shown to the person-in-charge of the premises to be searched and his/her signature with date and time shall be obtained on the body of the search authorization. The signatures of the witnesses with date and time should also be obtained on the body of the search authorization.
8. A Panchnama containing truthful account of the proceedings of the search shall necessarily be made and a list of documents/goods/things recovered should be prepared. It should be ensured that time and date of start of search and conclusion of search must be mentioned in the Panchnama. The fact of offering personal search of the officers and

witnesses before initiation and after conclusion of search must be recorded in the Panchnama,

9. In the sensitive premises videography of the search proceedings may also be considered and the same may be recorded in Panchnama.
10. While conducting search, the officers must be sensitive towards the assessee/party. Social and religious sentiments of the person(s) under search and of all the person(s) present, shall be respected at all times. Special care/attention should be given to elderly, women and children present in the premises under search. Children should be allowed to go to school, after examining of their bags. A woman occupying any premises, to be searched, has the right to withdraw before the search party enters. if according to the customs she does not appear in public, if a person in the premises is not well a medical practitioner may be called.
11. The person from whose custody any documents are seized may be allowed to make copies thereof or take extracts therefrom for which he/she may be provided a suitable time and place to take such copies or extract therefrom. However, if it is felt that providing such copies or extracts therefrom prejudicially affect the investigation, the officer may not provide such copies. If such request for taking copies is made during the course of search, the same may be incorporated in Panchmuna, intimating place and time to take such copies.
12. The officer authorized to search the premises must sign each page of the Panchnama and annexures. A copy of the Panchnama along with all its annexures should be given to the person-in-charge of the premises being searched and acknowledgement in this regard may be taken. If the person-in-charge refuses to sign the Panchnama, the same may be pasted in a conspicuous place of the premises, in presence of the witnesses. Photograph of the Panchnama pasted on the premises may be kept on record.
13. In case any statement is recorded during the search, each page of the statement must be signed by the person whose statement is being recorded. Each page of the statement must also be signed by the officer recording the statement as 'before me'.
14. After the search is over, the search authorization duly executed should be: returned to the officer who had issued the said search authorization with report regarding the outcome of the search. The names of the officers who has participated in the search should be written on the reverse of the search authorization. If search authorization could not be executed due to any reason the same should be mentioned-in the reverse of the search authorization and a copy of the same may be kept in the case file before returning the same to the officer who had issued the said search authorization.

15. The officers should leave the premises immediately after completion of Panchnama proceedings.
16. During the prevalent COVID-19 pandemic situation, it is imperative to take precautionary measures such as maintaining proper social distancing norms, use of masks and hand sanitizers etc. The search team should take all measures as contained in the guidelines of Ministry of Home Affairs, and Ministry of Health & Family Welfare, and also the guidelines issued by the State Government from time to time.

Specific instructions regarding search of premises/persons are contained in the Central Excise Intelligence and Investigation Manual issued by the DGCEI, New Delhi. Subsequent instructions have also been issued from time to time as per the need of the hour, latest being DGGI Instruction dated 14.08.2020. The instructions as elaborated in the preceding para(s) are to be followed in continuation to the earlier instructions.

* * *

Changes made in Finance Act, 2021

1. Making Seizure and Confiscation of goods and conveyances a separate proceeding

(Clause 113 of Finance Act, 2021 - Effective Date January 01, 2022)

- *Explanation 1(ii) of Section 74 of CGST Act provides that 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 of CGST Act then the proceedings against all the persons liable to pay penalty under sections 122, 125, 129 and 130 of CGST Act are deemed to be concluded.*
- Finance Act 2021 has made amendment in the above explanation to exclude Sections 129 and 130 of CGST Act from its purview. The said made to make seizure and confiscation of goods and conveyances in transit a separate proceeding from the recovery of tax.

(Notified vide Notification No 39/Central Tax. Dated. 21.12.2019.

* * *

CBIC issued guidelines for arrest and bail with regard to offences punishable under the CGST Act

The CBIC vide *Instruction No. 02/2022-23 (GST-Investigation) dated August 17, 2022* has issued guidelines for arrest and bail in relation to offences punishable under the Central Goods & Services Tax Act, 2017 (“the CGST Act”).

Hon'ble Supreme Court of India in its judgment dated August 16, 2021 in Criminal Appeal No. 838 of 2021, arising out of SLP (Crl.) No. 5442/2021, has observed as follows:

"We may note that personal liberty is an important aspect of our constitutional mandate. The occasion to arrest an accused during investigation arises when custodial investigation becomes necessary or it is a heinous crime or where there is a possibility of influencing the witnesses or accused may abscond. Merely because an arrest can be made because it is lawful does not mandate that arrest must be made. A distinction must be made between the existence of the power to arrest and the justification for exercise of it. If arrest is made routine, it can cause incalculable harm to the reputation and self-esteem of a person. If the Investigating Officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout cooperated with the investigation we fail to appreciate why there should be a compulsion on the officer to arrest the accused."

Board has examined the above-mentioned judgment and has felt the need to issue guidelines with respect to arrest under CGST Act, 2017. Even, under legacy laws i.e. Central Excise Act, 1944 (1 of 1944) and Chapter V of the Finance Act, 1994 (32 of 1994), the instructions regarding exercise of power to arrest had been issued.

Conditions precedent to arrest:

Sub-section (1) of Section 132 of CGST Act, 2017 deals with the punishment for offences specified therein. Sub-section (1) of Section 69 gives the power to the Commissioner to arrest a person where he has reason to believe that the alleged offender has committed any offence specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) of Section 132 which is punishable under clause (i) or clause (ii) of sub section (1), or sub-section (2) of the Section 132 of CGST Act, 2017. Therefore, before placing a person under arrest, the legal requirements must be fulfilled. The reasons to believe to arrive at a decision to place an alleged offender under arrest must be unambiguous and amply clear. The reasons to believe must be based on credible material.

Since arrest impinges on the personal liberty of an individual, the power to arrest must be exercised carefully. The arrest should not be made in routine and mechanical manner. Even if all the legal conditions precedent to arrest mentioned in Section 132 of the CGST Act, 2017 are fulfilled, that will not, ipso facto, mean that an arrest must be made. Once the legal ingredients of the offence are made out, the Commissioner or the competent authority must then determine if the answer to any or some of the following questions is in the affirmative:

Whether the person was concerned in the non-bailable offence or credible information has been received, or a reasonable suspicion exists, of his having been so concerned?

Whether arrest is necessary to ensure proper investigation of the offence?

Whether the person, if not restricted, is likely to tamper the course of further investigation or is likely to tamper with evidence or intimidate or influence witnesses?

Whether person is mastermind or key operator effecting proxy/benami transaction in the name of dummy GSTIN or non-existent persons, etc. for passing fraudulent input tax credit etc.?

As unless such person is arrested, his presence before investigating officer cannot be ensured.

Approval to arrest should be granted only where the intent to evade tax or commit acts leading to availment or utilization of wrongful Input Tax Credit or fraudulent refund of tax or failure to pay amount collected as tax as specified in sub-section (1) of Section 132 of the CGST Act 2017, is evident and element of mens rea/guilty mind is palpable.

Thus, the relevant factors before deciding to arrest a person, apart from fulfillment of the legal requirements, must be that the need to ensure proper investigation and prevent the possibility of tampering with evidence or intimidating or influencing witnesses exists.

Arrest should, however, not be resorted to in cases of technical nature i.e. where the demand of tax is based on a difference of opinion regarding interpretation of Law. The prevalent practice of assessment could also be one of the determining factors while ascribing intention to evade tax to the alleged offender. Other factors influencing the decision to arrest could be if the alleged offender is co-operating in the investigation, viz. compliance to summons, furnishing of documents called for, not giving evasive replies, voluntary payment of tax etc.

Procedure for arrest

Pr. Commissioner/Commissioner shall record on file that after considering the nature of offence, the role of person involved and evidence available, he has reason to believe that the person has committed an offence as mentioned in Section 132 and may authorize an officer of central tax to arrest the concerned person(s). The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) read with section 69(3) of CGST Act relating to arrest and the procedure thereof, must be adhered to. It is, therefore, advised that the Pr. Commissioner/Commissioner should ensure that all officers are fully familiar with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974).

The arrest memo must be in compliance with the directions of Hon'ble Supreme Court in the case of D.K Basu vs State of West Bengal reported in 1997(1) SCC 416 (see paragraph 35). Format of arrest memo has been prescribed under Board's Circular No. 128/47/2019-GST dated December 23, 2019. The arrest memo should indicate relevant section (s) of the CGST Act, 2017 or other laws attracted to the case and to the arrested person and inapplicable provisions should be struck off. In addition,

The grounds of arrest must be explained to the arrested person and this fact must be noted in the arrest memo;

A nominated or authorized person (as per the details provided by arrested person) of the arrested person should be informed immediately and this fact shall be mentioned in the arrest memo;

The date and time of arrest shall be mentioned in the arrest memo and the arrest memo should be given to the person arrested under proper acknowledgment.

A separate arrest memo has to be made and provided to each individual/arrested person. This should particularly be kept in mind in the event when there are several arrests in a single case.

Attention is also invited to Board's Circular No. 122/41/2019-GST dated November 05, 2019 which makes generation and quoting of Document Identification Number (DIN) mandatory on communication issued by officers of CBIC to tax payers and other concerned persons for the purpose of investigation. Any lapse in this regard will be viewed seriously.

Further there are certain modalities which should be complied with at the time of arrest and pursuant to an arrest, which include the following:

A woman should be arrested only by a woman officer in accordance with section 46 of Code of Criminal Procedure, 1973.

Medical examination of an arrested person should be conducted by a medical officer in the service of Central or State Government and in case the medical officer is not available, by a registered medical practitioner, soon after the arrest is made. If an arrested person is a female, then such an examination shall be made only by or under supervision of a female medical officer, and in case the female medical officer is not available, by a female registered medical practitioner.

It shall be the duty of the person having the custody of an arrested person to take reasonable care of the health and safety of the arrested person.

Arrest should be made with minimal use of force and publicity, and without violence. The person arrested should be subjected to reasonable restraint to prevent escape.

Post arrest formalities

The procedure is separately outlined for the different categories of offences, as listed in sub-section (4) and (5) of Section 132 of the CGST Act, 2017, as amended:

In cases, where a person is arrested under sub-section (1) of Section 69 of the CGST Act, 2017, for an offence specified under sub-section (4) of Section 132 of the CGST Act, 2017, the Assistant Commissioner or Deputy Commissioner is bound to release a person on bail against a bail bond. The bail conditions should be informed in writing to the arrested person and also on telephone to the nominated person of the person (s) arrested. The arrested person should also be allowed to talk to the nominated person.

The conditions will relate to, inter alia, execution of a personal bail bond and one surety of like amount given by a local person of repute, appearance before the investigating officer when required and not leaving the country without informing the officer. The amount to be indicated in the personal bail bond and surety will depend upon the facts and circumstances of each case, inter-alia, on the amount of tax involved. It has to be ensured that the amount of Bail bond/Surety should not be excessive and should be commensurate with the financial status of the arrested person.

If the conditions of the bail are fulfilled by the arrested person, he shall be released by the officer concerned on bail forthwith. However, only in cases where the conditions for granting bail are not fulfilled, the arrested person shall be produced before the appropriate Magistrate without unnecessary delay and within twenty-four hours of arrest. If necessary, the arrested person may be handed over to the nearest police station for his safe custody, during the night under a challan, before he is produced before the Court.

In cases, where a person is arrested under sub-section (1) of Section 69 of the CGST Act, 2017, for an offence specified under sub-section (5) of Section 132 of the CGST Act, 2017, the officer authorized to arrest the person shall inform such person of the grounds of arrest and produce him before a Magistrate within twenty-four hours. However, in the event of circumstances preventing the production of the arrested person before a Magistrate, if necessary, the arrested person may be handed over to nearest Police Station for his safe custody under a proper challan and produced before the Magistrate on the next day, and the nominated person of the arrested person may also be informed accordingly. In any case, it must be ensured that the arrested person should be produced before the appropriate Magistrate within twenty-four hours of arrest, exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

Formats of the relevant documentation i.e. Bail Bond in the Code of Criminal Procedure, 1973 (2 of 1974) and the Challan for handing over to the police should be followed.

After arrest of the accused, efforts should be made to file prosecution complaint under Section 132 of the Act, before the competent court at the earliest, preferably within sixty days of arrest, where no bail is granted. In all other cases of arrest also, prosecution complaint should be filed within a definite time frame.

Every Commissionerate/Directorate should maintain a Bail Register containing the details of the case, arrested person, bail amount, surety amount etc. The money/instruments/documents received as surety should be kept in safe custody of a single nominated officer who shall ensure that these instruments/documents received as surety are kept valid till the bail is discharged.

Reports to be sent

Pr. Director-General (DGGI)/Pr. Chief Commissioner(s)/Chief Commissioner(s) shall send a report on every arrest to Member (Compliance Management) as well as to the Zonal Member within 24 hours of the arrest giving details as has been prescribed in Annexure-I. To maintain an all India record of arrests made in CGST, from September, 2022 onwards, a monthly report of all persons arrested in the Zone shall be sent by the Principal Chief Commissioner(s)/Chief Commissioner(s) to the Directorate General of GST Intelligence, Headquarters, New Delhi in the format, hereby prescribed in Annexure-II, by the 5th of the succeeding month. The monthly reports received from the formations shall be compiled by DGGI, Hqrs. and a compiled Zone wise report shall be sent to Commissioner (GST-Investigation), CBIC by 100 of every month. Further, all such reports shall be sent only by e-mail and the practice of sending hard copies to the Board should be stopped with immediate effect.

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C.B.I & C issued guidelines on issuance of Summons u/s 70 of the CGST Act

The CBIC vide ***Instruction No. 03/2022-23 (GST-Investigation) dated August 17, 2022*** has issued guidelines on the issuance of Summons under section 70 of the Central Goods & Services Tax Act, 2017 ("the CGST Act").

It has been brought to the notice of the Board that in certain instances, summons under Section 70 of the Central Goods and Services Tax Act, 2017 (the CGST Act) have been issued by the field formations to the top senior officials of the companies in a routine manner to call for material evidence/documents. Besides, summons have also been issued to call for statutory records viz. GSTR-3B, GSTR-1 etc., which are available online in the GST portal.

As per Section 70(1) of the CGST Act, summons can be issued by the proper officer to any person whose attendance is considered necessary either for giving evidence or producing a document or any other thing in an inquiry in the same manner, as provided in the case of a civil court under the provisions of Code of Civil Procedure, 1908 (5 of 1908). As per sub-section (2) of Section 70, securing such documentary and oral evidence under the said legal provision shall be deemed to be a "judicial proceedings" within the meaning of Section 193 and Section 228 of the Indian Penal Code (45 of 1860). While issuing of summons is one of the instruments with the Department to get/obtain information or documents or statement from any person to find out the evasion of the tax etc., however, it needs to be ensured that exercise of such power is done judiciously and with due consideration. Officers are also advised to explore instances when instead of resorting to summons, a letter for requisition of information may suffice. Previously in respect of legacy laws, the Board has sensitized the officers regarding use of power of issuance of summons diligently. However, Board finds it necessary to issue fresh guidelines under CGST.

Accordingly, Board desires that the following guidelines must be followed in matters related to investigation under CGST:

- (i) Power to issue summons are generally exercised by Superintendents, though higher officers may also issue summons. Summons by Superintendents should be issued after obtaining prior written permission from an officer not below the rank of Deputy/Assistant Commissioner with the reasons for issuance of summons to be recorded in writing.
- (ii) Where for operational reasons it is not possible to obtain such prior written permission, oral/telephonic permission from such officer must be obtained and the same should be reduced to writing and intimated to the officer according such permission at the earliest opportunity.
- (iii) In all cases, where summons are issued, the officer issuing summons should record in file about appearance/non-appearance of the summoned person and place a copy of statement recorded in file.
- (iv) Summons should normally indicate the name of the offender(s) against whom the case is being investigated unless revelation of the name of the offender is detrimental to the cause of investigation, so that the recipient of summons has *prima-facie* understanding as whether he has been summoned as an accused, co accused or as witness.
- (v) Issuance of summons may be avoided to call upon statutory documents which are digitally/online available in the GST portal.
- (vi) Senior management officials such as CMD/MD/CEO/CFO/similar officers of any company or a PSU should not generally be issued summons in the first instance. They should be summoned when there are clear indications in the investigation of their involvement in the decision making process which led to loss of revenue.
- (vii) Attention is also invited to Board's Circular No. 122/41/2019-GST dated November 05, 2019 which makes generation and quoting of Document Identification Number (DIN) mandatory on communication issued by officers of CBIC to tax payers and other concerned persons for the purpose of investigation. Format of summons has been prescribed under Board's Circular No. 128/47/2019-GST dated December 23, 2019.
- (viii) The summoning officer must be present at the time and date for which summons is issued. In case of any exigency, the summoned person must be informed in advance in writing or orally.
- (ix) All persons summoned are bound to appear before the officers concerned, the only exception being women who do not by tradition appear in public or privileged persons. The exemption so available to these persons under Section 132 and 133 of CPC may be kept in consideration while investigating the case.
- (x) Issuance of repeated summons without ensuring service of the summons must be avoided. Sometimes it may so happen that summoned person does not join investigations even after being repeatedly summoned. In

such cases, after giving reasonable opportunity, generally three summons at reasonable intervals, a complaint should be filed with the jurisdictional magistrate alleging that the accused has committed offence under Sections 172 of Indian Penal Code (absconding to avoid service of summons or other proceedings) and/or 174 of Indian Penal Code (non-attendance in obedience to an order from public servant), as inquiry under Section 70 of CGST Act has been deemed to be a "judicial proceedings" within the meaning of Section 193 and Section 228 of the Indian Penal Code. Before filing such complaints, it must be ensured that summons have adequately been served upon the intended person in accordance with Section 169 of the CGST Act. However, this does not bar to issue further summons to the said person under Section 70 of the Act.

These instructions may be brought to the notice of all the field offices/formations under your charge for strict compliance. Non-observance of the instructions will be viewed seriously. Difficulties, if any, in implementation of the aforesaid instructions may be brought to the notice of the Board.

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C.B.I & C, Instruction No. 04/2022-23 [GST – Investigation], dated 1st September, 2022

Subject: Guidelines for Launching of Prosecution under the Central Goods & Services Tax Act, 2017 - reg.

Prosecution is the institution or commencement of legal proceeding; the process of exhibiting formal charges against the offender.

2. Section 132 of the Central Goods and Services Tax Act, 2017 (CGST Act, 2017) codifies the offences under the Act which warrant institution of criminal proceedings and prosecution. Whoever commits any of the offences specified under sub-section (1) and sub-section (2) of section 132 of the CGST Act, 2017, can be prosecuted.

3. Sanction of prosecution:

3.1 Sanction of prosecution has serious repercussions for the person involved, therefore, the nature of evidence collected during the investigation should be carefully assessed. One of the important considerations for deciding whether prosecution should be launched is the availability of adequate evidence. The standard of proof required in a criminal prosecution is higher than adjudication proceeding as the case has to be established beyond reasonable doubt. Therefore, even cases where demand is confirmed in adjudication proceedings, evidence collected should be weighed so as to likely meet the above criteria for recommending prosecution. Decision should be taken on case-to-case basis considering various factors, such as, nature and gravity of offence, quantum of tax evaded, or ITC wrongly availed, or refund wrongly taken and the nature as well as quality of evidence collected.

3.2. Prosecution should not be filed merely because a demand has been confirmed in the adjudication proceedings. Prosecution should not be launched in cases of technical nature, or where additional claim of tax is based on a difference of opinion regarding interpretation of law. Further, the evidence collected should be adequate to establish beyond reasonable doubt that the person had guilty mind, knowledge of the offence, or had fraudulent intention or in any manner possessed mens-reas for committing the offence. It follows, therefore, that in the case of public limited companies, prosecution should not be launched indiscriminately against all the Directors of the company but should be restricted to only persons who oversaw day-to-day operations of the company and have taken active part in committing the tax evasion etc. or had connived at it.

4. Decision on prosecution should normally be taken immediately on completion of the adjudication proceedings, except in cases of arrest where prosecution should be filed as early as possible. Hon'ble Supreme Court of India in the case of *Radheshyam Kejriwal [2011 (266) ELT 294 (SC)]* has, inter-alia, observed the following:

- (i) Adjudication proceedings and criminal proceedings can be launched simultaneously;
- (ii) Decision in adjudication proceedings is not necessary before initiating criminal prosecution;
- (iii) Adjudication proceedings and criminal proceedings are independent in nature to each other;
- (iv) The findings against the person facing prosecution in the adjudication proceedings is not binding on the proceeding for criminal prosecution;
- (v) The finding in the adjudication proceedings in favour of the person facing trial for identical violation will depend upon the nature of finding. If the exoneration in adjudication proceedings is on technical ground and not on merit, prosecution may continue; and
- (vi) In case of exoneration, however, on merits where the allegation is found to be not sustainable at all and the person held innocent, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue, the underlying principle being the higher standard of proof in criminal cases.

In view of the above observations of Hon'ble Supreme Court, prosecution complaint may even be filed before adjudication of the case, especially where offence involved is grave, or qualitative evidences are available, or it is apprehended that the concerned person may delay completion of adjudication proceedings. In cases where any offender is arrested under section 69 of the CGST Act, 2017, prosecution complaint may be filed even before issuance of the Show Cause Notice.

5. Monetary limits:

5.1 Monetary Limit: Prosecution should normally be launched where amount of tax evasion, or misuse of ITC, or fraudulently obtained refund in relation to

offences specified under sub-section (1) of section 132 of the CGST Act, 2017 is more than Five Hundred Lakh rupees. However, in following cases, the said monetary limit shall not be applicable:

- (i) **Habitual evaders:** Prosecution can be launched in the case of a company/taxpayer habitually involved in tax evasion or misusing Input Tax Credit (ITC) facility or fraudulently obtained refund. A company/taxpayer would be treated as habitual evader, if it has been involved in two or more cases of confirmed demand (at the first adjudication level or above) of tax evasion/fraudulent refund or misuse of ITC involving fraud, suppression of facts etc. in past two years such that the total tax evaded and/or total ITC misused and/or fraudulently obtained refund exceeds Five Hundred Lakh rupees. DIGIT database may be used to identify such habitual evaders.
- (ii) **Arrest Cases:** Cases where during the course of investigation, arrests have been made under section 69 of the CGST Act.

6. Authority to sanction prosecution:

6.1 The prosecution complaint for prosecuting a person should be filed only after obtaining the sanction of the Pr. Commissioner/Commissioner of CGST in terms of sub-section (6) of section 132 of CGST Act, 2017.

6.2 In respect of cases investigated by DGGI, the prosecution complaint for prosecuting a person should be filed only after obtaining the sanction of Pr. Additional Director General/Additional Director General, Directorate General of GST Intelligence (DGGI) of the concerned zonal unit/Hqrs.

7. Procedure for sanction of prosecution:

7.1 In cases of arrest(s) made under section 69 of the CGST Act, 2017:

7.1.1 Where during the course of investigation, arrest(s) have been made and no bail has been granted, all efforts should be made to file prosecution complaint in the Court within sixty (60) days of arrest. In all other cases of arrest, prosecution complaint should also be filed within a definite time frame. The proposal of filing complaint in the format of investigation report prescribed in Annexure-I, should be forwarded to the Pr. Commissioner/Commissioner, within fifty (50) days of arrest. The Pr. Commissioner/Commissioner shall examine the proposal and take decision as per section 132 of CGST Act, 2017. If prosecution sanction is accorded, he shall issue a sanction order along with an order authorizing the investigating officer (at the level of Superintendent) of the case to file the prosecution complaint in the competent court.

7.1.2 In cases investigated by DGGI wherever an arrest has been made, procedure as detailed in para 7.1.1 should be followed by officers of equivalent rank of DGGI.

7.1.3 The Additional/Joint Commissioner or Additional/Joint Director in the case of DGGI, must ensure that all the documents/evidence and list of witnesses are kept ready before forwarding the proposal of filing complaint to Pr. Commissioner/Commissioner or Pr. ADG/ADG of DGGI.

7.2 In case of filing of prosecution against legal person, including natural person:

7.2.1 Section 137 (1) of the Act provides that where an offence under this Act has been committed by a company, every person who, at the time offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. Section 137 (2) of the Act provides that where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. Thus, in the case of Companies, both the legal person as well as natural person are liable for prosecution under section 132 of the CGST Act. Similarly, under sub-section (3) of section 137, the provisions have been made for partnership firm or a Limited Liability Partnership or a Hindu Undivided Family or a Trust.

7.2.2 Where it is deemed fit to launch prosecution before adjudication of the case, the Additional/Joint Commissioner or Additional/Joint Director, DGGI, as the case may be, supervising the investigation, shall record the reason for the same and forward the proposal to the sanctioning authority. The decision of the sanctioning authority shall be informed to the concerned adjudicating authority so that there is no need for him to examine the case again from the perspective of prosecution.

7.2.3 In all cases (other than those mentioned at para 7.2.2 and arrests where prosecution complaint has already been filed before adjudication), the adjudicating authority should invariably indicate at the time of passing the order itself whether it considers the case fit for prosecution, so that it can be further processed and sent to the Pr. Commissioner/Commissioner for obtaining his sanction of prosecution.

7.2.4 In cases, where Show Cause Notice has been issued by DGGI, the recommendation of adjudicating authority for filing of prosecution shall be sent to the Pr. Additional Director General/Additional Director General, DGGI of the concerned zonal unit/Hqrs.

7.2.5 Where at the time of passing of adjudication order, no view has been taken on prosecution by the Adjudicating Authority, the adjudication branch shall re-submit the 5 file within 15 days from the date of issue of adjudication order to the Adjudicating Authority to take view on prosecution.

7.2.6 Pr. Commissioner/Commissioner or Pr. Additional Director General/Additional Director General of DGGI may on his own motion also, taking into consideration inter alia, the seriousness of the offence, examine whether the case is fit for sanction of prosecution irrespective of whether the adjudicating authority has recommended prosecution or not.

7.2.7 An investigation report for the purpose of launching prosecution should be carefully prepared in the format given in Annexure-I, within one month of the date of receipt of the adjudication order or receipt of recommendation of Adjudicating Authority, as the case may be. Investigation report should be signed by an Deputy/Assistant Commissioner, endorsed by the jurisdictional Additional/Joint Commissioner, and sent to the Pr. Commissioner/Commissioner for taking a decision on sanction for launching prosecution. In respect of cases booked by DGGI, the said report shall be prepared by the officers of DGGI, signed by the Deputy/Assistant Director, endorsed by the supervising Additional/Joint Director and sent to the Pr. Additional Director General/Additional Director General of DGGI for taking a decision on sanction for launching prosecution. Thereafter, the competent authority shall follow the procedure as mentioned in para 7.1.1.

7.2.8 Once the sanction for prosecution has been obtained, prosecution in the court of law should be filed as early as possible, but not beyond a period of sixty days by the duly authorized officer (of the level of Superintendent). In case of delay in filing complaint beyond 60 days, the reason for the same shall be brought to the notice of the sanctioning authority i.e., Pr. Commissioner/Commissioner or Pr. Additional Director General/Additional Director General, by the officer authorised for filing of the complaint.

7.2.9 In the cases investigated by DGGI, except for cases pertaining to single/multiple taxpayer(s) under Central Tax administration in one Commissionerate where arrests have not been made and the prosecution is not proposed prior to issuance of show cause notice, prosecution complaints shall be filed and followed up by DGGI. In other cases, the complaint shall be filed by the officer at level of Superintendent of the jurisdictional Commissionerate, authorized by Pr. Commissioner/Commissioner of CGST. However, in all cases investigated by DGGI, the prosecution shall continue to be sanctioned by appropriate officer of DGGI.

8. Appeal against Court order in case of inadequate punishment/acquittal:

8.1 The Prosecution Cell in the Commissionerate shall examine the judgment of the Court and submit their recommendations to the Pr. Commissioner/Commissioner. Where Pr. Commissioner/Commissioner is of the view that the accused person has been let off with lighter punishment than what is envisaged in the Act or has been acquitted despite the evidence being strong, filing of appeal should be considered against the order within the stipulated time. Before filing of appeal in such cases, concurrence of Pr. CC/CC should be obtained. Sanction for appeal in such cases shall, however, be accorded by Pr. Commissioner/Commissioner.

8.2 In respect of cases booked by DGGI, the Prosecution Cell in the Directorate shall examine the judgment of the court and submit their recommendations to the Pr. Additional Director General/Additional Director General who shall take a view regarding acceptance of the order or filing of appeal. However, before filing of appeal, concurrence of DG or Pr. DG (for cases booked by HQ Unit) should be obtained.

9. Procedure for withdrawal of prosecution:**9.1 Procedure for withdrawal of sanction-order of prosecution:**

9.1.1 In cases where prosecution has been sanctioned but complaint has not been filed and new facts or evidence have come to light necessitating review of the sanction for prosecution, the Commissionerate should immediately bring the same to the notice of the sanctioning authority. After considering the new facts and evidence, the sanctioning authority, if satisfied, may recommend to the jurisdictional Pr. Chief Commissioner/Chief Commissioner that the sanction for prosecution be withdrawn who shall then take a decision.

9.1.2 In the cases investigated by DGGI, such withdrawal of sanction order may be made with the approval of Director General of DGGI of concerned sub-national unit. In the cases booked by DGGI, Hqrs., Pr. Director General shall be competent to approve the withdrawal of sanction order.

9.2 Procedure for withdrawal of complaint already filed for prosecution:

9.2.1 Attention is invited to judgment of Hon'ble Supreme Court on the issue of relation between adjudication proceedings and prosecution in the case of **Radheshyam Kejriwal**, supra. Hon'ble Supreme Court in para 43 have observed as below: "In our opinion, therefore, the yardstick would be to judge as to whether allegation in the adjudication proceeding as well as proceeding for prosecution is identical and the exoneration of the person concerned in the adjudication proceeding is on merits. In case it is found on merit that there is no contravention of the provisions of the Act in the adjudication proceeding, the trial of the person concerned shall be in abuse of the process of the court."

The said ratio is equally applicable to GST Law. Therefore, where it is found on merit that there is no contravention of the provisions of the Act in the adjudication proceedings and such order has attained finality, Pr. Commissioner/Commissioner or Pr. Additional Director General/Additional Director General after taking approval of Pr. Chief Commissioner/Chief Commissioner or Pr. Director General/Director General, as the case may be, would ensure filing of an application through Public Prosecutor in the court to allow withdrawal of prosecution in accordance with law. The withdrawal can only be affected with the approval of the court.

10. General guidelines:

10.1 It has been reported that delay in the Court proceedings is often due to non-availability of the records required to be produced before the Court or due to delay in drafting of the complaint, listing of the exhibits etc. It shall be the responsibility of the officer who has been authorized to file complaint, to take charge of all documents, statements and other exhibits that would be required to be produced before a Court. The list of exhibits etc. should be finalized in consultation with the Public Prosecutor at the time of drafting of the complaint. No time should be lost in ensuring that all exhibits are kept in safe custody. Where a complaint has not been filed even after a lapse of 60 days from the receipt of sanction for prosecution, the reason for delay shall be brought to the

notice of the Pr. Commissioner/Commissioner or the Pr. Additional Director General/Additional Director General of DGGI by the Additional/Joint Commissioner in charge of the Commissionerate or Additional/Joint Director of DGGI, responsible for filing of the complaint.

10.2 Filing of prosecution need not be kept in abeyance on the ground that the taxpayer has gone in appeal/revision. However, to ensure that the proceeding in appeal/revision are not unduly delayed because the case records are required for the purpose of prosecution, a parallel file containing copies of essential documents relating to adjudication should be maintained.

10.3 The Superintendent in-charge of adjudication section should endorse copy of all adjudication orders to the prosecution section. The Superintendent in charge of prosecution section should monitor receipt of all serially numbered adjudication orders and obtain copies of adjudication orders of missing serial numbers from the adjudication section every month. In respect of adjudication orders related to DGGI cases, Superintendent in charge of adjudication section should ensure endorsing a copy of adjudication order to DGGI. Concerned Zonal Units/Hqrs. of DGGI shall also follow up the status of adjudication of the case from the concerned Commissionerate or adjudicating authority.

11. Publication of names of persons convicted:

11.1 Section 159 of the CGST Act, 2017 grants power to the Pr. Commissioner/Commissioner or any other officer authorised by him on his behalf to publish name and other particulars of the person convicted under the Act. It is directed that in deserving cases, the department should invoke this section in respect of all persons who are convicted under the Act.

12. Monitoring of prosecution:

12.1 Prosecution, once launched, should be vigorously followed. The Pr. Commissioner/Commissioner of CGST or Pr. Additional Director General/Additional Director General of DGGI should monitor cases of prosecution at monthly intervals and take the corrective action wherever necessary to ensure that the progress of prosecution is satisfactory. In DGGI, an Additional/Joint Director in each zonal unit and DGGI (Hqrs) shall supervise the prosecution related work and take stock of the pending prosecution cases. For keeping a track of prosecution cases, entries of all prosecution cases should promptly be made in DIGIT/Investigation Module, within 48 hours of sanction of prosecution and the entries must be updated from time to time. Additional/Joint Commissioner or Additional/Joint Director, in-charge of supervising prosecution cases shall ensure making timely entries in the database.

13. Compounding of offence:

13.1 Section 138 of the CGST Act, 2017 provides for compounding of offences by the Pr. Commissioner/Commissioner on payment of compounding amount. The provisions regarding compounding of offence should be brought to the notice of person being prosecuted and such person be given an offer of

compounding by Pr. Commissioner/Commissioner or Pr. Additional Director General/Additional Director General of DGGI, as the case may be.

14. Transitional Provisions:

14.1 All cases where sanction for prosecution is accorded after the issue of these instructions shall be dealt in accordance with the provisions of these instructions irrespective of the date of the offence. Cases where prosecution has been sanctioned but no complaint has been filed before the magistrate shall also be reviewed by the prosecution sanctioning authority considering the provisions of these instructions.

15. Inspection of prosecution work by the Directorate General of Performance Management:

15.1 Director General, Directorate General of Performance Management and Pr. Chief Commissioners/Chief Commissioners, who are required to inspect the Commissionerate, should specifically check whether instructions in this regard are being followed scrupulously and make a mention of the implementation of the guidelines in their inspection report apart from recording of statistical data. Similarly exercise should also be carried out in DGGI.

16. Where a cause is considered suitable for launching prosecution and where adequate evidence is forthcoming, securing conviction largely depends on the quality of investigation. It is, therefore, necessary for senior officers to take personal interest in the investigation of important cases of GST evasion and in respect of cases having money laundering angle and to provide guidance and support to the investigating officers.

17. To ensure proper training to the officers posted for prosecution work, the Pr. Director General, National Academy of Customs, Indirect Taxes and Narcotics (NACIN), Faridabad, should organize separate training courses on prosecution/arrest etc. from time to time and should incorporate a series of lectures on this issue in the courses organized for investigation. The Pr. Commissioner/Commissioner or Pr. ADG/ADG of DGGI should judiciously sponsor officers for such courses.

18. These instructions/guidelines may be circulated to all the formations under your charge for strict compliance.

21. Case Laws

Arrest under GST: The Rajasthan High Court in the case of *Bharat Raj Punj v Commissioner of CGST*, reported in 2019 (24) G.S.T.L. 321 (Raj.), while dismissing writ petition held that plea of Managing Director of assessee/company received managerial remuneration from company, became Managing Director after being Director and MD was residing abroad and not involved in day to day affairs of company was not acceptable.

Bail - Anticipatory Bail - The Bombay High Court in the case of *Meghraj Moolchand Burad v Director General of GST intelligence*, reported in 2019 (21) G.S.T.L 125 (Bom.), held that owing to the conduct of applicant in failure to inform investigating agency that no interim relief had been granted while

adjourning case on applicant's request to be deprecated. Due to such deliberate miscommunication, Investigating Agency refrained itself from either arresting or interrogating applicant's and considering applicant's conduct, gravity of offence and serious allegation, against the applicant, this Court is of the considered view that the applicant does deserve to be protected by pre-arrest bail and bail not granted. The applicant against the said order of the Bombay High Court filed Special Leave to Appeal before the Supreme Court, while issuing the notice; the Supreme Court passed the following order:

“In the meantime, the petitioner shall not be arrested, provided he appears before the Director General of GST Intelligence and in the event of his arrest, he shall be released on bail on furnishing security to the satisfaction of the competent authority” reported in [2019(24) G.S.T.L.J82 (S.C.)]

* * *

Bail under GST - The Hon'ble High Court of Karnataka in case of *Avinash Aradhya v Commissioner of Commercial Taxes*, reported in 2019 (23) G.S.T.L. 168 (Kar.), held that in the light of decision of the Hon'ble Apex Court in the case of *Siddharam Satlingappa Mhetre v State of Maharashtra and others*, reported in (2011) 1 SCC 694 at paragraph 112 of the decision and the said proposition of law, by taking into consideration the gravity of the offence and punishment which is liable to be involved, I am of the considered opinion that by imposing some stringent conditions, if accused –petitioners are ordered to be released on bail, it will meet the ends of justice.

* * *

GST – Arrest – Interim restraint from arrest during investigations:

The Supreme Court Bench admitted petition for Special Leave to Appeal filed by Union of India against Judgment and Order of Bombay High Court in Writ Petition as reported in 2019 [(366) E.L.T. 814 (Bom.)] in the case of *Rajuram Purohit v Union of India*. While issuing the notice, the Supreme Court passed the following order:

“Tag along with SLP (Crl.) No. 1534 of 2018 which is directed to be listed in the 2nd week of May, 2018”

The Bombay High Court in its impugned order had held that there is no absolute bar on High Court to grant interim restraint from arrest during investigations in Apex Court order in (2017) 2 SCC 779 while advising High Courts not to interfere generally in such matters. Since several Benches of High Court on basis of law laid down in 2011 (272) E.L.T. 321 (S.C.) have allowed protection from arrest, following judicial propriety, investigating agency directed not to arrest petitioner without following Cr. P.C. procedure. Petitioner directed to cooperate with investigation and attend on summons whenever issued. Advocate of petitioner allowed to be present during investigations at a visible but not audible distance. Videography of recording of statement also directed. Reported in 2019 (366) E.L.T.A 168 (S.C.).

* * *

GST - Arrest- Not prohibited.

In the recent decision of the *Hon'ble High Court of Telangana in the case P.V. Ramana Reddy v Union of India* [2019 (25) G.S.T.L. 185 (Telangana)], held that “a prosecution can be launched only after the completion of the assessment, goes contrary to Section 132 of CGST Act, 2017. The list of offences included in sub-Section (1) of Section 132 of CGST Act, 2017 have no co-relation to assessment. Issue of invoices or bills without supply of goods and the availing of ITC by using such invoices or bills, are made offences under clauses (b) and (c) of sub-Section (1) of Section 132 of the CGST Act. The prosecutions for these offences do not depend upon the completion of assessment. Therefore, the argument that there cannot be an arrest even before adjudication or assessment, does not appeal to us (Para-52).

In view of the above, despite our finding that the writ petitions are maintainable and despite our finding that the protection under Sections 41 and 41-A of Cr. P.C., may be available to persons said to have committed cognizable and non-bailable offences under this Act and despite our finding that there are incongruities within Section 69 and between Sections 69 and 132 of CGST Act, 2017, we do not wish to grant relief to the petitioners against arrest, in view of the special circumstances which we have indicated above.” (Para-61)

These orders were challenged by the petitioners therein in Special Leave to Appeal (Crl.) No. 4430 of 2019 and Batch before the Supreme Court and on 27.05.2019, a Bench presided over by the Hon'ble the Chief Justice of India dismissed the said Special Leave Petitions [2019 (26) G.S.T.L.J 175 (S.C.)].

* * *

GST Authorities have power to seize cash from assessee under section 67(2) of the CGST Act: MP HC

[*Smt. Kanishka Matta v Union of India* (2020) 120 taxmann.com 174 (Madhya Pradesh)]

The issue before the Hon'ble Madhya Pradesh High Court for consideration involves determination of expression ‘things’ under Section 67(2) of the CGST Act whether includes cash or not.

The petitioner is the wife of the proprietor of the firm functioning in the name and style of M/s. S. S. Enterprises. The firm is in the business of Confectionery and Pan Masala items. Search operation was carried out at the business premises as well as residential premises by the Department and cash of around ₹ 66 lakhs were seized.

The petitioner contended that the department is not competent to seize the cash under Section 67(2) of the Central Goods and Services Tax Act, 2017 ('CGST Act') since cash cannot be treated as document, book or things. Therefore, the department should be directed to release the cash seized by it.

The Hon'ble Madras High Court on going through the provisions of Section 67(2) of the CGST Act observed that the said section provides that confiscation of any documents or books or things, secreted in any place, which in the opinion

of proper officer shall be useful for or relevant to any proceedings under CGST Act. The meaning of the word ‘things’ needs to be seen widely and would include ‘money’ as well. Further, interpretation of statute must be adopted in a way that anomaly is avoided and which suppresses the mischief and advances the remedy.

Therefore, in view of interpretation of the word ‘thing’, money shall be included and hence, the cash has been rightly seized by the department from the petitioner. Further, unless and until the investigation is carried out and the matter is finally adjudicated, the question of releasing the amount does not arise.

* * *

Search not justified as officers stayed in assessee's premises for 8 days & restricted movement of family members:

[*Paresh Nathalal Chauhan v State of Gujarat* [2020] 113 taxmann.com 462 (Gujarat)]

Search was conducted at the residential premises of the assessee which went on from 11.10.2019 to 18.10.2019. The search party camped in the residential premises of the assessee for 8 days, during which the family members of the assessee were confined to the searched premises and were not permitted to leave the premises without the permission of the authorized officer. The assessee filed an application before the High Court of Gujarat challenging the validity and nature of the search proceedings conducted at his premises.

The Hon'ble High Court observed that as per the panchnama, the family members of the assessee were under house arrest for 8 days. There is no provision under the GST Act which empower the authorized officer to confine family members in this manner and to interrogate them day and night. In the given case, the authorization was for search and seizure of goods liable for confiscation, documents, books or things. Continuous stay of the officers for so many days was not for search of the premises but to search the assessee to obtain information of the place where the documents could have been secreted by him, was totally unauthorized as it was not backed by any statutory provision. Hence, the concerned officer converted it into a search for a person and investigation, which was not backed by any statutory provision.

Thus, apart from the illegality of the continuation of the search proceedings, the conduct of the search officers in confining the family members of the assessee to the house and interrogating them again and again was completely blatant abuse of powers.

In view of the above, the Hon'ble High Court held the search and seizure conducted at the premises of the assessee was illegal and not justified

* * *

Writ petitions could not be filed before HC against seizure orders: SC

[*State of Uttar Pradesh v Kay Pan Fragrance (P.) Ltd.* [2019] 112 taxmann.com 81 (SC)]

The appeal was filed against the interim orders passed by the High Court directing the State to release the seized goods on deposit of security or on furnishing of indemnity bond equal to tax and penalty to the satisfaction of the Assessing Authority.

The Apex Court found that the High Court in all such should have referred the assessees to the Appropriate Authority for complying with the procedures prescribed under the GST Act. The CGST Act read with CGST Rules contains a complete code for release (including provisional release) of seized goods. Therefore, the orders passed by the High Court are held contrary to the provisions prescribed and such order would not be given effect and to be processed by the authorities afresh in accordance with law.

Cash cannot be seized during search of premises:

The Hon'ble High Court of Kerala in the case of *Shabu George v State Tax Officer*, reported in (2023) 9 Centax 28 (Ker.), held that While it may be a fact that Section 67(2) of the CGST Act authorizes the seizure of things, including cash in appropriate cases, we do not think that the present is a case that called for a seizure of the cash found in the premises of the appellants at the time of the search. The power of any authority to seize any 'thing' while functioning under the provisions of a taxing statute must be guided and informed in its exercise by the object of the statute concerned. In an investigation aimed at detecting tax evasion under the GST Act, we fail to see how cash can be seized especially when it is the admitted case that the cash did not form part of the stock in trade of the appellant's business. It is evident from the order of the Intelligence Officer that the cash that was seized from the premises of the appellants was not the stock in trade of the quarry business that was conducted by the appellant. The findings of the Intelligence Officer that 'it is suspicious that this much amount of money kept in the house of M/s. Shabu as idle and not deposited at bank' and further 'the amount received as gift on the day of marriage has not been recorded in his income tax return and from this it is evident that the money is from illicit sources' reveal the extent to which authorities under the Act are misinformed of their powers and the limits of their jurisdiction. The aforesaid findings of the Intelligence Officer could perhaps have been justified had he been an officer attached to the Income-tax department. In the context of the GST Act, the findings are wholly irrelevant. We find that the seizure of cash from the premises of the appellants was wholly uncalled for and unwarranted. Moreover, as the respondent has retained the seized cash for more than six months and is yet to issue a show cause notice to the appellants in connection with the investigation, there can be no justification for a continued retention of the said amount with the respondent. We therefore, allow this appeal by directing the first respondent to forthwith release to the appellant the cash seized from the premises, against a receipt to be obtained from him. The amount shall be released to the appellant without any delay, and at any rate, within a week from the date of receipt of a copy of this judgment. (Para.3).

The State Tax department filed SLP before the Hon'ble Supreme Court against High Court's ruling that In an investigation aimed at detecting tax evasion under GST Act, cash cannot be seized, especially when cash does not form part of stock-in-trade of business. The SLP filed against impugned order was to be dismissed – Section 67 of Central Goods and Services Tax Act, 2017/Kerala State Goods and Services Tax Act, 2017 reported in (2023) 9 Centax 89 (S.C.) [31-07-2023].

High Court directs the DGGI to transfer entire investigation to State tax authority as proceedings were already initiated by them.

The Hon'ble Jharkhand High Court in the case of *Vivek Narsaria v State of Jharkhand & Ors.* [Writ Petition(T) No. 4491 of 2023 dated January 15, 2024] held that since all the proceedings are interrelated, the State Authorities to continue the proceedings as per Section 6(2)(b) of the Central Goods and Services Tax Act, 2017 ("the CGST Act") read with *Notification No. 39/2017-Central Tax dated October 13, 2017* and the *clarification bearing D.O.F. No. CBEC/20/43/01/2017- GST(Pt.) dated October 5, 2018*. Further, directed both the Preventive Wing of the CGST and Directorate General of GST Intelligence Wing of the CGST to forward all their investigation carried out against the Petitioner and inter-related transactions to the State Authorities, who shall carry out further proceedings against the Petitioner in accordance with law and also, directed to take decision immediately on defreezing of bank accounts of the Petitioner.

GST: During search, proper officer cannot seize currency and other valuable assets in exercise of powers under sub-section (2) of Section 67; even if so done, same are required to be returned by virtue of sub-section (3) of Section 67 when assets and currency had not been relied upon in notice issued subsequently

The Hon'ble High Court of Delhi in the case of *Deepak Khandelwal v Commissioner of CT & GST*, reported in (2023) 9 Centax 244 (Del.) held that Search and seizure operations under section 67 are not for purpose of seizing unaccounted income or assets or ensuring that same are taxed; said field is covered by Income-tax Act, 1961 - Where currency or silver bars that were seized, could not be traced in species to any transaction which revenue required to establish in any proceedings those silver bars and cash could not be seized only on ground that it was 'unaccounted wealth' and not as any material which was to be relied upon in any proceedings under Act - Even if, it is accepted, which should not be, that proper officer could seize currency and other valuable assets in exercise of powers under sub-section (2) of Section 67, ibid, same were required to be returned by virtue of sub-section (3) of Section 67.

Chapter 20

Demand and Recovery

Synopsis

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1. Introduction

The provision of demand and recovery of tax has been incorporated under GST law, which is based on erstwhile tax laws. Under self-assess system of determination and payment of tax, there is every chance of inadvertently short payment of tax and sometimes also deliberately taxes are not paid by the assessees. Accordingly, the CGST Act contains elaborate provisions for the recovery of tax under various situations such as Tax short paid or erroneously refunded or Input Tax Credit wrongly availed and non-payment of self-assessed tax or amount collected as representing the tax.

Chapter XV and Section 73 to Section 84 of CGST Act, 2017 contains the provisions of demand and recovery of tax under GST. The recovery processes of tax start with the issuance of show cause notice and end with Adjudication proceedings.

2. The major grounds of demand of Tax

The primary demand for tax can be raised by the authorised officer of GST for short payment or non-payment of tax in the following situations:

- (a) when there is reason of fraud or wilful misstatement or suppression of facts
- (b) when there is no reason of fraud or wilful misstatement or suppression of facts

3. When there is no reason of fraud - Section 73 of CGST Act

Section 73 of CGST Act, deals with the cases any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any wilful-mis-statement or suppression of facts to evade tax.

(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder.

➤ **Proper officer issue notice 3 months prior to time limit of 3 years:**

(2) The proper officer shall issue the notice under sub-section (1) at least three months prior to the time limit specified in sub-section (10) for issuance of order.

➤ **Proper officer issue a statement details of tax recovery:**

(3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.

➤ **Serve of such statement is deemed to be service of notice.**

(4) The service of such statement shall be deemed to be service of notice on such person under sub-section (1), subject to the condition that the grounds relied upon for such tax periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.

➤ **Taxpayer can pay own ascertainment of such tax.**

(5) The person chargeable with tax may, before service of notice under sub-section (1) or, as the case may be, the statement under sub-section (3), pay the amount of tax along with interest payable thereon under section 50 on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

➤ **Proper officer received of such statement not issue notice**

(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1) or, as the case may be, the statement under sub-section (3), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.

➤ **Proper officer issue notice if short falls of tax payment**

(7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.

➤ **If the taxpayers paid the said tax with interest within 30 days of notice then no penalty shall be payable.**

(8) Where any person chargeable with tax under sub-section (1) or sub-section (3) pays the said tax along with interest payable under section 50 within thirty days of issue of show cause notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.

➤ **Penalty equivalent to 10% or ₹10,000/- to be charged whichever is higher:**

(9) The proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty equivalent to ten per cent of tax or ten thousand rupees, whichever is higher, due from such person and issue an order.

➤ **Proper officer issue order within 3 years of due date of furnishing Annual return:**

(10) The proper officer shall issue the order under sub-section (9) within three years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within three years from the date of erroneous refund.

- (i) Extends the time limit for issuance order u/s 73(9)/73(10), for recovery of tax not paid or short paid or input tax credit wrongly availed or utilized, in respect of a tax period for the financial year 2017-18, up to the 30th day of September'2023.

(ii) Excludes period 1-3-2020 to 28-02-2022

Notification No.13/2022 C.T., dated 05.07.2022 (w.e.f.1.3.22)

➤ **Penalty equivalent to 50% of tax if tax paid within 30 days of communication of the order:**

(11) Where any person served with an order issued under sub-section (9) pays the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty per cent of such tax within thirty days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded.

Explanation 1.—For the purposes of section 73 and this section,—

- (i) the expression "all proceedings in respect of the said notice" shall not include proceedings under section 132;
- (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. (Notified vide Notification No.39/2021-Central Tax., dated 21.12.2021)

Explanation 2.—For the purposes of this Act, the expression "suppression" shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer.

4. Limitation for recovery and adjudication is within 3 years of filing Annual return

- (i) If the case relating to non-fraud, the adjudication of the case should be done within 3 years from the date of filing of annual return for the relevant financial year.
- (ii) If the assessee received an erroneous refund, the case must be adjudicated within 3 years from the date on which such refund was credited to the assessee's account.
- (iii) The proper officer shall issue notice for recovery of Tax at least 3 months prior to the limit of adjudication or issue of order.
- (iv) The proper officer shall issue order of adjudication within 3 years from the due date for furnishing of annual return for the financial year for the relevant period of dispute.

5. When there is Fraud - Section 74 of CGST Act

Section 74 of CGST Act, deals with the cases where any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised by reason of fraud or any wilful-misstatement or suppression of facts to evade tax.

➤ Penalty equivalent to tax in case of suppression of facts to evade tax.

(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.

➤ Issue notice 6 months prior to limitation of time of 5 years

(2) The proper officer shall issue the notice under sub-section (1) at least six months prior to the time limit specified in sub-section (10) for issuance of order.

➤ **Proper officer issue a statement details of tax recovery:**

(3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.

➤ **Serve of such statement is deemed to be service of notice**

(4) The service of statement under sub-section (3) shall be deemed to be service of notice under sub-section (1) of section 73, subject to the condition that the grounds relied upon in the said statement, except the ground of fraud, or any wilful-misstatement or suppression of facts to evade tax, for periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.

➤ **Taxpayer can pay own ascertainment of such tax.**

(5) The person chargeable with tax may, before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 and a penalty equivalent to fifteen per cent of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

➤ **Proper officer received of such statement not issue notice**

(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.

➤ **Proper officer issue notice if short falls of tax payment**

(7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.

➤ **If the taxpayers paid the said tax with interest within 30 days of notice then 25% of penalty shall be payable.**

(8) Where any person chargeable with tax under sub-section (1) pays the said tax along with interest payable under section 50 and a penalty equivalent to twenty-five per cent of such tax within thirty days of issue of the notice, all proceedings in respect of the said notice shall be deemed to be concluded.

➤ **Proper officer issue order after considering representation.**

(9) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order.

➤ **Issue notice 6 months prior to limitation of time of 5 years**

(10) The proper officer shall issue the order under sub-section (9) within a period of five years from the due date for furnishing of annual return for the

financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within five years from the date of erroneous refund.

➤ **Penalty equivalent to 50% of tax if tax paid within 30 days of communication of the order:**

(11) Where any person served with an order issued under sub-section (9) pays the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty per cent of such tax within thirty days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded.

Explanation 1.—For the purposes of section 73 and this section,—

- (i) the expression "all proceedings in respect of the said notice" shall not include proceedings under section 132;
- (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. (Notified vide Notification No.39/2021-Central Tax., dated 21.12.2019)

Explanation 2.—For the purposes of this Act, the expression "suppression" shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer.

6. Limitation for recovery and adjudication

- (i) If the case relating to fraud or suppression of facts, the adjudication of the case should be done within 5 years from the date of filing of annual return for the relevant financial year.
- (ii) If the assessee received an erroneous refund, the case must be adjudicated within 5 years from the date on which such refund was credited to the assessee's account.
- (iii) The proper officer shall issue notice for recovery of Tax at least 3 months before the deadline for adjudication of case or issue of order.
- (iv) The proper officer shall issue order of adjudication within 5 years from the due date for furnishing of annual return for the financial year for the relevant period of dispute.

7. Interest and Penalty

The incidence of short payment of tax or erroneous refund or wrong availment of Input Tax Credit may be because of an inadvertent *bona fide* mistake (Normal Cases) or it may be a deliberate attempt (Fraud Cases) to evade the tax. Since the nature of offence is totally different in both the incidences, hence, separate provisions for recovery of the tax and the amount of penalty have been made to deal with such type of cases. There are provisions to encourage

voluntary compliance such as no penalty or lesser penalty if the tax dues along with interest, are paid within the specified time limit/incidence.

The rate of interest and amount of penalty on the various situations has been summarized under the below Table:

| Sl. No. | Nature of situations | In Normal Case under Section 73 of CGST Act. | In case of fraud or suppression/misstatement etc., under Section 74 of CGST Act. |
|---------|--------------------------------------|---|--|
| 1 | Before issuance of show cause notice | The taxpayer needs to pay the tax due along with applicable interest and No penalty, No notice shall be issued. | The taxpayer needs to pay the tax due along with interest and penalty @15% of the tax amount due and no Notice shall be issued. |
| 2 | After issuance of show cause notice | The taxpayer needs to pay the tax due along with applicable interest within 30 days of issue of SCN and No penalty after the payment. | The taxpayer needs to pay the tax due along with interest and penalty @25% of the tax amount due and must make payment within 30 days of issue of SCN. |
| 3 | After issuance of order | Even after the order is issued, the taxpayer can avoid prosecution by taking certain actions, i.e. pay tax, interest and penalty on time. | The taxpayer to pay tax along with interest & penalty @50% of the tax amount due. All proceeding deemed to be concluded. |
| 4 | Any other case | The tax payer has to pay tax amount due with interest and penalty of equivalent to of 10% of Tax amount due or ₹10,000/-, whichever is higher with 30 days of communication of order. | The taxpayer needs to pay tax amount due along with interest & penalty @100% of the tax amount due. |

Remarks

The penalty shall also be not chargeable in cases where the self assessed tax or any amount collected as tax is paid (with interest) within 30 days from the due date of payment.

The amount of tax, interest and penalty demanded in the order shall not be more than the amount specified in the notice and no demand shall be confirmed on the ground other than the ground specified in the notice.

8. General provisions relating to determination of Tax

Section 75 of CGST Act, deals with the general provisions relating to determination of tax and which provides that,

➤ **Order is stayed by an order of court**

- (1) where the service of notice or issuance of order is stayed by an order of Court or Appellate Tribunal, the period of stay shall be excluded in computing the period specified in sub-section (2) and (10) of Section 73 or sub-section (2) and of Section 74 as the case may be.

➤ **Proper officer determine tax payable deeming the notice issued under section**

- (2) where any Appellate Authority or Appellate Tribunal or Court concludes that the notice issued under Section 74(1) is not sustainable for the reason that the charges of Fraud or wilful-misstatement or suppression of facts to evade tax has not been established, the proper officer shall determine the tax payable deeming as if the notice were issued under Section 73(1).

➤ **Any order shall be issued within 2 years of Appellate order**

- (3) Where any order is required to be issued in pursuance of the direction of the Appellate Authority or Appellate Tribunal or a court, such order shall be issued within 2 years from the date of communication of the said direction.

➤ **Opportunity of hearing should be provided**

- (4) An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person.

Provided that no such adjournment shall be granted for more than three times to a person during the proceedings.

➤ **No adjournment of hearings more than three occasions**

- (5) The proper officer shall, if sufficient cause is shown by the person chargeable with tax, grant time to the said person and adjourn the hearing for reasons to be recorded in writing.

Provided that no such adjournment shall be granted for more than three times to a person during the proceedings.

- (6) The proper officer, in his order, shall set out the relevant facts and the basis of his decision.

➤ **Order should not beyond scope of show cause notice:**

- (7) The amount of tax, interest and penalty demanded in the order shall not be in excess of the amount specified in the notice and no demand shall be confirmed on the grounds other than the grounds specified in the notice.

- (8) Where the Appellate Authority or Appellate Tribunal or court modifies the amount of tax determined by the proper officer, the amount of

interest and penalty shall stand modified accordingly, taking into account the amount of tax so modified.

- (9) The interest on the tax short paid or not paid shall be payable whether or not specified in the order determining the tax liability.

➤ **Adjudication proceeding deemed to be concluded beyond time limits**

- (10) The adjudication proceedings shall be deemed to be concluded, if the order is not issued within 3 years as provided for in sub-section (10) of Section 73 or within 5 years as provided for in sub-section (10) of Section 74.

➤ **Computing period shall be determined by considering the order by the Appellate Authority, High Court and Supreme Court shall be excluded.**

- (11) An issue on which the Appellate Authority or the Appellate Tribunal or the High Court has given its decision which is prejudicial to the interest of revenue in some other proceedings and an appeal to the Appellate Tribunal or the High Court or the Supreme Court against such decision of the Appellate Authority or the Appellate Tribunal or the High Court is pending, the period spent between the date of the decision of the Appellate Authority and that of the Appellate Tribunal or the date of decision of the Appellate Tribunal and that of the High Court or the date of the decision of the High Court and that of the Supreme Court shall be excluded in computing the period referred to in subsection (10) of section 73 or sub-section (10) of section 74 where proceedings are initiated by way of issue of a show cause notice under the said sections.

➤ **Unpaid tax amount of self assessment shall be recovered under section 79 of CGST Act.**

- (12) Notwithstanding anything contained in section 73 or section 74, where any amount of self-assessed tax in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of section 79.

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. (Notified vide Notification No. 39/2021-CT, dated 21.12.2021 w.e.f. 01.01.2022]

➤ **No Penalty under any provisions when imposed under section 73 or 74 of CGST Act.**

- (13) Where any penalty is imposed under section 73 or section 74, no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act.

Recovery of Tax in respect of transaction declared in Form GSTR 1

(Clause 114 of Finance Act, 2021 - Effective Date January 01, 2022)

- Section 75 of CGST Act provides the general provisions relating to the determination of the tax. Section 75(12) of CGST Act prescribes about the recovery of self-assessed tax. Where a self-assessed tax or interest thereon remains unpaid according to supplies furnished in Form GSTR-3B the same is recovered as per the provisions of Section 79 of CGST Act
- The Finance Act 2021 has defined the meaning of the term self-assessed tax. The self-assessed tax has been defined to include the tax payable in respect of outward supplies furnished in Form GSTR-1, but not included in Form GSTR-3B. Therefore, if a person has furnished details of outward supplies in Form GSTR-1 but has not discharged the tax liability *i.e.*, not furnished the details of outward supplies in the GSTR-3B, then the same would qualify as self-assessed tax and recovery proceedings under section 79 of CGST Act may be initiated by the proper officer. The proposed amendment ensures that tax declared in Form GSTR 1 must actually be paid by the supplier.

(Notified vide Notification No. 39/2021-Central Tax, dated 21.12.2021)

9. Tax collected but not paid to Government – Section 76

(1) Notwithstanding anything to the contrary contained in any order or direction of any Appellate Authority or Appellate Tribunal or court or in any other provisions of this Act or the rules made thereunder or any other law for the time being in force, every person who has collected from any other person any amount as representing the tax under this Act, and has not paid the said amount to the Government, shall forthwith pay the said amount to the Government, irrespective of whether the supplies in respect of which such amount was collected are taxable or not.

(2) Where any amount is required to be paid to the Government under sub-section (1), and which has not been so paid, the proper officer may serve on the person liable to pay such amount a notice requiring him to show cause as to why the said amount as specified in the notice, should not be paid by him to the Government and why a penalty equivalent to the amount specified in the notice should not be imposed on him under the provisions of this Act.

(3) The proper officer shall, after considering the representation, if any, made by the person on whom the notice is served under sub-section (2), determine the amount due from such person and thereupon such person shall pay the amount so determined.

(4) The person referred to in sub-section (1) shall in addition to paying the amount referred to in sub-section (1) or sub-section (3) also be liable to pay interest thereon at the rate specified under section 50 from the date such amount was collected by him to the date such amount is paid by him to the Government.

(5) An opportunity of hearing shall be granted to the person whom the notice was issued to show cause.

(6) The proper officer shall issue an order within one year from the date of issue of the notice.

(7) Where the issuance of order is stayed by an order of the court or Appellate Tribunal, the period of such stay shall be excluded in computing the period of one year.

(8) The proper officer, in his order, shall set out the relevant facts and the basis of his decision.

(9) The amount paid to the Government under sub-section (1) or sub-section (3) shall be adjusted against the tax payable, if any, by the person in relation to the supplies referred to in sub-section (1).

(10) Where any surplus is left after the adjustment under sub-section (9), the amount of such surplus shall either be credited to the Fund or refunded to the person who has borne the incidence of such amount.

(11) The person who has borne the incidence of the amount may apply for the refund of the same in accordance with the provisions of section 54.

10. Tax wrongly collected and paid to Central/State Government

Section 77 of CGST Act, provides mechanism for refund of tax wrongly collected and paid.

If a registered person on a transaction wrongly paid as CGST/SGST or CGST/UTGST as the case may be, considering as intra-State supply which was actually inter-State supply, then a refund of such tax can be claimed as per this section.

Also if a registered person paid integrated tax on a transaction which is actually an intra-State supply but considered an inter-State supply, then he does not required to pay any interest on the amount of CGST/SGST or CGST/UTGST as the case may be.

11. Intimation recovery proceedings

Section 78 of CGST Act, provides that any amount payable by a taxable person in pursuance of an order passed shall be paid within 3 months from the date of service of such order failing which recovery proceedings shall be initiated by the department.

Provided that where the proper officer considers it expedient in the interest of revenue, may with reasons to be recorded in writing, require the said person to make such payment within such reduced period as may be specify by him.

12. Manner of Recovery of Tax – Section 79 of CGST Act.

(1) Where any amount payable by a person to the Government under any of the provisions of this Act or the rules made thereunder is not paid, the proper officer shall proceed to recover the amount by one or more of the following modes, namely:—

- (a) The proper officer may recover by deduct the amount from the other amount payable to such person which may be under the control of such officer.

- (b) The proper officer may recover by detaining or selling any goods belonging to such person which are under his control.
- (c) (i) the proper officer may, by a notice in writing, require any other person from whom money is due or may become due to such person or who holds or may subsequently hold money for or on account of such person, to pay to the Government either forthwith upon the money becoming due or being held, or within the time specified in the notice not being before the money becomes due or is held, so much of the money as is sufficient to pay the amount due from such person or the whole of the money when it is equal to or less than that amount;
 - Notice issue to post office, banking company or an insurance company
- (ii) every person to whom the notice is issued under sub-clause (i) shall be bound to comply with such notice, and in particular, where any such notice is issued to a post office, banking company or an insurer, it shall not be necessary to produce any pass book, deposit receipt, policy or any other document for the purpose of any entry, endorsement or the like being made before payment is made, notwithstanding any rule, practice or requirement to the contrary;
- (iii) in case the person to whom a notice under sub-clause (i) has been issued, fails to make the payment in pursuance thereof to the Government, he shall be deemed to be a defaulter in respect of the amount specified in the notice and all the consequences of this Act or the rules made thereunder shall follow;
- (iv) the officer issuing a notice under sub-clause (i) may, at any time, amend or revoke such notice or extend the time for making any payment in pursuance of the notice;
- (v) any person making any payment in compliance with a notice issued under sub-clause (i) shall be deemed to have made the payment under the authority of the person in default and such payment being credited to the Government shall be deemed to constitute a good and sufficient discharge of the liability of such person to the person in default to the extent of the amount specified in the receipt;
- (vi) any person discharging any liability to the person in default after service on him of the notice issued under sub-clause (i) shall be personally liable to the Government to the extent of the liability discharged or to the extent of the liability of the person in default for tax, interest and penalty, whichever is less;
- (vii) where a person on whom a notice is served under sub-clause (i) proves to the satisfaction of the officer issuing the notice that the money demanded or any part thereof was not due to the person in default or that he did not hold any money for or on account of the

person in default, at the time the notice was served on him, nor is the money demanded or any part thereof, likely to become due to the said person or be held for or on account of such person, nothing contained in this section shall be deemed to require the person on whom the notice has been served to pay to the Government any such money or part thereof;

➤ **Recovery by distress any movable or immovable property of the belonging to such person**

- (d) the proper officer may, in accordance with the rules to be made in this behalf, distress any movable or immovable property belonging to or under the control of such person, and detain the same until the amount payable is paid; and in case, any part of the said amount payable or of the cost of the distress or keeping of the property, remains unpaid for a period of thirty days next after any such distress, may cause the said property to be sold and with the proceeds of such sale, may satisfy the amount payable and the costs including cost of sale remaining unpaid and shall render the surplus amount, if any, to such person;

➤ **Recovery of demand as arrear of land revenue by the collector**

- (e) the proper officer may prepare a certificate signed by him specifying the amount due from such person and send it to the Collector of the district in which such person owns any property or resides or carries on his business or to any officer authorised by the Government and the said Collector or the said officer, on receipt of such certificate, shall proceed to recover from such person the amount specified thereunder as if it were an arrear of land revenue;
- (f) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the proper officer may file an application to the appropriate Magistrate and such Magistrate shall proceed to recover from such person the amount specified thereunder as if it were a fine imposed by him.

(2) Where the terms of any bond or other instrument executed under this Act or any rules or regulations made thereunder provide that any amount due under such instrument may be recovered in the manner laid down in sub-section (1), the amount may, without prejudice to any other mode of recovery, be recovered in accordance with the provisions of that sub-section.

(3) Where any amount of tax, interest or penalty is payable by a person to the Government under any of the provisions of this Act or the rules made thereunder and which remains unpaid, the proper officer of State tax or Union territory tax, during the course of recovery of said tax arrears, may recover the amount from the said person as if it were an arrear of State tax or Union territory tax and credit the amount so recovered to the account of the Government.

(4) Where the amount recovered under sub-section (3) is less than the amount due to the Central Government and State Government, the amount to be credited to the account of the respective Governments shall be in proportion to the amount due to each such Government.

Explanation.—For the purposes of this section, the word person shall include distinct persons as referred to in sub-section (4) or, as the case may be, sub-section (5) of section 25.

13. Payment of tax and other amount in instalments

Section 80 of CGST Act, provides for payment of tax and other amount in instalments. On an application filed by a taxable person, the Commissioner/Chief Commissioner may for reasons to be recorded in writing, extend the time for payment or allow payment of any amount due under this Act, other than the amount due as per liability self-assessed in any return, by such person in monthly instalments not exceeding twenty-four, subject to payment of interest.

Provided, where there is default in payment of any one instalment on its due date, the whole outstanding balance payable on such date shall become due and payable forthwith and shall without any further notice being served on the person.

14. Transfer of property to be void in certain cases

Section 81 of CGST Act from him, creates a charge on or parts with property belonging to him or in his possession by way of sale, mortgage, exchange, or any other mode of transfer whatsoever of any of his properties in favour of any other person with the intention of defrauding the Government revenue, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the said person.

Provided that, such charge or transfer shall not be void if it is made for adequate consideration, in good faith and without notice of the pendency of such proceedings under this Act without notice of such tax.

15. Tax to be first charge on property

Section 82 of CGST Act, specified that any amount payable to Government as tax, interest, penalty by a taxable person or any other person shall be first charge on the property of such taxable person or any other person, notwithstanding anything contrary contained in any other law for the time being in force, except insolvency and Bankruptcy Code 2016.

16. Provisional attachment

Section 83 of CGST Act, specified that during the pendency of any proceedings under Section 62 or Section 63 or Section 64 or Section 67 or Section 73 or Section 74, Commissioner may, if necessary in the interest of Government revenue, by order in writing attach provisionally any property belonging the taxable person, by order writing attach any property including bank account. Every such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order.

➤ For the purpose of recovery any property, bank account may be attached by the commissioner to protect Government revenue.

(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. (Notified vide Notification No.39/2021-Central Tax., dated 21.12.2021]

(2) Every such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order made under sub-section (1).

17. Continuation and validation of certain recovery proceedings

Section 84 of CGST Act, specified that where any notice of demand in respect of any tax, penalty, interest or any other amount payable under this Act, is served upon any taxable person or any other person and any appeal or revision application is filed or any other proceedings is initiated in respect of such Government dues, then—

- (a) Government dues are enhanced in appeal, revision or other proceedings then Commissioner shall serve notice of demand in respect of enhance amount. The recovery proceeding shall be continued from the stage at which such proceedings stood immediately before such disposal.
- (b) Where such Government dues are reduced in such appeal, revision or in other proceedings—
 - (i) it shall not be necessary for the Commissioner to serve upon the taxable person a fresh notice of demand.
 - (ii) him and to the appropriate authority with whom recovery proceedings is pending.
 - (iii) any recovery proceedings initiated on the basis of the demand served upon him prior to the disposal of such appeal, revision or other proceedings may be continued in relation to the amount so reduced from the stage at which such proceedings stood immediately before such disposal.

17.1 Liability in case of transfer of business - Section 85 of CGST Act.

Where a taxable person, liable to pay tax under this Act, transfers his business in whole or in part, by sale, gift, lease, leave and license, hire or in any other manner whatsoever, the taxable person and the person to whom the business is so transferred shall, jointly and severally, be liable wholly or to the extent of such transfer, to pay the tax, interest or any penalty due from the taxable person upto the time of such transfer, whether such tax, interest or penalty has been determined before such transfer, but has remained unpaid or is determined thereafter.

➤ **In case business transfer the registered person shall liable to pay tax.**

(2) Where the transferee of a business referred to in sub-section (1) carries on such business either in his own name or in some other name, he shall be liable to pay tax on the supply of goods or services or both effected by him with effect from the date of such transfer and shall, if he is a registered person under this Act, apply within the prescribed time for amendment of his certificate of registration.

17.2 Liability of agent and principal - Section 86 of CGST Act.

Where an agent supplies or receives any taxable goods on behalf of his principal, such agent and his principal shall, jointly and severally, be liable to pay the tax payable on such goods under this Act.

17.3 Liability in case of amalgamation or merger of companies - Section 87 of CGST Act

(1) When two or more companies are amalgamated or merged in pursuance of an order of court or of Tribunal or otherwise and the order is to take effect from a date earlier to the date of the order and any two or more of such companies have supplied or received any goods or services or both to or from each other during the period commencing on the date from which the order takes effect till the date of the order, then such transactions of supply and receipt shall be included in the turnover of supply or receipt of the respective companies and they shall be liable to pay tax accordingly.

(2) Notwithstanding anything contained in the said order, for the purposes of this Act, the said two or more companies shall be treated as distinct companies for the period up to the date of the said order and the registration certificates of the said companies shall be cancelled with effect from the date of the said order.

17.4 Liability in case of company in liquidation - Section 88 of CGST Act

When any company is being wound up whether under the orders of a court or Tribunal or otherwise, every person appointed as receiver of any assets of a company (hereafter in this section referred to as the "liquidator"), shall, within thirty days after his appointment, give intimation of his appointment to the Commissioner.

➤ **Notify liquidator within three months for recovery**

(2) The Commissioner shall, after making such inquiry or calling for such information as he may deem fit, notify the liquidator within three months from the date on which he receives intimation of the appointment of the liquidator, the amount which in the opinion of the Commissioner would be sufficient to provide for any tax, interest or penalty which is then, or is likely thereafter to become, payable by the company.

➤ **If liquidator fails to recover the company director is liable for payment any demand**

(3) When any private company is wound up and any tax, interest or penalty determined under this Act on the company for any period, whether before or in

the course of or after its liquidation, cannot be recovered, then every person who was a director of such company at any time during the period for which the tax was due shall, jointly and severally, be liable for the payment of such tax, interest or penalty, unless he proves to the satisfaction of the Commissioner that such non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

17.5 Liability of directors of private company - Section 89 of CGST Act.

Notwithstanding anything contained in the Companies Act, 2013 (18 of 2013), where any tax, interest or penalty due from a private company in respect of any supply of goods or services or both for any period cannot be recovered, then, every person who was a director of the private company during such period shall, jointly and severally, be liable for the payment of such tax, interest or penalty unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

(2) Where a private company is converted into a public company and the tax, interest or penalty in respect of any supply of goods or services or both for any period during which such company was a private company cannot be recovered before such conversion, then, nothing contained in sub-section (1) shall apply to any person who was a director of such private company in relation to any tax, interest or penalty in respect of such supply of goods or services or both of such private company:

Provided that nothing contained in this sub-section shall apply to any personal penalty imposed on such director.

17.6 Liability of partners of firm to pay tax - Section 90 of CGST Act

Notwithstanding any contract to the contrary and any other law for the time being in force, where any firm is liable to pay any tax, interest or penalty under this Act, the firm and each of the partners of the firm shall, jointly and severally, be liable for such payment:

Provided that where any partner retires from the firm, he or the firm, shall intimate the date of retirement of the said partner to the Commissioner by a notice in that behalf in writing and such partner shall be liable to pay tax, interest or penalty due up to the date of his retirement whether determined or not, on that date:

Provided further that if no such intimation is given within one month from the date of retirement, the liability of such partner under the first proviso shall continue until the date on which such intimation is received by the Commissioner.

17.7 Liability of guardians, trustees, etc - Section 91 of CGST Act.

Where the business in respect of which any tax, interest or penalty is payable under this Act is carried on by any guardian, trustee or agent of a minor or other incapacitated person on behalf of and for the benefit of such minor or other incapacitated person, the tax, interest or penalty shall be levied upon and

recoverable from such guardian, trustee or agent in like manner and to the same extent as it would be determined and recoverable from any such minor or other incapacitated person, as if he were a major or capacitated person and as if he were conducting the business himself, and all the provisions of this Act or the rules made thereunder shall apply accordingly.

17.8 Liability of Court of Wards, etc - Section 92 of CGST Act

Where the estate or any portion of the estate of a taxable person owning a business in respect of which any tax, interest or penalty is payable under this Act is under the control of the Court of Wards, the Administrator General, the Official Trustee or any receiver or manager (including any person, whatever be his designation, who in fact manages the business) appointed by or under any order of a court, the tax, interest or penalty shall be levied upon and be recoverable from such Court of Wards, Administrator General, Official Trustee, receiver or manager in like manner and to the same extent as it would be determined and be recoverable from the taxable person as if he were conducting the business himself, and all the provisions of this Act or the rules made thereunder shall apply accordingly.

17.9 Special provisions regarding liability to pay tax, interest or penalty in certain cases - section 93 of the CGST Act

Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016 (31 of 2016), where a person, liable to pay tax, interest or penalty under this Act, dies, then—

- (a) if a business carried on by the person is continued after his death by his legal representative or any other person, such legal representative or other person, shall be liable to pay tax, interest or penalty due from such person under this Act; and
- (b) if the business carried on by the person is discontinued, whether before or after his death, his legal representative shall be liable to pay, out of the estate of the deceased, to the extent to which the estate is capable of meeting the charge, the tax, interest or penalty due from such person under this Act, whether such tax, interest or penalty has been determined before his death but has remained unpaid or is determined after his death.

➤ **Each member or group of members shall, jointly and severally, be liable to pay the tax, interest or penalty due from the taxable person**

(2) Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, where a taxable person, liable to pay tax, interest or penalty under this Act, is a Hindu Undivided Family or an association of persons and the property of the Hindu Undivided Family or the association of persons is partitioned amongst the various members or groups of members, then, each member or group of members shall, jointly and severally, be liable to pay the tax, interest or penalty due from the taxable person under this Act up to the time of the partition whether such tax, penalty or interest has been determined before partition but has remained unpaid or is determined after the partition.

➤ **In case of Insolvency and Bankruptcy, every person of partner shall jointly and severally be liable to pay tax.**

(3) Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016 (31 of 2016), where a taxable person, liable to pay tax, interest or penalty under this Act, is a firm, and the firm is dissolved, then, every person who was a partner shall, jointly and severally, be liable to pay the tax, interest or penalty due from the firm under this Act up to the time of dissolution whether such tax, interest or penalty has been determined before the dissolution, but has remained unpaid or is determined after dissolution.

(4) Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016 (31 of 2016), where a taxable person liable to pay tax, interest or penalty under this Act.

(a) is the guardian of a ward on whose behalf the business is carried on by the guardian; or

➤ **Business under a trust for a beneficiary, then, if the guardianship or trust is terminated, the ward or the beneficiary shall be liable to pay the tax**

(b) is a trustee who carries on the business under a trust for a beneficiary, then, if the guardianship or trust is terminated, the ward or the beneficiary shall be liable to pay the tax, interest or penalty due from the taxable person upto the time of the termination of the guardianship or trust, whether such tax, interest or penalty has been determined before the termination of guardianship or trust but has remained unpaid or is determined thereafter.

17.10 Liability in other cases - Section 94 of CGST Act

Where a taxable person is a firm or an association of persons or a Hindu Undivided Family and such firm, association or family has discontinued business—

(a) the tax, interest or penalty payable under this Act by such firm, association or family up to the date of such discontinuance may be determined as if no such discontinuance had taken place; and

(b) every person who, at the time of such discontinuance, was a partner of such firm, or a member of such association or family, shall, notwithstanding such discontinuance, jointly and severally, be liable for the payment of tax and interest determined and penalty imposed and payable by such firm, association or family, whether such tax and interest has been determined or penalty imposed prior to or after such discontinuance and subject as aforesaid, the provisions of this Act shall, so far as may be, apply as if every such person or partner or member were himself a taxable person.

(2) Where a change has occurred in the constitution of a firm or an association of persons, the partners of the firm or members of association, as it existed before and as it exists after the reconstitution, shall, without prejudice to

the provisions of section 90, jointly and severally, be liable to pay tax, interest or penalty due from such firm or association for any period before its reconstitution.

(3) The provisions of sub-section (1) shall, so far as may be, apply where the taxable person, being a firm or association of persons is dissolved or where the taxable person, being a Hindu Undivided Family, has effected partition with respect to the business carried on by it and accordingly references in that sub-section to discontinuance shall be construed as reference to dissolution or to partition.

Explanation.—For the purposes of this Chapter,—

- (i) a "Limited Liability Partnership" formed and registered under the provisions of the Limited Liability Partnership Act, 2008 (6 of 2009) shall also be considered as a firm;
- (ii) "Court" means the District Court, High Court or Supreme Court.

18. Statutory Provisions of Demand and Recovery

Rule 142 to 161 of CGST Rules, 2017 provides the procedure of Demands and Recovery under GST. The various procedures and different forms have been incorporated under GST Rules,

18.1 Notice and order for demand of amounts payable under the Act - Rule 142 of CGST Rules

The proper officer shall serve, along with the—

- (a) Notice issued under section 52 or section 53 or section 73 or section 74 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130, a summary thereof electronically in **FORM GST DRC-01**,
- (b) statement under sub-section (3) of section 73 or sub-section (3) of section 74, a summary thereof electronically in FORM GST DRC-02, specifying therein the details of the amount payable.

(1A) The proper officer may, before service of Notice to the person chargeable with tax, interest and penalty, under sub-section (1) of Section 73 or sub-section (1) of Section 74, as the case may be, communicate the details of any tax, interest and penalty as ascertained by the said officer, in **Part A of FORM GST DRC-01 FORM GST DRC-01A**;

(2) Where, before the service of Notice or statement, the person chargeable with tax makes payment of the tax and interest in accordance with the provisions of sub-section (5) of section 73 or, as the case may be, tax, interest and penalty in accordance with the provisions of subsection (5) of section 74, or where any person makes payment of tax, interest, penalty or any other amount due in accordance with the provisions of the Act whether on his own ascertainment or, as communicated by the proper officer under sub-rule (1A),] he shall inform the proper officer of such payment in **FORM GST DRC-03** and the proper officer shall issue an acknowledgement, accepting the payment made by the said person in **FORM GST DRC-04**.

(2A) Where the person referred to in sub-rule (1A) has made partial payment of the amount communicated to him or desires to file any submissions against the proposed liability, he may make such submission in **Part B of FORM GST DRC-01A**.

(3) Where the person chargeable with tax makes payment of tax and interest under sub-section (8) of section 73 or, as the case may be, tax, interest and penalty under sub-section (8) of section 74 within thirty days of the service of a Notice under sub-rule (1), or where the person concerned makes payment of the amount referred to in sub-section (1) of section 129 within seven days of the notice issued under sub-section (3) of section 129 but before the issuance an intimation under the said sub-section (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-03** concluding the proceedings in respect of the said Notice.

(4) The representation referred to in sub-section (9) of section 73 or sub-section (9) of section 74 or sub-section (3) of section 76 or the reply to any Notice issued under any section whose summary has been uploaded electronically in **FORM GST DRC-01** under sub-rule (1) shall be furnished in **FORM GST DRC-06**.

(5) A summary of the order issued under section 52 or section 62 or section 63 or section 64 or section 73 or section 74 or section 75 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or 129 or section 130 shall be uploaded electronically in **FORM GST DRC-07**, specifying therein the amount of tax, interest and penalty, as the case may be, payable by the person concerned.

(6) The order referred to in sub-rule (5) shall be treated as the Notice for recovery.

(7) Where a rectification of the order has been passed in accordance with the provisions of section 161 or where an order uploaded on the system has been withdrawn, a summary of the rectification order or of the withdrawal order shall be uploaded electronically by the proper officer in **FORM GST DRC-08**.

18.1.1 Recovery of the tax and interest in respect of the amount intimated under Rule 88C

In order to align with recommendations of the 50th GST Council's Meeting the CBIC vide **Notification No. 38/2023 – (Central Tax) dated August 04, 2022** has issued 'the Central Goods and Services Tax (Second Amendment) Rules, 2023' to further amend the Central Goods and Services Tax, Rules, 2017 ("the CGST Rules").

"142B. Intimation of certain amounts liable to be recovered under section 79 of the Act.-

(1) Where, in accordance with section 75 read with rule 88C, or otherwise, any amount of tax or interest has become recoverable under section 79 and the same has remained unpaid, the proper officer shall

intimate, electronically on the common portal, the details of the said amount in FORM GST DRC-01D, directing the person in default to pay the said amount, along with applicable interest, or, as the case may be the amount of interest, within seven days of the date of the said intimation and the said amount shall be posted in Part-II of Electronic Liability Register in FORM GST PMT-01.

(2) *The intimation referred to in sub-rule (1) shall be treated as the notice for recovery.*

(3) *Where any amount of tax or interest specified in the intimation referred to in sub-rule (1) remains unpaid on the expiry of the period specified in the said intimation, the proper officer shall proceed to recover the amount that remains unpaid in accordance with the provisions of rule 143 or rule 144 or rule 145 or rule 146 or rule 147 or rule 155 or rule 156 or rule 157 or rule 160.”.*

18.2 Recovery by deduction from any money owed - Rule 143 of CGST Rules

Where any amount payable by a person (hereafter referred to in this rule as "the defaulter") to the Government under any of the provisions of the Act or the rules made thereunder is Not paid, the proper officer may require, in **FORM GST-DRC-09**, a specified officer to deduct the amount from any money owing to such defaulter in accordance with the provisions of clause (a) of sub-section (1) of section 79.

Explanation.—For the purposes of this rule, "specified officer" shall mean any officer of the Central Government or a State Government or the Government of a Union territory or a local authority, or of a Board or Corporation or a company owned or controlled, wholly or partly, by the Central Government or a State Government or the Government of a Union territory or a local authority.

18.3 Recovery by sale of goods under the control of proper officer - Rule 144 of CGST Rules

(1) Where any amount due from a defaulter is to be recovered by selling goods belonging to such person in accordance with the provisions of clause (b) of sub-section (1) of section 79, the proper officer shall prepare an inventory and estimate the market value of such goods and proceed to sell only so much of the goods as may be required for recovering the amount payable along with the administrative expenditure incurred on the recovery process.

(2) The said goods shall be sold through a process of auction, including e-auction, for which a Notice shall be issued in **FORM GST DRC-01** clearly indicating the goods to be sold and the purpose of sale.

(3) The last day for submission of bid or the date of auction shall not be earlier than fifteen days from the date of issue of the Notice referred to in sub-rule (2):

Provided that where the goods are of perishable or hazardous nature or where the expenses of keeping them in custody are likely to exceed their value, the proper officer may sell them forthwith.

(4) The proper officer may specify the amount of pre-bid deposit to be furnished in the manner specified by such officer, to make the bidders eligible to participate in the auction, which may be returned to the unsuccessful bidders, forfeited in case the successful bidder fails to make the payment of the full amount, as the case may be.

(5) The proper officer shall issue a Notice to the successful bidder in **FORM GST DRC-11** requiring him to make the payment within a period of fifteen days from the date of auction. On payment of the full bid amount, the proper officer shall transfer the possession of the said goods to the successful bidder and issue a certificate in **FORM GST DRC-12**.

(6) Where the defaulter pays the amount under recovery, including any expenses incurred on the process of recovery, before the issue of the Notice under sub-rule (2), the proper officer shall cancel the process of auction and release the goods.

(7) The proper officer shall cancel the process and proceed for re-auction where no bid is received or the auction is considered to be non-competitive due to lack of adequate participation or due to low bids.

18.4 Recovery from a third person - Rule 145 of CGST Rules.

(1) The proper officer may serve upon a person referred to in clause (c) of sub-section (1) of section 79 (hereafter referred to in this rule as "the third person"), a Notice in **FORM GST DRC-13** directing him to deposit the amount specified in the Notice.

(2) Where the third person makes the payment of the amount specified in the Notice issued under sub-rule (1), the proper officer shall issue a certificate in **FORM GST DRC-14** to the third person clearly indicating the details of the liability so discharged.

18.5 Recovery through execution of a decree, etc. - Rule 146 of CGST Rules

Where any amount is payable to the defaulter in the execution of a decree of a civil court for the payment of money or for sale in the enforcement of a mortgage or charge, the proper officer shall send a request in **FORM GST DRC-15** to the said court and the court shall, subject to the provisions of the Code of Civil Procedure, 1908 (5 of 1908), execute the attached decree, and credit the net proceeds for settlement of the amount recoverable.

18.6 Recovery by sale of movable or immovable property - Rule 147 of CGST Rules

The proper officer shall prepare a list of movable and immovable property belonging to the defaulter, estimate their value as per the prevalent market price and issue an order of attachment or distress and a Notice for sale in **FORM GST DRC-16** prohibiting any transaction with regard to such movable and immovable property as may be required for the recovery of the amount due:

Provided that the attachment of any property in a debt not secured by a negotiable instrument, a share in a corporation, or other movable property not in

the possession of the defaulter except for property deposited in, or in the custody of any Court, shall be attached in the manner provided in rule 151.

➤ **The proper officer shall send order of attachment to concerned Revenue authority.**

(2) The proper officer shall send a copy of the order of attachment or distraint 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 proper officer to that effect.

(3) Where the property subject to the attachment or distraint under sub-rule (1) is—

➤ **Attachment letter fixed on the said property**

(a) an immovable property, the order of attachment or distraint shall be affixed on the said property and shall remain affixed till the confirmation of sale;

➤ **The proper officer shall take custody of the said property**

(b) a movable property, the proper officer shall seize the said property in accordance with the provisions of chapter XIV of the Act and the custody of the said property shall either be taken by the proper officer himself or an officer authorised by him.

➤ **The property shall be sold through auction including e-auction**

(3) The property attached or distrained shall be sold through auction, including e-auction, for which a Notice shall be issued in FORM GST DRC-17 clearly indicating the property to be sold and the purpose of sale.

➤ **Where property is negotiable instrument instead of selling share through broker**

(5) Notwithstanding anything contained in the provision of this Chapter, where the property to be sold is a negotiable instrument or a share in a corporation, the proper officer may, instead of selling it by public auction, sell such instrument or a share through a broker and the said broker shall deposit to the Government so much of the proceeds of such sale, reduced by his commission, as may be required for the discharge of the amount under recovery and pay the amount remaining, if any, to the owner of such instrument or a share.

➤ **Pre-deposits of unsuccessful bidders may be returned**

(6) The proper officer may specify the amount of pre-bid deposit to be furnished in the manner specified by such officer, to make the bidders eligible to participate in the auction, which may be returned to the unsuccessful bidders or, forfeited in case the successful bidder fails to make the payment of the full amount, as the case may be.

➤ **Date of issue notice prior to 15 days of auction**

(7) The last day for the submission of the bid or the date of the auction shall not be earlier than fifteen days from the date of issue of the Notice referred to in sub-rule (4):

Provided that where the goods are of perishable or hazardous nature or where the expenses of keeping them in custody are likely to exceed their value, the proper officer may sell them forthwith.

➤ **Postpone of sale property in case of objection or claim on property.**

(8) Where any claim is preferred or any objection is raised with regard to the attachment or distress of any property on the ground that such property is not liable to such attachment or distress, the proper officer shall investigate the claim or objection and may postpone the sale for such time as he may deem fit.

➤ **Objection on property must be supported by evidence**

(9) The person making the claim or objection must adduce evidence to show that on the date of the order issued under sub-rule (1) he had some interest in, or was in possession of, the property in question under attachment or distress.

➤ **Before attachment of property the proper officer should investigate the possession of property and make an order for releasing the property.**

(10) Where, upon investigation, the proper officer is satisfied that, for the reason stated in the claim or objection, such property was not, on the said date, in the possession of the defaulter or of any other person on his behalf or that, being in the possession of the defaulter on the said date, it was in his possession, not on his own account or as his own property, but on account of or in trust for any other person, or partly on his own account and partly on account of some other person, the proper officer shall make an order releasing the property, wholly or to such extent as he thinks fit, from attachment or distress.

➤ **If the property proved in the name of defaulter then the proper officer process of sale through auction.**

(11) Where the proper officer is satisfied that the property was, on the said date, in the possession of the defaulter as his own property and not on account of any other person, or was in the possession of some other person in trust for him, or in the occupancy of a tenant or other person paying rent to him, the proper officer shall reject the claim and proceed with the process of sale through auction.

➤ **The proper officer issue notice to successful bidder**

(12) The proper officer shall issue a Notice to the successful bidder in **FORM GST DRC-1** requiring him to make the payment within a period of fifteen days from the date of such Notice and after the said payment is made, he shall issue a certificate in **FORM GST DRC-12** specifying the details of the property, date of transfer, the details of the bidder and the amount paid and upon issuance of such certificate, the rights, title and interest in the property shall be deemed to be transferred to such bidder:

Provided that where the highest bid is made by more than one person and one of them is a co-owner of the property, he shall be deemed to be the successful bidder.

➤ **Any amount of fees, tax paid to the Government**

(13) Any amount, including stamp duty, tax or fee payable in respect of the transfer of the property specified in sub-rule (12), shall be paid to the Government by the person to whom the title in such property is transferred.

➤ **Defaulter pays all expenses on the process of recovery**

(14) Where the defaulter pays the amount under recovery, including any expenses incurred on the process of recovery, before the issue of the notice under sub-rule (4), the proper officer shall cancel the process of auction and release the goods.

➤ **In case of non-competitive auction the proper officer cancel the auction and re-auction where bid is not received.**

(15) The proper officer shall cancel the process and proceed for re-auction where no bid is received or the auction is considered to be Non-competitive due to lack of adequate participation or due to low bids.

18.7 Prohibition against bidding or purchase by officer - Rule 148 of CGST Rules

No officer or other person having any duty to perform in connection with any sale under the provisions of this Chapter shall, either directly or indirectly, bid for, acquire or attempt to acquire any interest in the property sold.

18.8 Prohibition against sale on holidays - Rule 149 of CGST Rules.

No sale under the rules under the provision of this chapter shall take place on a Sunday or other general holidays recognized by the Government or on any day which has been notified by the Government to be a holiday for the area in which the sale is to take place.

18.9 Assistance by police - Rule 150 of CGST Rules

The proper officer may seek such assistance from the officer- in charge of the jurisdictional police station as may be necessary in the discharge of his duties and the said officer-in-charge shall depute sufficient number of police officers for providing such assistance.

18.10 Attachment of debts and shares, etc - Rule 151 of CGST Rules

(1) A debt Not secured by a negotiable instrument, a share in a corporation, or other movable property Not in the possession of the defaulter except for property deposited in, or in the custody of any court shall be attached by a written order in FORM GST DRC-16 prohibiting.—

- (a) in the case of a debt, the creditor from recovering the debt and the debtor from making payment thereof until the receipt of a further order from the proper officer;
- (b) in the case of a share, the person in whose name the share may be standing from transferring the same or receiving any dividend thereon;
- (c) in the case of any other movable property, the person in possession of the same from giving it to the defaulter.

(2) A copy of such order shall be affixed on some conspicuous part of the office of the proper officer, and another copy shall be sent, in the case of debt, to the debtor, and in the case of shares, to the registered address of the corporation and in the case of other movable property, to the person in possession of the same.

(3) A debtor, prohibited under clause (a) of sub-rule (1), may pay the amount of his debt to the proper officer, and such payment shall be deemed as paid to the defaulter.

18.11 Attachment of property in custody of courts or Public Officer - Rule 152 of CGST Rules

Where the property to be attached is in the custody of any court or Public Officer, the proper officer shall send the order of attachment to such court or officer, requesting that such property, and any interest or dividend becoming payable thereon, may be held till the recovery of the amount payable.

18.12 Attachment of interest in partnership - Rule 153 of CGST Rules

(1) Where the property to be attached consists of an interest of the defaulter, being a partner, in the partnership property, the proper officer may make an order charging the share of such partner in the partnership property and profits with payment of the amount due under the certificate, and may, by the same or subsequent order, appoint a receiver of the share of such partner in the profits, whether already declared or accruing, and of any other money which may become due to him in respect of the partnership, and direct accounts and enquiries and make an order for the sale of such interest or such other order as the circumstances of the case may require.

(2) The other partners shall be at liberty at any time to redeem the interest charged or, in the case of a sale being directed, to purchase the same.

18.13 Disposal of proceeds of sale of goods or conveyance and movable or immovable property - Rule 154 of CGST Rules

The amounts so realised from the sale of goods or conveyance, movable or immovable property, for the recovery of dues from a defaulter or for recovery of penalty payable under sub-section (3) of section 129 shall,—

- (a) first, be appropriated against the administrative cost of the recovery process;
- (b) next, be appropriated against the amount to be recovered or to the payment of the penalty payable under sub-section (3) of section 129, as the case may be;
- (c) next, be appropriated against any other amount due from the defaulter under the Act or the Integrated Goods and Services Tax Act, 2017 or the Union Territory Goods and Services Tax Act, 2017 or any of the State Goods and Services Tax Act, 2017 and the rules made thereunder; and
- (d) the balance, if any, shall be credited to the electronic cash ledger of the owner of the goods or conveyance as the case may be, in case the person

is registered under the Act, and where the said person is not required to be registered under the Act, the said amount shall be credited to the bank account of the person concerned;

(2) where it is not possible to pay the balance of sale proceeds, as per clause (d) of sub-rule (1), to the person concerned within a period of six months from the date of sale of such goods or conveyance or such further period as the proper officer may allow, such balance of sale proceeds shall be deposited with the Fund;

18.14 Recovery through land revenue authority - Rule 155 of CGST Rules

Where an amount is to be recovered in accordance with the provisions of clause (e) of sub-section (1) of section 79, the proper officer shall send a certificate to the Collector or Deputy Commissioner of the district or any other officer authorised in this behalf in FORM GST DRC-18 to recover from the person concerned, the amount specified in the certificate as if it were an arrear of land revenue.

18.15 Recovery through court - Rule 156 of CGST Rules

Where an amount is to be recovered as if it were a fine imposed under the Code of Criminal Procedure, 1973, the proper officer shall make an application before the appropriate Magistrate in accordance with the provisions of clause (f)

of sub-section (1) of section 79 in FORM GST DRC-19 to recover from the person concerned, the amount specified thereunder as if it were a fine imposed by him.

18.16 Recovery from surety - Rule 157 of CGST Rules

Where any person has become surety for the amount due by the defaulter, he may be proceeded against under this Chapter as if he were the defaulter.

18.17 Payment of tax and other amounts in instalments - Rule 158 of CGST Rules

(1) On an application filed electronically by a taxable person, in **FORM GST DRC-20**, seeking extension of time for the payment of taxes or any amount due under the Act or for allowing payment of such taxes or amount in instalments in accordance with the provisions of section 80, the Commissioner shall call for a report from the jurisdictional officer about the financial ability of the taxable person to pay the said amount.

(2) Upon consideration of the request of the taxable person and the report of the jurisdictional officer, the Commissioner may issue an order in **FORM GST DRC-21** allowing the taxable person further time to make payment and/or to pay the amount in such monthly instalments, not exceeding twenty-four, as he may deem fit.

(3) The facility referred to in sub-rule (2) shall not be allowed where-

- (a) the taxable person has already defaulted on the payment of any amount under the Act or the Integrated Goods and Services Tax Act, 2017 or the

Union Territory Goods and Services Tax Act, 2017 or any of the State Goods and Services Tax Act, 2017, for which the recovery process is on;

- (b) the taxable person has Not been allowed to make payment in instalments in the preceding financial year under the Act or the Integrated Goods and Services Tax Act, 2017 or the Union Territory Goods and Services Tax Act, 2017 or any of the State Goods and Services Tax Act, 2017;
- (c) the amount for which instalment facility is sought is less than twenty-five thousand rupees.

18.18 Provisional attachment of property - Rule 159 of CGST Rules

Where the Commissioner decides to attach any property, including bank account in accordance with the provisions of section 83, he shall pass an order in **FORM GST DRC-22** to that effect mentioning therein, the details of property which is attached.

(2) The Commissioner shall send a copy of the order of attachment in **FORM GST DRC-22** 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 or on expiry of a period of one year from the date of issuance of order under sub-rule (1), whichever is earlier.

(3) Where the property attached is of perishable or hazardous nature, and if the person, whose property has been attached pays an amount equivalent to the market price of such property or the amount that is or may become payable by such person, whichever is lower, then such property shall be released forthwith, by an order in **FORM GST DRC-23**, on proof of payment.

(4) Where such person fails to pay the amount referred to in sub-rule (3) in respect of the said property of perishable or hazardous nature, the Commissioner may dispose of such property and the amount realized thereby shall be adjusted against the tax, interest, penalty, fee or any other amount payable such person.

(5) Any person whose property is attached may file an objection in **FORM GST DRC-22A** to the effect that the property attached was or is Not liable to attachment, and the Commissioner may, after affording an opportunity of being heard to the person filing the objection, release the said property by an order in **FORM GST DRC-23**.

(6) The Commissioner may, upon being satisfied that the property was, or is No longer liable for attachment, release such property by issuing an order in **FORM GST DRC-23**.

18.19 Recovery from company in liquidation - Rule 160 of CGST Rules

Where the company is under liquidation as specified in section 88, the Commissioner shall Notify the liquidator for the recovery of any amount representing tax, interest, penalty or any other amount due under the Act in **FORM GST DRC-24**.

18.20 Continuation of certain recovery proceedings - Rule 161 of CGST Rules

The order for the reduction or enhancement of any demand under section 84 shall be issued in **FORM GST DRC-25**.

19. CBIC Circulars/Notifications/Instructions

Circular No. 58/32/2018 dated 04.09.2018. This circular is revised in order to streamline the modes of recovery. Accordingly, the original and the amended relevant para of the circular are detailed hereunder.

Amended Para 3.

It may be noted that all such liabilities may be discharged by the taxpayers, either voluntarily in **FORM GST DRC-03** or may be recovered vide order uploaded in **FORM GST DRC-07**, and payment against the said order shall be made in **FORM GST DRC-03**. It is further clarified that the alternative method of reversing the wrongly availed CENVAT credit under the existing law and inadmissible transitional credit through Table 4(B)(2) of **FORM GSTR-3B** would no longer be available to taxpayers. The applicable interest and penalty shall apply in respect of all such amounts, which shall also be paid in **FORM GST DRC-03**.

(CBIC, Circular No. 88/07/2019-GST dated 1st February 2019)

* * *

In rule 142,—(a) after sub-rule (1) the following sub-rule shall be inserted, namely:—

“(1A) The proper officer shall, before service of notice to the person chargeable with tax, interest and penalty, under sub-section (1) of Section 73 or sub-section (1) of Section 74, as the case may be, shall communicate the details of any tax, interest and penalty as ascertained by the said officer, in Part A of **FORM GST DRC-01A**.”; (b) in sub-rule (2), after the words “in accordance with the provisions of the Act”, the words, figures and brackets “, whether on his own ascertainment or, as communicated by the proper officer under sub-rule (1A),” shall be inserted; (c) after sub-rule (2) the following sub-rule shall be inserted, namely:- “(2A) Where the person referred to in sub-rule (1A) has made partial payment of the amount communicated to him or desires to file any submissions against the proposed liability, he may make such submission in Part B of FORM GST DRC-01A.”.

(Notification No. 49/2019-Central Tax dated 9.10.2019.)

* * *

Widening the scope of provisional attachment of property including bank account

(Clause 115 of Finance Act, 2021 - Effective Date, January 01, 2022)

- In terms of Section 83 of the CGST Act, the commissioner may provisionally attach any property including bank account of the registered person if he is of the opinion that it is necessary to attach the same to protect the interest of the Revenue. The attachment can be made only during the pendency of proceedings in the below cases:

- (a) For assessment of non-filers of returns under Section 62
- (b) Assessment of unregistered persons under Section 63
- (c) Summary assessments under Section 64
- (d) Power of inspection, search and seizure under Section 67
- (e) Determination of tax not paid or erroneously availed input tax credit due to fraud or wilful misstatement as dealt under section 74 or any other reason as dealt under section 73
- The Finance Act, 2021 has provided an amendment to widen the scope of provisions relating to the attachment of the property including bank accounts to protect the interest of the Revenue. The Commissioner has been empowered to attach the property under various provisions of the CGST Act from the initiation of the proceedings under Chapter XII, Chapter XIV or Chapter XV of the CGST Act.
- Further, the Commissioner apart from the taxable person may attach the property belonging to any person specified in sub-section (1A) of section 122 of CGST Act, 2017 i.e., any person who assist the taxable person for conducting transaction like receives any goods or services without the issue of invoice, issue any invoice without the supply of goods or services, etc.

(Notified vide Notification No.39/2021-Central Tax; dated 21.12.2021)

Clarification on various issues relating to applicability of demand and penalty provisions under the Central Goods and Services Tax Act, 2017 in respect of transactions involving fake invoices.

- Issuing tax invoices without actual supply of goods or services or both (referred to as “fake invoices”)
- Registered person liable for penal action under section 122(1) (ii) of the CGST Act for issuing tax invoices without actual supply of goods or services or both.
- If the recipient has availed and utilized fraudulent ITC on such fake invoices is contravention of section 16(2)(b) of CGST Act, he shall be liable for the demand and recovery of the said ITC along with penal action u/s 74 of the CGST Act and interest u/s 50 of the said Act.
- Further, as per provisions of section 75(13) of CGST Act, if penal action for fraudulent availment or utilization of ITC is taken under section 74 of CGST Act, no penalty for the same act,
- Who retained undue benefit of the said transaction shall also be penalized u/s 122 of the said Act.

Vide Circular No. 171/03/2022-GST., dated 6-07-2022

Guidelines for recovery proceedings under the provisions of section 79 of CGST Act, 2017 in cases covered under explanation to sub-section (12) of section 75 of CGST Act, 2017.

C.B.I & C, Instruction No.1/2022 dated 07.01.2022

Sub-section (12) of section 75 of the CGST Act, 2017 (hereinafter referred to as "the Act") provides that notwithstanding anything contained in section 73 or section 74 of the Act, where any amount of self-assessed tax in accordance with the return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of section 79. An explanation has been added to sub-section (12) of section 75 vide section 114 of the Finance Act, 2021 with effect from January 01, 2022 to clarify that "self-assessed tax" shall include the tax payable in respect of outward supplies, the details of which have been furnished under section 37, but not included in the return furnished under section 39.

Doubts are being raised by the trade and the field formations regarding modalities for initiation of the recovery proceedings under section 79 of the Act in the cases covered under the explanation to sub-section (12) of section 75 of the Act. In view of the above, the following guidelines are hereby issued with respect to the recovery proceedings under section 79 of the Act in such cases.

Sub-section (12) of section 75 of the Act is reproduced hereunder for reference:

"(12) Notwithstanding anything contained in section 73 or section 74, where any amount of self-assessed tax in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of section 79.

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."

From the perusal of the above provision, it is clear that where the tax payable in respect of details of outward supplies furnished by the registered person in GSTR-1, has not been paid through GSTR-3B return, either wholly or partly, or any amount of interest payable on such tax remains unpaid, then in such cases, the tax short paid on such self-assessed and thus self-admitted liability, and the interest thereon, are liable to be recovered under the provisions of section 79.

There may, however, be some cases where there may be a genuine reason for difference between the details of outward supplies declared in GSTR-1 and those declared in GSTR-3B. For example, the person may have made a typographical error or may have wrongly reported any detail in GSTR-1 or GSTR-3B. Such errors or omissions can be rectified by the said person in a subsequent GSTR-1/GSTR-3B as per the provisions of sub-section (3) of section 37 or the provisions of sub-section (9) of section 39, as the case may be. There may also be cases, where a supply could not be declared by the registered person in GSTR-1 of an earlier tax period, though the tax on the same was paid by correctly reporting the

said supply in GSTR-3B. The details of such supply may now be reported by the registered person in the GSTR-1 of the current tax period. In such cases, there could be a mis-match between GSTR-1 and GSTR-3B (liability reported in GSTR-1 > tax paid in GSTR-3B) in the current tax period. Therefore, in all such cases, an opportunity needs to be provided to the concerned registered person to explain the differences between GSTR-1 and GSTR-3B, if any, and for short payment or non-payment of the amount of self-assessed tax liability, and interest thereon, before any action under section 79 of the Act is taken for recovery of the said amount.

Accordingly, where ever any such amount of tax, self-assessed by the registered person in his outward supply statement **GSTR-1** is found to be short paid or not paid by the said person through his **GSTR-3B** return in terms of the provisions of sub-section (12) of section 75 of the Act, the proper officer may send a communication (with DIN, in terms of guidelines issued vide Circular No. 122/41/2019-GST dated November 05, 2019) to the registered person to pay the amount short paid or not paid, or to explain the reasons for such short payment or non-payment of self-assessed tax, within a reasonable time, as prescribed in the communication. If, the concerned person is able to justify the differences between GSTR-1 and GSTR-3B, or is able to explain the reasons of such short-payment or non-payment of tax, to the satisfaction of the proper officer, or pays the amount such short paid or not paid, then there may not be any requirement to initiate proceedings for recovery under section 79.

However, if the said registered person either fails to reply to the proper officer, or fails to make the payment of such amount short paid or not paid, within the time prescribed in the communication or such further period as may be permitted by the proper officer, then the proceedings for recovery of the said amount as per provisions of section 79 may be initiated by the proper officer. Further, where the said registered person fails to explain the reasons for such difference/ short payment of tax to the satisfaction of the proper officer, then the proper officer may proceed for recovery of the said amount as per provisions of section 79.

* * *

C.B.I & C, Instruction No.4/2023 dated 23.11.2023

Serving of the summary of notice in FORM GST DRC-01 and uploading of summary of order in FORM GST DRC-07 electronically on the portal by the proper officer-regarding.

Reference is invited to the provisions of section 52, section 73, section 74, section 122, section 123, section 124, section 125, section 127, section 129 and section 130 of Central Goods and Service Tax Act, 2017 (herein after referred to as the CGST Act), as per which a notice is required to be issued by the proper officer to a person for demand and recovery of any amount of tax not paid or short paid/amount of input tax credit wrongly availed/amount of refund erroneously made, for recovery of interest and/ or for imposition of any penalty or fine on the said person. Attention is also invited to sub-rule (1) of rule 142 of

Central Goods and Service Tax Rules, 2017 (herein after referred to as the CGST Rules) as per which, along with the notices issued under section 52 or section 73 or section 74 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130 of CGST Act, a summary of such notice is also required to be served by the proper officer electronically on the portal in FORM GST DRC-01.

2. It is also mentioned that as per sub-rule (5) of rule 142 of CGST Rules, where any order is issued by the proper officer under section 52 or section 62 or section 63 or section 64 or section 73 or section 74 or section 75 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130 of CGST Act, summary of such order is also required to be uploaded electronically on the portal by the proper officer in FORM GST DRC-07, specifying the amount of tax, interest and penalty, as the case may be, payable by the person concerned.

3. It has been brought to the notice of the Board that some of the field formations are serving such notices and orders manually only and are not serving the summary of the notices issued under section 52 or section 73 or section 74 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130 of CGST Act, electronically on the portal in FORM GST DRC-01, or are not uploading the summary of the order issued under section 52 or section 62 or section 63 or section 64 or section 73 or section 74 or section 75 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130 of CGST Act electronically on the portal in FORM GST DRC-07.

4. It is highlighted that non-issuance of the summary of such notices/orders electronically on the portal is in clear violation of the explicit provisions of CGST Rules. Besides, serving/uploading the summary of notices/orders electronically on the portal not only makes the said notices/orders available electronically to the taxpayers on the portal, but also helps in keeping a track of such proceedings and consequential action in respect of recovery, appeal etc., subsequent to issuance of such notices/orders. Accordingly, any deviation from this requirement under CGST Rules may adversely impact record keeping under GST. Further, such an action may also impact further proceedings of appeal and/or recovery to be done seamlessly on the portal.

5. The proper officers are accordingly directed to ensure that summary of the notices issued under section 52 or section 73 or section 74 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130 of CGST Act are served, electronically on the portal in FORM GST DRC-01. Also, they should ensure that summary of the order issued under section 52 or section 62 or section 63 or section 64 or section 73 or section 74 or section 75 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130 of CGST Act is uploaded electronically on the portal in FORM GST DRC-07.

6. The Principal Chief Commissioners/Chief Commissioners of the CGST Zones and Principal Director General of DGGI may closely supervise the officers under their Zones/Directorate to ensure strict compliance of the above provisions of rule 142 of CGST Rules by the officers within their Zones/Directorate.

20. Case Laws

No recovery proceeding to be initiated for interest amount under GST without any adjudication proceedings: HC

[*Mahadeo Construction Co. v Union of India* [2020] 116 taxmann.com 262 (Jharkhand)]

The assessee was served with a letter issued by Superintendent of Goods and Services Tax and Central Excise directing the assessee to pay interest amounting to ₹19,59,721 due to delay in filing of return in Form GSTR-3B for the months of February and March, 2018. The revenue authorities further initiated recovery proceedings of interest amount by issuing notice to the banker of assessee. The writ application was filed to seek relief in this regard.

The Hon'ble High Court observed that as per Section 73(1) of the Central Goods and Services Tax Act ('CGST Act'), if tax had not been paid or had been short paid, a notice was required to be served by the Proper Officer on the assessee. The said notice would not only require him to show cause as to why tax should not be recovered from it, but should also specify the interest payable under Section 50 will also be recovered along with penalty. Thus, if there was a short payment of tax or non-payment of tax, a notice was required to be issued even for recovery of interest under Section 50 of the CGST Act.

The interest liability under Section 50 is required to be calculated and intimated to assessee. If the assessee disputes the calculation of interest or the leviability of interest, then only the Assessing Officer can initiate proceedings either under Section 73 or 74 of the CGST Act for adjudication of interest liability.

Moreover, Section 79 of the CGST Act empower the authorities to initiate garnishee proceedings for recovery of tax wherein any amount payable by a person to the Government under any of the provisions of the Act and Rules made is not paid. Even though the liability of interest is automatic, but the same is required to be adjudicated when assessee dispute the computation or leviability of interest, by initiation of adjudication proceedings. Until such adjudication was completed by the Proper Officer, the amount of interest could not be termed as an amount payable under GST. Therefore, without initiation of any adjudication proceedings, no recovery proceeding under Section 79 of the Act could be initiated for recovery of the interest amount. The Honourable High Court set aside the letter demanding interest as well as notice initiating recovery proceedings.

Mere E-mail of SCN to taxpayer wouldn't suffice, uploading on website is mandatory:

Madhya Pradesh High Court

[*Akash Garg v State of Madhya Pradesh* [2020] 121 taxmann.com 329 (Madhya Pradesh)]

The petitioner who was an individual registered under GST filed writ petition. It was submitted that while raising the demand of tax, the foundational show-cause notice was never communicated by the department. The department submitted that show-cause notice was communicated to the petitioner on his E-mail address and despite receiving the same the petitioner failed to file any response.

The Hon'ble High Court observed that as per the GST Provisions, the only mode prescribed for communicating the show-cause notice/order is by way of uploading the same on website of the revenue. The show-cause notice/orders were communicated to assessee by Email and were not uploaded on website of the revenue. Therefore, it was held that statutory procedure prescribed for communicating show-cause notice/order under Rule 142(1) of the Central Goods and Service Tax Rules, 2017 ('CGST Rules') was not followed by the revenue. Hence, demand deserved to be struck down.

* * *

Demand order not preceded by Form GST DRC-01 and Form DRC-01A to be set aside: HC *Shri Tyers v State Tax Officer* [2021] 133 taxmann.com 319 (Madras)

The Competent Authority passed an order under section 73 on the assessee. The assessee filed writ petition and submitted that the procedures prescribed for making the impugned order had not been followed, i.e. impugned order was not preceded by Form GST DRC-01 and Form GST DRC-01A.

The Honorable High Court observed that requirement of issue of Form GST DRC-01 and Form GST DRC-01A has been statutorily ingrained in rule 142 of the CGST Rules, 2017. It was not a mere procedural requirement and it was clear that it would tantamount to trampling the rights of the assessee. Therefore, it was held that order would be set aside and Competent Authority shall commence proceedings afresh and complete the exercise by adhering the requirements more particularly requirements under rule 142.

* * *

Reply to SCN to be considered even if sent by post and not through portal: Madras HC

[*Asia (Chennai) Engineering Company (P.) Ltd. v Assistant Commissioner (ST) (FAC)* - [2022] 143 taxmann.com 126 (Madras)]

The show cause notice (SCN) was issued against the petitioner by the department for revoking the erroneous refund claim. It replied to the SCN which was sent by the post. The department didn't consider the reply as it was not sent

through portal and passed adverse order. The petitioner filed writ petition against the same and contended that any adverse decision to be passed only after hearing the petitioner.

The Honorable High Court noted that the only objection of the Department was that the postal/physical reply had not been considered, since it was not sent through portal. The petitioner had sent a detailed representation which received by the department and it was not disputed. This was a case for erroneous refund and the petitioner would deserve personal hearing so that his objections can be heard. Therefore, the Court directed department to hear objections and give opportunity of personal hearing to the petitioner.

* * *

Section 74 of the Central Goods and Services Tax Act, 2017 - Demands and Recovery - Tax or Input Tax Credit involving fraud or Misstatement or Suppression

Adjudication order passed without affording personal hearing and without sharing relied on documents was not sustainable; High Court directs authority to issue hearing notice and then decide - *Om Sai Ram Enterprises v State of Jharkhand* [2022] 143 taxmann.com 227 (Jharkhand)

* * *

GST-Provisional attachment of bank account under section 83 of CGST Act is not sustainable in absence of any proceedings u/s 62,63,64,67,73 or 74 of CGST Act

The High Court of Bombay in the case of *Real Trade v UOI* reported in 2022 (56) G.S.T.L. 161 (Bom.), held that "We have heard Learned Advocates for the parties and perused the decisions cited at the bar. Mr. Mishra has not disputed that no proceedings under Sections 62 or 63 or 64 or 67 or 73 or 74 have yet been initiated against the petitioner. M/s. Jaychem Enterprise Pvt. Ltd. (supra) is not applicable in the present case since no contention was raised therein to the effect that the order of provisional attachment under challenge was made when proceedings under Sections 62 or 63 or 64 or 67 or 73 or 74 of the Act were not pending. On the other hand, we agree with Mr. Pande that the present case is squarely covered by the decision in M/s. S.S. Offshore Pvt. Ltd. (supra). Whilst so deciding, the Division Bench had relied on the decision of the Supreme Court reported in 2021 SCC OnLine SC 334: 2021 (48) G.S.T.L. 112 (S.C) (*Radha Krishan Industries v State of Himachal Pradesh and Others*). The order of provisional attachment under challenge is clearly in the teeth of the decision in *Radha Krishan Industries* (supra). In such circumstances, the order of provisional attachment dated 9-11-2020 stands set aside with further direction to the Assistant Commissioner to defreeze the bank account of the petitioner immediately."

HC directed GST authorities to provide opportunity of personal hearing to assessee & set aside adverse order.

The Hon'ble High Court of Madhya Pradesh in the case of *IJM Concrete Products Pvt. Ltd. v State of Madhya Pradesh* reported in (2024) 14-Centax 388 (M.P.) held that Where no opportunity of personal hearing was provided to assessee before passing adverse order against assessee, decision making process adopted by authorities were vitiated and ran contrary to principles of natural justice, thus said proceedings were to be set aside and authorities were to be directed to provide opportunity of personal hearing to assessee.

GST: Non-consideration of assessee's reply to show cause notice certainly prejudices assessee and denies assessee a reasonable opportunity to establish its position, therefore, without expressing any opinion on merits of matter, orders were to be quashed and matter was remanded.

The Hon'ble High Court of Madras in the case of *Makemytrip (India) Pvt.Ltd. v State Tax Officer*, reported in (2024) 14 Centax 263 (Mad.), held that without expressing any opinion on the merits of the matter, the orders impugned herein are quashed. As a corollary, these matters are remanded for reconsideration by the assessing officer. After providing a reasonable opportunity to the petitioner and by taking into consideration the replies of the petitioner, a reasoned order shall be issued within a period of four weeks from the date of receipt of a copy of this order.

Chapter 21

Advance Ruling

Synopsis

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1. Introduction

The concept of Advance Ruling is not new one and borrowed from erstwhile provision of Indirect Tax law. The advance ruling means decision passed by the Advance Ruling Authority. The said decision helps the applicant in planning their activities well in advance on GST issues. The scope of advance ruling is very wide and reduces the quantum of litigation between taxpayers and department. The decision of advance ruling is binding on the applicant as well as Government authorities as a legally constituted body under GST law.

2. Definition of Advance Ruling - Section 95 of CGST Act

“advance ruling” means a decision provided by the Authority or the Appellate Authority or the National Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of Section 97 or sub-section (1) of Section 100 or of section 101C of CGST Act, 2017, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.

3. Advantages of Advance Ruling

The major advantages of advance ruling as primary decision making authority on tax law are summarized as under:

1. Seeking advance ruling is cheaper and procedure very simple;
2. Early disposal of application with solution for the applicant;
3. Provide certainty in tax liability in advance in relation to an activity proposed to be undertaken by the applicant;
4. Pronounced ruling expeditiously in a transparent and inexpensive manner;
5. Reduce litigation at the initial stage of ambiguity;
6. Advance ruling can be delivered with conducting due personal hearing of the applicant;
7. With transparent decision attract Foreign Direct Investment (FDI).

4. Authority for Advance Ruling (AAR) - Section 96 of CGST Act

Section 96 of CGST Act, 2017 has prescribed, the Authority for advance ruling constituted under the provisions of a State Goods and Services Tax Act or Union Territory Goods and Services Tax Act shall be deemed to be the Authority for advance ruling in respect of that State or Union territory.

5. Questions Specified for Advance Ruling - Section 97 of CGST Act.

Sub-section (2) of Section 97 of the CGST Act, 2017 has prescribed the questions, on which the advance ruling is sought under this Act, shall be in respect of,—

- (a) Classification of any goods or services or both;
- (b) Applicability of a notification issued under the provisions of this Act;
- (c) Determination of time and value of supply of goods or services or both;
- (d) Admissibility of input tax credit of tax paid or deemed to have been paid;
- (e) Determination of the liability to pay tax on any goods or services or both;
- (f) Whether applicant is required to be registered;
- (g) Whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.

6. Procedure on receipt of application - Section 98 of CGST Act

(1) On receipt of an application, the Authority shall cause a copy thereof to be forwarded to the concerned officer and, if necessary, call upon him to furnish the relevant records:

Provided that where any records have been called for by the Authority in any case, such records shall, as soon as possible, be returned to the said concerned officer.

(2) The Authority may, after examining the application and the records called for and after hearing the applicant or his authorised representative and the concerned officer or his authorised representative, by order, either admit or reject the application:

Provided that the Authority shall not admit the application where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act:

Provided further that no application shall be rejected under this sub-section unless an opportunity of hearing has been given to the applicant:

Provided also that where the application is rejected, the reasons for such rejection shall be specified in the order.

(3) A copy of every order made under sub-section (2) shall be sent to the applicant and to the concerned officer.

(4) Where an application is admitted under sub-section (2), the Authority shall, after examining such further material as may be placed before it by the applicant or obtained by the Authority and after providing an opportunity of

being heard to the applicant or his authorised representative as well as to the concerned officer or his authorised representative, pronounce its advance ruling on the question specified in the application.

(5) Where the members of the Authority differ on any question on which the advance ruling is sought, they shall state the point or points on which they differ and make a reference to the Appellate Authority for hearing and decision on such question.

(6) The Authority shall pronounce its advance ruling in writing within ninety days from the date of receipt of application.

(7) A copy of the advance ruling pronounced by the Authority duly signed by the members and certified in such manner as may be prescribed shall be sent to the applicant, the concerned officer and the jurisdictional officer after such pronouncement.

7. Appellate Authority for Advance Ruling - Section 99 of CGST Act

Section 99 of the CGST Act, 2017 has specified the provisions of the Appellate Authority for Advance Ruling constituted under the provisions of a State Goods and Services Tax Act or a Union Territory Goods and Services Tax Act shall be deemed to be the Appellate Authority in respect of that State or Union territory.

7.1 Appeal to Appellate Authority - Section 100 of CGST Act

(1) The concerned officer, the jurisdictional officer or an applicant aggrieved by any advance ruling pronounced under sub-section (4) of section 98, may appeal to the Appellate Authority.

➤ **Appeal to be filed within 30 days and further period of 30 days if it is satisfied by the Appellate authority.**

(2) Every appeal under this section shall be filed within a period of thirty days from the date on which the ruling sought to be appealed against is communicated to the concerned officer, the jurisdictional officer and the applicant:

Provided that the Appellate Authority may, if it is satisfied that the appellant was prevented by a sufficient cause from presenting the appeal within the said period of thirty days, allow it to be presented within a further period not exceeding thirty days.

(3) Every appeal under this section shall be in such form, accompanied by such fee and verified in such manner as may be prescribed.

7.2 Orders of Appellate Authority - Section 101 of CGST Act

The Appellate Authority may, after giving the parties to the appeal or reference an opportunity of being heard, pass such order as it thinks fit, confirming or modifying the ruling appealed against or referred to.

➤ After giving an opportunity of hearing order to be passed within 90 days.

(2) The order referred to in sub-section (1) shall be passed within a period of ninety days from the date of filing of the appeal under section 100 or a reference under sub-section (5) of section 98.

(3) Where the members of the Appellate Authority differ on any point or points referred to in appeal or reference, it shall be deemed that no advance ruling can be issued in respect of the question under the appeal or reference.

(4) A copy of the advance ruling pronounced by the Appellate Authority duly signed by the Members and certified in such manner as may be prescribed shall be sent to the applicant, the concerned officer, the jurisdictional officer and to the Authority after such pronouncement.

7.3 Constitution of National Appellate Authority for Advance Ruling - Section 101A of CGST Act

(1) The Government shall, on the recommendations of the Council, by notification, constitute, with effect from such date as may be specified therein, an Authority known as the National Appellate Authority for Advance Ruling for hearing appeals made under section 101B.

(2) **The National Appellate Authority shall consist of—**

- (i) the President, who has been a Judge of the Supreme Court or is or has been the Chief Justice of a High Court, or is or has been a Judge of a High Court for a period not less than five years;
- (ii) a Technical Member (Centre) who is or has been a member of Indian Revenue (Customs and Central Excise) Service, Group A, and has completed at least fifteen years of service in Group A;
- (iii) a Technical Member (State) who is or has been an officer of the State Government not below the rank of Additional Commissioner of Value Added Tax or the Additional Commissioner of State tax with at least three years of experience in the administration of an existing law or the State Goods and Services Tax Act or in the field of finance and taxation.

(3) The President of the National Appellate Authority shall be appointed by the Government after consultation with the Chief Justice of India or his nominee:

Provided that in the event of the occurrence of any vacancy in the office of the President by reason of his death, resignation or otherwise, the senior most Member of the National Appellate Authority shall act as the President until the date on which a new President, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office:

Provided further that where the President is unable to discharge his functions owing to absence, illness or any other cause, the senior most Member of the National Appellate Authority shall discharge the functions of the President until the date on which the President resumes his duties.

(4) The Technical Member (Centre) and Technical Member (State) of the National Appellate Authority shall be appointed by the Government on the recommendations of a Selection Committee consisting of such persons and in such manner as may be prescribed.

(5) No appointment of the Members of the National Appellate Authority shall be invalid merely by the reason of any vacancy or defect in the constitution of the Selection Committee.

(6) Before appointing any person as the President or Members of the National Appellate Authority, the Government shall satisfy itself that such person does not have any financial or other interests which are likely to prejudicially affect his functions as such President or Member.

(7) The salary, allowances and other terms and conditions of service of the President and the Members of the National Appellate Authority shall be such as may be prescribed:

Provided that neither salary and allowances nor other terms and conditions of service of the President or Members of the National Appellate Authority shall be varied to their disadvantage after their appointment.

(8) The President of the National Appellate Authority shall hold office for a term of three years from the date on which he enters upon his office, or until he attains the age of seventy years, whichever is earlier and shall also be eligible for reappointment.

(9) The Technical Member (Centre) or Technical Member (State) of the National Appellate Authority shall hold office for a term of five years from the date on which he enters upon his office, or until he attains the age of sixty-five years, whichever is earlier and shall also be eligible for reappointment.

(10) The President or any Member may, by notice in writing under his hand addressed to the Government, resign from his office:

Provided that the President or Member shall continue to hold office until the expiry of three months from the date of receipt of such notice by the Government, or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

(11) The Government may, after consultation with the Chief Justice of India, remove from the office such President or Member, who—

- (a) has been adjudged an insolvent; or
- (b) has been convicted of an offence which, in the opinion of such Government involves moral turpitude; or
- (c) has become physically or mentally incapable of acting as such President or Member; or
- (d) has acquired such financial or other interest as is likely to affect prejudicially his functions as such President or Member; or
- (e) has so abused his position as to render his continuance in office prejudicial to the public interest;

Provided that the President or the Member shall not be removed on any of the grounds specified in clauses (d) and (e), unless he has been informed of the charges against him and has been given an opportunity of being heard.

(12) Without prejudice to the provisions of sub-section (11), the President and Technical Members of the National Appellate Authority shall not be removed from their office except by an order made by the Government on the ground of proven misbehaviour or incapacity after an inquiry made by a Judge of the Supreme Court nominated by the Chief Justice of India on a reference made to him by the Government and such President or Member had been given an opportunity of being heard.

(13) The Government, with the concurrence of the Chief Justice of India, may suspend from office, the President or Technical Members of the National Appellate Authority in respect of whom a reference has been made to the Judge of the Supreme Court under sub-section (12).

(14) Subject to the provisions of article 220 of the Constitution, the President or Members of the National Appellate Authority, on ceasing to hold their office, shall not be eligible to appear, act or plead before the National Appellate Authority where he was the President or, as the case may be, a Member.

7.4 Appeal to National Appellate Authority - Section 101B of CGST Act

Where, in respect of the questions referred to in sub-section (2) of section 97, conflicting Advance Rulings are given by the Appellate Authorities of two or more States or Union territories or both under sub-section (1) or sub-section (3) of section 101, any officer authorised by the Commissioner or an applicant, being distinct person referred to in section 25 aggrieved by such Advance Ruling, may prefer an appeal to National Appellate Authority:

Provided that the officer shall be from the States in which such Advance Rulings have been given.

(2) Every appeal under this section shall be filed within a period of thirty days from the date on which the ruling sought to be appealed against is communicated to the applicants, concerned officers and jurisdictional officers:

Provided that the officer authorised by the Commissioner may file appeal within a period of ninety days from the date on which the ruling sought to be appealed against is communicated to the concerned officer or the jurisdictional officer:

Provided further that the National Appellate Authority may, if it is satisfied that the appellant was prevented by a sufficient cause from presenting the appeal within the said period of thirty days, or as the case may be, ninety days, allow such appeal to be presented within a further period not exceeding thirty days.

Explanation.—For removal of doubts, it is clarified that the period of thirty days or as the case may be, ninety days shall be counted from the date of communication of the last of the conflicting rulings sought to be appealed against.

(3) Every appeal under this section shall be in such form, accompanied by such fee and verified in such manner as may be prescribed.

8. Order of National Appellate Authority - Section 101C of CGST Act

The National Appellate Authority may, after giving an opportunity of being heard to the applicant, the officer authorised by the Commissioner, all Principal Chief Commissioners, Chief Commissioners of Central tax and Chief Commissioner and Commissioner of State tax of all States and Chief Commissioner and Commissioner of Union territory tax of all Union territories, pass such order as it thinks fit, confirming or modifying the rulings appealed against.

(2) If the members of the National Appellate Authority differ in opinion on any point, it shall be decided according to the opinion of the majority.

(3) The order referred to in sub-section (1) shall be passed as far as possible within a period of ninety days from the date of filing of the appeal under section 101B.

(4) A copy of the Advance Ruling pronounced by the National Appellate Authority shall be duly signed by the Members and certified in such manner as may be prescribed and shall be sent to the applicant, the officer authorised by the Commissioner, the Board, the Chief Commissioner and Commissioner of State tax of all States and Chief Commissioner and Commissioner of Union territory tax of all Union territories and to the Authority or Appellate Authority, as the case may be, after such pronouncement.

9. Applicability of Advance Ruling – Section 103 of the CGST Act, 2017

The advance ruling pronounced by the Authority or the Appellate Authority under this Chapter shall be binding only—

- (a) on the applicant who had sought it in respect of any matter referred to in sub-section (2) of section 97 for advance ruling;
- (b) on the concerned officer or the jurisdictional officer in respect of the applicant.

(1A) The Advance Ruling pronounced by the National Appellate Authority under this Chapter shall be binding on—

- (a) the applicants, being distinct persons, who had sought the ruling under sub-section (1) of section 101B and all registered persons having the same Permanent Account Number issued under the Income-tax Act, 1961 (43 of 1961);
- (b) the concerned officers and the jurisdictional officers in respect of the applicants referred to in clause (a) and the registered persons having the same Permanent Account Number issued under the Income-tax Act, 1961 (43 of 1961)

(2) The advance ruling referred to in sub-section (1) [and sub-section (1A)] shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.

10. Time period of Validity - Void of Advance Ruling - Section 104 of the CGST Act, 2017

(1) Where the Authority or the Appellate Authority or the National Appellate Authority finds that advance ruling pronounced by it under sub-section (4) of section 98 or under sub-section (1) of section 101 or under section 101C has been obtained by the applicant or the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void *ab-initio* and thereupon all the provisions of this Act or the rules made thereunder shall apply to the applicant or the appellant as if such advance ruling had never been made:

Provided that no order shall be passed under this sub-section unless an opportunity of being heard has been given to the applicant or the appellant.

Explanation.—The period beginning with the date of such advance ruling and ending with the date of order under this sub-section shall be excluded while computing the period specified in sub-sections (2) and (10) of section 73 or sub-sections (2) and (10) of section 74.

(2) A copy of the order made under sub-section (1) shall be sent to the applicant, the concerned officer and the jurisdictional officer.

10.1 Powers of Authority and Appellate Authority - Section 105 of CGST Act

The Authority or the Appellate Authority or the National Appellate Authority shall, for the purpose of exercising its powers regarding—

- (a) discovery and inspection;
- (b) enforcing the attendance of any person and examining him on oath;
- (c) issuing commissions and compelling production of books of account and other records, have all the powers of a civil court under the Code of Civil Procedure, 1908.

(2) The Authority or the Appellate Authority or the National Appellate Authority shall be deemed to be a civil court for the purposes of section 195, but not for the purposes of Chapter XXVI of the Code of Criminal Procedure, 1973, and every proceeding before the Authority or the Appellate Authority shall be deemed to be a judicial proceedings within the meaning of sections 193 and 228, and for the purpose of section 196 of the Indian Penal Code.

10.2 Procedure of Authority and Appellate Authority - Section 106 of CGST Act

The Authority or the Appellate Authority or the National Appellate Authority shall, subject to the provisions of this Chapter, have power to regulate its own procedure.

11. Procedure for obtaining Advance Ruling

- (i) The registered persons or an applicant desirous of obtaining an advance ruling may make an application to Advance Ruling Authority in **FORM GST ARA-01** along with filing fee of ₹5,000/- (*sub-section (1) of*

Section 97 of CGST Act, 2017). For CGST ₹5000/- + SGST ₹5000/- as fees for advance ruling.

- (ii) Upon receipt of an application, the Authority shall send a copy of application to the concerned officer in whose jurisdiction the applicant falls and call for relevant records. The Authority may, after examining the application and the records called for and after hearing the applicant or his authorised representative and the concerned officer or his authorised representative, by order, either admit or reject the application.
- (iii) Application for advance ruling will not be admitted in cases where the question raised in the application is already pending or decided in any proceedings in the case of an application under any of the provisions of this Act.
- (iv) If the application is rejected, it should be by way of speaking order giving the reasons for rejection.
- (v) If the application is admitted, the AAR shall pronounce its ruling within 90 days of receipt of application. Before giving its ruling, it shall examine the application and any further material furnished by the applicant or by the concerned department officer.
- (vi) Before giving the ruling, AAR must hear the applicant or his authorised representative as well as the jurisdictional officers of CGST/SGST.
- (vii) If there is a difference of opinion between the two members of AAR, they shall refer the point or points on which they differ to the AAAR for hearing the issue. If the members of AAAR are also unable to come to a common conclusion in regard to the point(s) referred to them by AAR, then it shall be deemed that no advance ruling can be given in respect of the question on which difference persists at the level of AAAR.
- (viii) A copy of the advance ruling pronounced by the Authority duly signed by the members and certified in such manner as may be prescribed shall be sent to the applicant, the concerned officer and the jurisdictional officer after such pronouncement. (***Section 98 of the CGST Act, 2017***)

12. Remedies against order of AAR - Section 100 of the CGST Act, 2017

- (i) If the applicant is aggrieved with the ruling of the AAR, he can file an appeal with AAAR on the common portal in **FORM GST ARA-02** and shall be accompanied by a fee of ₹10,000/- to be deposited manner specified sub-section (9) of Section 49 of the CGST Act, 2017. Similarly, if the jurisdictional officer of CGST/SGST does not agree with the finding of AAR, he can also file an appeal with AAAR on the common portal in **FORM GST ARA-03** and no fee shall be payable for filing the appeal. The jurisdictional officer will be the officer in whose jurisdiction the applicant is located.
- (ii) Any appeal must be filed within 30 days from the receipt of the advance ruling. AAR has the power to condone the delay of 30 days on being shown the sufficient cause for the delay.

- (iii) The Appellate Authority must pass an order after hearing the parties to the appeal within a period of 90 days of the filing of an appeal.
- (iv) If members of AAAR differ on any point referred to in appeal, it shall be deemed that no advance ruling is issued in respect of the question under appeal.

13. Orders of Appellate Authority – Section 101 of CGST Act

- (i) The Appellate Authority pass order after giving the parties to the appeal or reference an opportunity of being heard, pass such order as it thinks fit, confirming or modifying the ruling appealed against.
- (ii) If the members of the Appellate Authority differ on any point or points referred to in appeal or reference, it shall be deemed that no advance ruling can be issued in respect of the question under the appeal or reference.
- (iii) An order declaring advance ruling to be void can be passed only after hearing the applicant.
- (iv) A copy of the advance ruling pronounced by the Appellate Authority duly signed by the Members and certified in such manner as may be prescribed shall be sent to the applicant, the concerned officer, the jurisdictional officer and to the Authority after such pronouncement. (*Sections 101 of the GST Act, 2017*)
- (v) A copy of the advance ruling pronounced by the Appellate Authority for Advance Ruling shall be sent to - (*Rule 107 of the CGST Rules, 2017*)
 - (a) the applicant and the appellant;
 - (b) the concerned officer of Central Tax and State/Union Territory Tax;
 - (c) the jurisdictional officer of Central Tax and State/Union Territory Tax; and
 - (d) the Authority, in accordance with the provisions of sub-section (4) of Section 101 of the Act.

13.1 Rectification of advance ruling - Section 102 of CGST Act

The Authority or the Appellate Authority or the National Appellate Authority may amend any order passed by it under section 98 or section 101 or section 101 or section 101C, respectively, so as to rectify any error apparent on the face of the record, if such error is noticed by the Authority or the Appellate Authority or the National Appellate Authority on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer, the applicant appellant, the Authority or the Appellate Authority within a period of six months from the date of the order:

Provided that no rectification which has the effect of enhancing the tax liability or reducing the amount of admissible input tax credit shall be made unless the applicant or the appellant has been given an opportunity of being heard.

13.2 Applicability of advance ruling - Section 103 of CGST Act

The advance ruling pronounced by the Authority or the Appellate Authority under this Chapter shall be binding only—

- (a) on the applicant who had sought it in respect of any matter referred to in sub-section (2) of section 97 for advance ruling;
- (b) on the concerned officer or the jurisdictional officer in respect of the applicant.

(1A) The advance ruling pronounced by the Authority or the Appellate Authority under this Chapter shall be binding only—

- (a) on the applicant who had sought it in respect of any matter referred to in sub-section (2) of section 97 for advance ruling;
- (b) on the concerned officer or the jurisdictional officer in respect of the applicant.

(1A) The Advance Ruling pronounced by the National Appellate Authority under this Chapter shall be binding on—

- (a) the applicants, being distinct persons, who had sought the ruling under sub-section (1) of section 101B and all registered persons having the same Permanent Account Number issued under the Income-tax Act, 1961 (43 of 1961);
- (b) the concerned officers and the jurisdictional officers in respect of the applicants referred to in clause (a) and the registered persons having the same Permanent Account Number issued under the Income-tax Act, 1961 (43 of 1961).

(2) The advance ruling referred to in sub-section (1) and sub-section (1A) shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.

- (a) the applicants, being distinct persons, who had sought the ruling under sub-section (1) of section 101B and all registered persons having the same Permanent Account Number issued under the Income-tax Act, 1961 (43 of 1961);
- (b) the concerned officers and the jurisdictional officers in respect of the applicants referred to in clause (a) and the registered persons having the same Permanent Account Number issued under the Income-tax Act, 1961 (43 of 1961).

(2) The advance ruling referred to in sub-section (1) and sub-section (1A)] shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.

14. Procedure of Advance Ruling

14.1 Qualification and appointment of members of the Authority for Advance Ruling - Rule 103 of CGST Rules

The Government shall appoint officers not below the rank of Joint Commissioner as member of the Authority for Advance Ruling.

14.2 Form and manner of application to the Authority for Advance Ruling - Rule 104 of CGST Rules

(1) An application for obtaining an advance ruling under sub-section (1) of section 97 shall be made on the common portal in **FORM GST ARA-01** and shall be accompanied by a fee of five thousand rupees, to be deposited in the manner specified in section 49.

(2) The application referred to in sub-rule (1), the verification contained therein and all the relevant documents accompanying such application shall be signed in the manner specified in rule 26.

14.3 Certification of copies of advance rulings pronounced by the Authority - Rule 105 of CGST Rules

A copy of the advance ruling shall be certified to be a true copy of its original by any member of the Authority for Advance Ruling.

14.4 Form and manner of appeal to the Appellate Authority for Advance Ruling - Rule 106 of CGST Rules

(1) An appeal against the advance ruling issued under sub-section (6) of section 98 shall be made by an applicant on the common portal in **FORM GST ARA-02** and shall be accompanied by a fee of ten thousand rupees to be deposited in the manner specified in section 49.

(2) An appeal against the advance ruling issued under sub-section (6) of section 98 shall be made by the concerned officer or the jurisdictional officer referred to in section 100 on the common portal in **FORM GST ARA-03** and no fee shall be payable by the said officer for filing the appeal.

(3) The appeal referred to in sub-rule (1) or sub-rule (2), the verification contained therein and all the relevant documents accompanying such appeal shall be signed,—

- (a) in the case of the concerned officer or jurisdictional officer, by an officer authorised in writing by such officer; and
- (b) in the case of an applicant, in the manner specified in rule 26.

14.5 Certification of copies of the advance rulings pronounced by the Appellate Authority - Rule 107 of CGST Rules

A copy of the advance ruling pronounced by the Appellate Authority for Advance Ruling and duly signed by the Members shall be sent to—

- (a) the applicant and the appellant;
- (b) the concerned officer of central tax and State or Union territory tax;
- (c) the jurisdictional officer of central tax and State or Union territory tax; and
- (d) the Authority, in accordance with the provisions of sub-section (4) of section 101 of the Act.

15. Manual filing and processing Application - Rule 107A of CGST Rules

Notwithstanding anything contained in this Chapter, in respect of any process or procedure prescribed herein, any reference to electronic filing of an application, intimation, reply, declaration, statement or electronic issuance of a notice, order or certificate on the common portal shall, in respect of that process or procedure, include manual filing of the said application, intimation, reply, declaration, statement or issuance of the said notice, order or certificate in such prescribed Forms.

16. Rectification of Advance Ruling

The law gives power to AAR and AAAR to amend their order to amend any order passed by them under Section 98 or Section 101 of the CGST/SGST Act, 2017, so as to rectify any error apparent on the face of the record, if such error is noticed by the Authority or the Appellate Authority on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer, the applicant or the appellant within a period of six months from the date of the order. Such mistake may be noticed by the authority on its own accord or may be brought to its notice by the applicant or the jurisdictional CGST/SGST officer. If a rectification has the effect of enhancing the tax liability or reducing the quantum of input tax credit, the applicant must be heard before the order is passed. (*Section 102 of the GST Act, 2017*)

17. Void of Advance Ruling under certain circumstances

If the Appellate Authority finds that advance ruling pronounced by them and has been obtained by the applicant or the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be *void ab initio*. Before declaring such ruling an opportunity of being heard in person shall be given to the applicant or the appellant. (*Section 104 of the GST Act, 2017*)

18. Powers of AAR and AAAR

- (i) Both the Authority and the Appellate Authority are vested with the powers of a civil court under the Code of Civil Procedure, 1908, for discovery and inspection, enforcing the attendance of a person and examining him on oath, and compelling production of books of account and other records.
- (ii) Both the Authority and the Appellate Authority shall be deemed to be a civil court for the purposes of Section 195 of the Code of Criminal Procedure, 1973. Any proceeding before the Authority or the Appellate Authority shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228, and for the purpose of Section 196 of the Indian Penal Code, 1860. The both authorities have the power to regulate their own procedure. (*Section 105 of the GST Act, 2017*)

19. Formation of AAR**Nomination of IRS (C&CE) officers as Member and Appellate Authority in Authority for Advance Ruling under GST to be constituted in the States**

Consequent upon receipt of references from State Governments for nomination of IRS(C&CE) officers as Member and Appellate Authority in Authority for Advance Ruling to be constituted in the States, the C.B.I.& C, has decided that the principal Chief Commissioner/Chief Commissioner of the zone will be the nominated officer who will function as the Appellate Authority of their respective States' Authority for Advance Ruling, - **C.B.E.&C. Letter D.O. No.C-50/94/2017-Ad.II, dated 28-8-2017.**

20. National Appellate Authority for Advance Ruling

The provision of National Appellate Authority has been created by virtue of Section 104 of the Finance (No. 2) Act, 2019 and in section 95 (a) of the CGST Act, 2017 after the words "Appellate Authority", the words "or the National Appellate Authority" has been inserted. The "National Appellate Authority" means the National Appellate Authority for Advance Ruling. Section 105 of the Finance (No. 2) Act, 2019 has inserted new sections 101A, 101B and 101C after 101 of the CGST Act, 2017.

The objective of the formation of National Appellate Authority for Advance Ruling to decide the conflicting Advance Rulings are given by the Appellate Authorities of two or more States or Union territories or both.

21. Constitution of National Appellate Authority for Advance Ruling: Section 101A of CGST Act

Section 101A of CGST Act, 2017 prescribes that the Government shall, on the recommendations of the Council, constitute an authority known as the National Appellate Authority for Advance Ruling for hearing appeals made under section 101B. The National Appellate Authority shall consist of—

- (i) the President, who has been a Judge of the Supreme Court or is or has been the Chief Justice of a High Court, or is or has been a judge of a High Court for a period not less than five years;
- (ii) a Technical Member (Centre) who is or has been a member of Indian Revenue (Customs and Central Excise) Service, Group A, and has completed at least fifteen years of service in Group A;
- (iii) a Technical Member (State) who is or has been an officer of the State Government not below the rank of Additional Commissioner of Value Added Tax or the Additional Commissioner of State tax with at least three years of experience in the administration of an existing law or the State Goods and Services Tax Act or in the field of finance and taxation.

22. Appointment of President and Technical Members

The president of the National Appellate Authority shall be appointed by the Government after consultation with the Chief Justice of India or his nominee:

Provided that in the event of the occurrence of any vacancy in the office of the President by reason of his death, resignation or otherwise, the senior most Member of the National Appellate Authority shall act as the President until the date on which a new President, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office:

Provided further that where the President is unable to discharge his functions owing to absence, illness or any other cause, the senior most Member of the National Appellate Authority shall discharge the functions of the President until the date on which the President resumes his duties.

The Technical Member (Centre) and Technical Member (State) of the National Appellate Authority shall be appointed by the Government on the recommendations of a Selection Committee consisting of such persons and in such manner as may be prescribed.

No appointment of the Members of the National Appellate Authority shall be invalid merely by the reason of any vacancy or defect in the constitution of the Selection Committee.

Before appointing any person as the President or Members of the National Appellate Authority, the Government shall satisfy itself that such person does not have any financial or other interests which are likely to prejudicially affect his functions as such president or Member.

23. Remunerations of the Members

The salary, allowances and other terms and conditions of service of the President and the Members of the National Appellate Authority shall be such as may be prescribed.

Provided that neither salary and allowances nor other terms and conditions of service of the President or Members of the National Appellate Authority shall be varied to their disadvantage after their appointment.

24. Tenure of office

The President of the National Appellate Authority shall hold office for a term of three years from the date on which he enters upon his office, or until he attains the age of seventy years, whichever is earlier and shall also be eligible for reappointment.

The Technical Members (Centre) or Technical Member (State) of the National Appellate Authority shall hold office for a term of five years from the date on which he enters upon his office, or until he attains the age of sixty-five years, whichever is earlier and shall also be eligible for reappointment.

25. Procedure of resignation

The President or any Member may, by notice in writing under his hand addressed to the Government, resign from his office:

Provided that the President or Member shall continue to hold office until the expiry of three months from the date of receipt of such notice by the Government, or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

26. Procedure of Removal

The Government may, after consultation with the Chief Justice of India, remove from the office such President or Member, who—

- (a) has been adjudged an insolvent; or
- (b) has been convicted of an offence which, in the opinion of such Government involves moral turpitude; or
- (c) has become physically or mentally incapable of acting as such President or Members; or
- (d) has acquired such financial or other interest as is likely to affect prejudicially his functions as such President or Member; or
- (e) has so abused his position as to render his continuance in office prejudicial to the public interest:

Provided that the President or the Member shall not be removed on any of the grounds specified in clauses (d) and (e), unless he has been informed of the charges against him and has been given an opportunity of being heard.

27. Order of Removal

Without prejudice to the provisions of removal, the President and Technical Members of the National Appellate Authority shall not be removed from their office except by an order made by the Government on the ground of proven misbehaviour or incapacity after an inquiry made by a Judge of the Supreme Court nominated by the Chief Justice of India on a reference made to him by the Government and such President or Member had given an opportunity of being heard.

28. Order of Suspension

The Government, with the concurrence of the Chief Justice of India, may suspend from office, the president or Technical Members of the National Appellate Authority in respect of whom a reference has been made to the Judge of the Supreme Court.

29. Appearance before the Authority

Subject to the provisions of article 220 of the Constitution, the President or Members of the National Appellate Authority, on ceasing to hold their office, shall not be eligible to appear, act or plead before the National Appellate Authority where he was the President or, as the case may be, a Member.

30. Appeal to National Appellate Authority

Section 101B of CGST Act, 2017 prescribes where conflicting Advance Rulings are given by the Appellate Authorities of two or more States or Union territories or both, any officer authorised by the Commissioner or an applicant, being aggrieved by such advance ruling, may prefer an appeal to National Appellate Authority:

Provided that the officer shall be from the States in which advance rulings have been given.

Every appeal under this section shall be filed within a period of thirty days from the date on which the ruling sought to be appealed against is communicated to the applicants, concerned officers and jurisdictional officers:

Provided that the officer authorised by the Commissioner may file appeal within a period of ninety days from the date on which the ruling sought to be appealed against is communicated to the concerned officer or the jurisdictional officer:

Provided further that the National Appellate Authority may, if it is satisfied that the appellant was prevented by a sufficient cause from presenting the appeal within the said period of thirty days, or as the case may be, ninety days, allow such appeal to be presented within a further period not exceeding thirty days.

Explanation.—For removal of doubts, it is clarified that the period of thirty days or ninety days shall be counted from the date of communication of the last of the conflicting rulings sought to be appealed against.

Every appeal under this section shall be in such form, accompanied by such fee and verified in such manner as may be prescribed.

31. Order of National Appellate Authority

Section 101C of CGST Act, 2017 prescribes the National Appellate Authority may, after giving an opportunity of being heard to the applicant, the officer authorised by the Commissioner, all Principal Chief Commissioners, Chief Commissioners of Central tax and Chief Commissioner and Commissioner of State tax of all States and Chief Commissioner and Commissioner of Union territory tax of all Union territories, pass such order as it thinks fit, confirming or modifying the rulings appealed against.

32. Majority of opinion

If the members of the National Appellate Authority differ in opinion on any point, it shall be decided according to the opinion of the majority.

33. Time period of Order

The order shall be passed as far as possible within a period of ninety days from the date of filing of the appeal.

34. Disposal of Order

A copy of the Advance Ruling pronounced by the National Appellate Authority shall be duly signed by the Members and certified in such manner as may be prescribed and shall be sent to the applicant, the officer authorised by the Commissioner, the Board, the Chief Commissioner and Commissioner of State tax of all States and Chief Commissioner and Commissioner of Union territory tax of all Union territories and to the Authority or Appellate Authority, as the case may be, after such pronouncement.

35. Rectification of Order

The Authority or the Appellate Authority or the National Appellate Authority may amend any order passed by it under section 98 or section 101 or Section 101C, so as to rectify any error apparent on the face of the record, if such error is

noticed by the Authority or the Appellate Authority on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer, the applicant or the appellant, appellant, the Authority or the Appellate Authority within a period of six months from the date of the order:

Provided that no rectification which has the effect of enhancing the tax liability or reducing the amount of admissible input tax credit shall be made unless the applicant or the appellant has been given an opportunity of being heard.

Chapter 22

Appeals and Revision

Synopsis

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1. Introduction

Any dispute between the assessee and the revenue department has to be decided by the appellate authority arising out of order-in-Original passed by the adjudicating authority. As per the existing tax laws, both assessee and the department has been conferred with a right of two stage appellate remedies, first appeal lies with the Commissioner (Appeals) and the second appeal lies with the Tribunal (i.e. CESTAT) or to the Joint Secretary (Revision Application) as the case may be, but under GST second appeal lies with National Appellate Tribunal.

2. Meaning of Appellate Authority

Appellate Authority has been defined in Section 2(8) of the CGST Act, 2017 'Appellate Authority' means an authority appointed or authorised to hear appeals referred to in Section 107 of the CGST Act. The First Appellate Authority constituted under Section 107 of the CGST Act to adjudicate appeals arising out of the order or decision of the adjudicating authority of the CGST Act and Second Appellate Authority means the Appellate Tribunal constituted under Section 112 of the CGST Act, by the Central Government on the recommendation of the GST Council. Therefore, there are two types of Appellate Authorities under CGST Act, namely First Appellate Authority and Second Appellate Authority or Appellate Tribunal to adjudicate the appeals relating to disputes on CGST, SGST/UTGST. Apart from the said Appellate Authorities CGST Act, has made provision of separate Appellate Authority for Advance Ruling, constituted under Section 96 of the CGST Act, 2017.

3. Appeals under GST Law

The Chapter-XVIII of the CGST, Act, 2017 deals with the provision of Appeals and Revision, where these provisions shall be applicable for appeals under CGST Act, SGST Act & UTGST Act.

4. First Appellate Authority

Section 107 of the CGST Act, shall be applicable for appeals to First Appellate authority on disputes relating to CGST, SGST & UTGST Act. The details of sub-section as under:

➤ Appeal to be filed within 3 months from the date of receipt of order.

(1) Any person aggrieved by any decision or order passed against him by an adjudicating authority, may appeal to the First Appellate Authority within 3 months from the date of the said order communicated to the said person.

➤ **Department's Appeal to be filed within 6 months from the date of receipt of order.**

(2) The Commissioner of CGST, on his own motion, or upon request from the Commissioner of State tax or the Commissioner of Union territory tax, call for and examine the record of any proceedings in which an Adjudicating Authority has passed any decision or order, may by order, direct any arising out of the decision or order passed by the adjudicating authority within six months from the date of communication of the said order.

(3) The authorised officer makes an application to the First Appellate Authority against an order passed by the adjudicating authority.

➤ **Appellate Authority may allow to file Appeal further within another one month.**

(4) The appellate Authority may, if he satisfied that the appellant was prevented by sufficient cause from presenting the appeal within period of three months or six months, allow a further period of one month.

(5) Every appeal shall be filed in the prescribed form and shall be verified in the prescribed manner.

(6) No appeal shall be filed by an aggrieved person unless the appellant has deposited or paid—

(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and

(b) a sum equal to ten per cent of the remaining amount of tax in dispute arising from the said order, in relation to which the appeal has been filed.

Pre-deposits for filing an appeal to Appellate Authority put a ceiling on the limit of the amount to be deposited before filing an appeal to the appellate authorities which is 10% of the disputed tax amount subject to maximum limit of ₹25 crores.

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. (Notified *vide* Notification No. 39/2021-Central Tax, dated 21.12.2021).

(7) If the appellant has paid the amount as pre-deposit the balance amount shall be deemed to be stayed.

➤ **Order to be passed after giving an opportunity of hearing to the Appellant.**

(8) The Appellate Authority shall give an opportunity to the appellant of being heard in person, if he so desires.

➤ **Adjournment of hearing grant not more than three occasions.**

(9) The Appellate Authority may, if sufficient reason is shown at any stage of hearing of an appeal, grant time to the parties or any of them and adjourn the hearing of appeal for reasons to be recorded in writing, provided no such adjournment shall be granted more than three occasions to a party during hearing of the appeal.

Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.

➤ **Additional grounds of appeal may be allow during stage of hearing**

(10) During hearing stage of an appeal, Appellate Authority may allows an appellant to add any ground of appeal not specified in the grounds of appeal, if it is satisfied that the omission of that ground from the grounds of appeal was not wilful or unreasonable.

(11) The Appellate Authority shall, after making such further inquiry as may be necessary, pass such order, as it thinks just and proper, confirming, modifying or annulling the decision or order appealed against but shall not refer the case back to the Adjudicating Authority that passed the said decision or order.

Provided that an order enhancing any fee or penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund or input tax credit shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order:

Provided further that where the Appellate Authority is of the opinion that any tax has not been paid or short-paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised, no order requiring the appellant to pay such tax or input tax credit shall be passed unless the appellant is given notice to show cause against the proposed order and the order is passed within the time limit specified under section 73 or section 74.

(12) The order of the Appellate Authority disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for the decision.

➤ **Appeal to be decided within period of one year.**

(13) The Appellate Authority shall, where it is possible to do so, hear and decide every appeal within a period of one year from the date on which it is filed:

Provided that where the issuance of order is stayed by an order of a Court or Tribunal, the period of such stay shall be excluded in computing the period of one year.

(14) On disposal of the appeal, the Appellate Authority shall communicate the order passed by it to the appellant, respondent and to the Adjudicating authority.

(15) A copy of the order passed by the Appellate Authority shall also be sent to the jurisdictional Commissioner of CGST or the authority designated by him in this behalf and the jurisdictional Commissioner of SGST or the authority designated by him in this behalf.

(16) Every order passed by the Appellate, subject to the provisions of Section 108 or Section 113 or Section 117 or Section 118, be final and binding on the parties.

5. Appeal to the Appellate Authority - Rule 108 of CGST Rules

An appeal to the Appellate Authority under sub-section (1) of section 107 shall be filed in **FORM GST APL-01** along with the relevant documents, and a provisional acknowledgement shall be issued to the appellant immediately.

Provided that an appeal to the Appellate Authority may be filed manually in FORM GST APL-01, along with the relevant documents, only if—

- (i) the Commissioner has so notified, or
- (ii) the same cannot be filed electronically due to non-availability of the decision or order to be appealed against on the common portal, and in such case, a provisional acknowledgement shall be issued to the appellant immediately. *Vide* Notification No. 38/2023-CT, dated 04.08.2023

(2) The grounds of appeal and the form of verification as contained in **FORM GST APL-01** shall be signed in the manner specified in rule 26.

(3) Where the decision or order appealed against is uploaded on the common portal, a final acknowledgment, indicating appeal number, shall be issued in FORM GST APL-02 by the Appellate Authority or an officer authorised by him in this behalf and the date of issue of the provisional acknowledgement shall be considered as the date of filing of appeal:

Provided that where the decision or order appealed against is not uploaded on the common portal, the appellant shall submit a self-certified copy of the said decision or order within a period of seven days from the date of filing of FORM GST APL-01 and a final acknowledgment, indicating appeal number, shall be issued in FORM GST APL-02 by the Appellate Authority or an officer authorised by him in this behalf, and the date of issue of the provisional acknowledgement shall be considered as the date of filing of appeal:

Provided further that where the said self-certified copy of the decision or order is not submitted within a period of seven days from the date of filing of FORM GST APL-01, the date of submission of such copy shall be considered as the date of filing of appeal.

6. Application to the Appellate Authority - Rule 109 of CGST Rules

(1) An application to the Appellate Authority under sub-section (2) of section 107 shall be made in **FORM GST APL-03**, along with the relevant documents, and a provisional acknowledgement shall be issued to the appellant immediately.

Provided that an appeal to the Appellate Authority may be filed manually in **FORM GST APL-03**, along with the relevant documents, only if—

- (i) the Commissioner has so notified, or
- (ii) the same cannot be filed electronically due to non-availability of the decision or order to be appealed against on the common portal, and in such case, a provisional acknowledgement shall be issued to the appellant immediately

(2) Where the decision or order appealed against is uploaded on the common portal, a final acknowledgment, indicating appeal number, shall be issued in **FORM GST APL-02** by the Appellate Authority or an officer authorised by him in this behalf and the date of issue of the provisional acknowledgement shall be considered as the date of filing of appeal under sub-rule (1):

Provided that where the decision or order appealed against is not uploaded on the common portal, the appellant shall submit a self-certified copy of the said decision or order within a period of seven days from the date of filing of FORM GST APL-03 and a final acknowledgment, indicating appeal number, shall be issued in FORM GST APL-02 by the Appellate Authority or an officer authorised by him in this behalf, and the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal.

Provided further that where the said self-certified copy of the decision or order is not submitted within a period of seven days from the date of filing of FORM GST APL-03, the date of submission of such copy shall be considered as the date of filing of appeal.

7. Appointment of Appellate Authority - Rule 109A of CGST Rules

(1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act may appeal to—

- (a) the Commissioner (Appeals) where such decision or order is passed by the Additional or Joint Commissioner;
- (b) any officer not below the rank of Joint Commissioner (Appeals)] where such decision or order is passed by the Deputy or Assistant Commissioner or Superintendent, within three months from the date on which the said decision or order is communicated to such person.

(2) An officer directed under sub-section (2) of section 107 to appeal against any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act may appeal to—

- (a) any officer not below the rank of Joint Commissioner (Appeals)] where such decision or order is passed by the Additional or Joint Commissioner;
- (b) the Additional Commissioner (Appeals) where such decision or order is passed by the Deputy or Assistant Commissioner or the Superintendent, within six months from the date of communication of the said decision or order.

8. Retirement or resignation from parent service on appointment as Chairperson or Member

Where the person appointed as a Chairperson or a Member is a serving Judge of the Supreme Court or a High Court or a serving Member of an organised service, he shall either resign or obtain voluntary retirement from his parent service before joining the Tribunal.

9. Notice to person and order of revisional authority in case of revision - Rule 109B of CGST Rules

(1) Where the Revisional Authority decides to pass an order in revision under section 108 which is likely to affect the person adversely, the Revisional Authority shall serve on him a notice in **FORM GST RVN-01** and shall give him a reasonable opportunity of being heard.

(2) The Revisional Authority shall, along with its order under sub-section (1) of section 108, issue a summary of the order in **FORM GST APL-04** clearly indicating the final amount of demand confirmed.

9.1 Withdrawal of Appeal - Rule 109C of CGST Rules

The appellant may, at any time before issuance of show cause notice under sub-section (11) of section 107 or before issuance of the order under the said sub-section, whichever is earlier, in respect of any appeal filed in **FORM GST APL-01** or **FORM GST APL-03**, file an application for withdrawal of the said appeal by filing an application in **FORM GST APL-01/03W**:

Provided that where the final acknowledgment in **FORM GST APL-02** has been issued, the withdrawal of the said appeal would be subject to the approval of the appellate authority and such application for withdrawal of the appeal shall be decided by the appellate authority within seven days of filing of such application:

Provided further that any fresh appeal filed by the appellant pursuant to such withdrawal shall be filed within the time limit specified in sub-section (1) or sub-section (2) of section 107, as the case may be.”

10. Powers of Revisional Authority

Section 108 of the CGST Act, 2017 prescribed for Powers of Revisional Authority:

(1) Subject to the provisions of Section 121 and any rules made thereunder, the Revisional Authority may, on his own motion or upon information received by him, or on request from the Commissioner of State tax, or the Commissioner of Union territory tax, call for and examine the record of any proceeding and if he considers that any decision or order passed under this Act or under SGST Act or UTGST Act by any officer subordinate to him is erroneous insofar as it is prejudicial to the interest of the revenue and is illegal or improper or has not taken into certain material facts, whether available at the time of issuance of the said order or not or in consequence of an observation by the comptroller and Auditor General of India, he may, if necessary, stay the operation of such decision or order for such period as he deems fit and after giving the person concerned an opportunity of being heard and after making such further inquiry as may be necessary, pass such order, as he thinks just and proper, including enhancing or modifying or annulling the said decision or order.

(2) The Revisional Authority shall not exercise any power under sub-section (1), if,—

- (a) the order has been subject to an appeal under Section 107 or Section 112 or Section 117 or Section 118; or
- (b) the period specified under sub-section (2) of Section 107 has not yet expired or more than three years after the passing of the decision or order sought to be revised; or
- (c) the order has already been taken for revision under this section at an earlier stage; or

- (d) the order has been passed in exercise of the powers under sub-section (1):

Provided that the Revisional Authority may pass an order under sub-section (1) on any point which has not been raised and decided in an appeal referred to in clause (a) of sub-section (2), before the expiry of a period of one year from the date of the order in such appeal or before the expiry of a period of three years referred to in clause (b) of that sub-section, whichever is later.

(3) Every order passed in revision under sub-section (1) shall, subject to the provisions of Sections 113, or Section 117 or Section 118, be final and binding on the parties.

(4) If the said decision or order involves an issue on which the Appellate Tribunal or the High Court has given its decision in some other proceedings and an appeal to the High Court or the Supreme Court against such decision of the Appellate Tribunal or the High Court is pending, the period spent between the date of the decision of the Appellate Tribunal and the date of the decision of the High Court and the date of decision Supreme Court shall be excluded in computing the period of limitation referred to in clause (b) of sub-section (2).

(5) Where the issuance of an order under sub-section (1) is stayed by the order of a Court or Appellate Tribunal, the period of such stay shall be excluded in computing the period of limitation referred to in clause (b) of sub-section (2).

(6) For the purposes of this section, the term,—

- (i) ‘record’ shall include all records relating to any proceedings under this Act available at the time of examination by the Revisional Authority;
- (ii) ‘decision’ shall include intimation given by any officer lower in rank than the Revisional Authority.

11. Constitution of Revisional Authority

- (a) The Principal Commissioner or Commissioner of Central Tax for decisions or orders passed by the Additional or Joint Commissioner of Central Tax; and
- (b) the Additional or Joint Commissioner of Central Tax for decisions or orders passed by the Deputy Commissioner or Assistant Commissioner or Superintendent of Central Tax, as the Revisional Authority under section 108 of the said Act.

(Notification No. 05/2020-Central Tax, 13th January, 2020)

11.1. Nature of Order passed by RA

As per Section 108(3) of the CGST Act, 2017, appeal against order or revision by the Commissioner is subject to appeal provisions under Section 113, 117 or 118 of the CGST Act, 2017, i.e. before Appellate Tribunal, High Court and Supreme Court.

Thus, every order passed under Section 108(1), shall be final and binding on the parties but subject to appeal before higher forums

Thus, if an appeal is preferred against the revision order, it may be done before the following authorities:

- (a) Appellate Tribunal (Section 113)
- (b) High Court (Section 117)
- (c) Supreme Court (Section 118)

If no appeal as aforesaid is preferred, order passed under Section 108(1) of CGST Act, 2017 shall be considered as final and binding on the concerned parties.

11.2 Time Limit of RA order

If a revision is sought under Section 108 of CGST Act, 2017, the Revisional Authority shall pass the order within one year from the date of order passed in such appeal or within 3 years from the date of such passing the decision or order sought to be revised, whichever is later.

11.3 How to calculate time limit

As per Section 108(5) of the CGST Act, 2017, if the decision or order passed under this Act by an officer subordinate to the commissioner involves an issue on which the appellate tribunal or the high court has given its decision which is prejudicial to the interest of revenue in some other proceedings and an appeal to the high court or the Supreme Court against such decision of the appellate tribunal or as the case may be, the high court is pending, the period spent between the date of the decision of the appellate tribunal and the date of the decision of the high court or as the case may be, the date of the decision of the high court and the date of the decision of the Supreme Court shall be excluded in computing the period of three years.

12. Constitution of Appellate Tribunal and Benches thereof

Section 109 of the CGST Act, prescribed for constitution of Appellate Tribunal and constitution of Appellate Tribunal and Benches thereof—

(1) The Government shall on the recommendation of the Council, by notification, establish with effect from such date as may be specified therein an Appellate Tribunal known as the Goods and Services Tax Appellate Tribunal for hearing appeals against the orders passed by the Appellate Authority or the Revisional Authority.

(2) The jurisdiction powers and authority conferred on thereof Appellate Tribunal shall be exercised by the Principal Bench and State Benches constituted under sub-section (3) and sub-section (4).

(3) The Government shall, by notification, constitute a Principal Bench of the Appellate Tribunal at New Delhi, which shall consist of the President, a Judicial Member and a Technical Member (Centre) and one Technical Member (State).

(4) On the request of the State, the Government may, by notification constitute, constitute such number of State Benches at such places and with such Jurisdiction as may be recommended by the Council, which shall consist of two Judicial Members, a Technical a Member (Centre) and one Technical Member (State).

(5) The Principal Bench and the State Bench shall hear appeals against the order passed by the Appellate Authority or the Revisional Authority.

Provided that the cases in which any one of the issues involved relates to the place of supply, shall be heard only by the Principal Bench.

(6) The President shall, from time to time, by a general or special order, distribute the business of the Appellate Tribunal among the Benches and may transfer cases from one Bench to another

(7) The senior most Judicial Member within the State Benches, as may be notified, shall act as the Vice-President for such State Benches and shall exercise such powers of the President as may be prescribed, but for all other purposes be considered as a Member.

(8) Appeals, where the tax or input tax credit involved or the amount of fine, fee or penalty determined in any order appealed against, does not exceed fifty lakh rupees and which does not involve any question of law may, with the approval of the President, and subject to such conditions as may be prescribed on the recommendations of the Council, be heard by a single Member, and in all other cases, shall be heard together by one Judicial Member and One Technical Member

(9) If, after hearing the case, the members differ in their opinion on any point or points, such Member shall state the point or points on which they differ, and the president shall refer such case for hearing:

(a) where the appeal was originally heard by Members of a State Bench, to another Member of a State Bench within the State or, where no such other State Bench is available within the State, to a Member of a State Bench in another State.

(b) where the appeal was originally heard by Members of the Principal Bench to another Member from the Principal Bench or where no such other Member is available, to a Member of any State Bench.

and such point or points shall be decided according to the majority opinion including the opinion of the Members who first heard the case.

(10) The Government may, in consultation with the President, for the administrative efficiency, transfer Members from one Bench to another Bench. Provided that a Technical Member (State) of a State Bench may be transferred to a State Bench only of the same State in which he was originally appointed, in consultation with the State Government.

(11) No act or proceedings of the Appellate Tribunal shall be questioned or shall be invalid merely on the ground of the existence of any vacancy or defect in the constitution of the Appellate Tribunal.

12.1 President and Members of Appellate Tribunal, their qualification, appointment, conditions of service etc. (Section 110)

(1) A person shall not be qualified for appointment as—

(a) the President, unless he has been a judge of the Supreme Court or is or has been the Chief Justice of a High Court;

- (b) a Judicial Member, unless he—
 - (i) has been a judge of the High Court; or
 - (ii) has for a combined period of ten years, been a District Judge or an Additional District Judge.
 - (iii) has been an advocate for ten years with substantial experience in litigation in matters relating to indirect taxes in the Appellate Tribunal, Customs, Excise and Service Tax Appellate Tribunal, State Value Added Tax Tribunal, by whatever name called, High Court or Supreme Court;”;

“Provided that a person who has not completed the age of fifty years shall not be eligible for appointment as the President or Member,”;
- (c) a Technical Member (Centre), unless he is or has been a member of the Indian Revenue (Customs and Indirect Taxes) Service, Group A, or of the All India Service with at least three years of experience in the administration of an existing law or goods and services tax in the Central Government, and has completed at least twenty-five years of service in Group A;
- (d) a Technical Member (State), unless he is or has been an officer of the State Government or an officer of All India Service, not below the rank of Additional Commissioner of Value Added Tax or the State Goods and Service Tax or such rank not lower than that of the First Appellate Authority, as may be notified by the concerned State Government, on the recommendations of the Council and has completed twenty-five years of service in Group A, or equivalent, with at least three years of experience in the administration of an existing law or the goods and services tax or in the field of finance and taxation in the State Government:

Provided that the State Government may, on the recommendations of the Council, by notification, relax the recruitment of completion of twenty-five years of service in Group A, or equivalent, in respect of officers of such State where no person has completed twenty-five years of service in Group A, or equivalent, but has completed twenty-five years service in the Government, subject to such conditions, and till such period, as may be specified in the notification.

- (2) The President, Judicial Member, Technical Member (Centre) and Technical Member (State) shall be appointed or re-appointed by the Government on the recommendations of a Search-cum-Selection Committee constituted under sub-section(4);

Provided that in the event of the occurrence of any vacancy in the office of the President by reason of his death, resignation or otherwise, the Judicial Member or, in his absence, the senior-most Technical Member of the Principal Bench shall act as the President until the date on which a new President, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office:

Provided further that where the President is unable to discharge his functions owing to absence, illness or any other cause, the Judicial Member or, in his absence, the senior-most Technical Member of the Principal Bench, shall discharge the functions of the President until the date on which the President resumes his duties.

(3) While making selection for Technical Member (State) of a State Bench, first preference shall be given to offices who have worked in the State Government of the State to which the jurisdiction of the Bench extends.

(4) (a) The Search-cum-Selection Committee for Technical Member (State) of a State Bench shall consist of the following members namely:—

- (i) the Chief Justice of the High Court in whose jurisdiction the State Bench is located, to be the Chairperson of the Committee;
- (ii) the senior-most Judicial Member in the State, and where no Judicial Member is available, a retired Judge of the High Court in whose jurisdiction the State Bench is located, as may be nominated by the Chief Justice of such High Court;
- (iii) Chief Secretary of the State in which the State Bench is located;
- (iv) one Additional Chief Secretary or Principal Secretary or Secretary of the State in which the State Bench is located, as may be the nominated by such State Government, not in-charge of the Department responsible for administration of State tax; and
- (v) Additional Chief Secretary or Principal Secretary or Secretary of the Department responsible for administration of State tax, of the State in which the State Bench is located- Member Secretary; and

(b) the Search-cum-Selection Committee for all other cases shall consist of the following members, namely—

- (i) the Chief Justice of India or a Judge of Supreme Court nominated by him, to be the Chairperson of the Committee;
- (ii) Secretary of the Central Government nominated by the Cabinet Secretary-Member;
- (iii) Chief Secretary of a State to be nominated by the Council-Member;
- (iv) one Member, who—
 1. in case of appointment of a President of a Tribunal, shall be the outgoing President of the Tribunal; or
 2. in case of appointment of a Member of a Tribunal, shall be the sitting President of the Tribunal; or
 3. in case of the President of the Tribunal seeking re-appointment or where the outgoing President is unavailable or the removal of the President is being considered, shall be a retired Judge of the Supreme Court or a retired Chief Justice of a High Court nominated by the Chief Justice of India; and
- (v) Secretary of the Department of Revenue in the Ministry of Finance of the Central Government – Member Secretary.

(5) The Chairperson shall have the casting vote and the Member Secretary shall not have a vote.

(6) Notwithstanding anything contained in any judgment, order, or decree of any court or any law for the time being in force, the Committee shall recommend a panel of two names for appointment or re-appointment to the post of the President or a Member, as the case may be.

(7) No appointment or re-appointment of the Members of the Appellate Tribunal shall be invalid merely by reason of any vacancy or defect in the constitution of the Search-cum-Selection Committee.

(8) Notwithstanding anything contained in any judgment, order, or decree of any court or any law for the time being in force, the salary of the president and the Members of the Appellate Tribunal shall be such as may be prescribed and their allowances and other terms and conditions of service shall be the same as applicable to Central Government officers carrying the same pay:

Provided that neither the salary and allowances nor other terms and conditions of service of the President of Members of the Appellate Tribunal shall be varied to their disadvantage after their appointment:

Provided further that, if the President or Member takes a house on rent, he may be reimbursed a house rent higher than the house rent allowances as are admissible to a Central Government officer holding the post carrying the same pay, subject to such limitations and conditions as may be prescribed.

(9) Notwithstanding anything contained in any judgment, order, or decree of any court or any law for the time being in force, the President of the Appellate Tribunal shall hold office for a term of four years from the date on which he enters upon his office, or until he attains the age of seventy years, whichever is earlier and shall be eligible for re-appointment for a period not exceeding two years subject to the age-limit specified above”.

(10) Notwithstanding anything contained in any judgment, order, or decree of any court or any law for the time being in force, the Judicial Member, Technical Member (Centre) or Technical Member (State) of the Appellate Tribunal shall hold office for a term of four years from the date on which he enters upon his office, or until he attains the age of sixty-seven years, whichever is earlier and shall be eligible for re-appointment for a period not exceeding two years subject to the age limit specified above.”

(11) The President or any Member may, by notice in writing under his hand addressed to the Government, resign from his office:

Provided that the President or Member shall continue to hold office until the expiry of three months from the date of receipt of such notice by the Government or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

The eligibility requirements to become Judicial Member, Technical Member (Centre) and Technical Member (State) who hold a term of four years in office or

work till they attain the age of 67 years whichever is earlier, is tabulated here under:

| To become | Persons eligible | |
|--|---|---|
| Judicial Member who has been a/an | Judge of the High Court or | District judge/Additional District judge with combined period of ten years of service |
| Technical Member (Centre) who is or has been | an officer of Indian Revenue Service (Customs and Indirect Taxes) with 25 years of service as Group A officer or | an All India Service officer with 25 years of service as Group A officer with at least three years of experience in the administration of Central Excise/Service Tax/GST laws. |
| Technical Member (State) who is or has been | any State Government officer of the rank of Additional Commissioner in VAT/GST and above with 25 years of service as Group A officer or equivalent, with at least three years of experience in the administration of VAT/GST/ finance and taxation laws or | an All India Service officer with 25 years of service as Group A officer or equivalent, with at least three years of experience in the administration of VAT/GST/finance and taxation laws. |

Further, an Advocate with a minimum of 10 years of practice on indirect tax matters in CESTAT/State VAT Tribunal/High Court/Supreme Court is made eligible for appointment as Judicial Member as per the amendment carried out to the new Section 110 of CGST Act, 2017 through the CGST (Second Amendment) Act, 2023. The said amendment Act also increased the age limit for the retirement of the President to 70 years and Members to 67 years, apart from prescribing minimum age limit as fifty years to be considered for the post of the President and the Member.

(12) The Government may, on the recommendations of the Search-cum-Selection Committee, remove from the office such president or a Member who—

- (a) has been adjudged of an insolvent, or
- (b) has been convicted of an offence which involves moral turpitude; or
- (c) has become physically or mentally incapable of acting as such President or Member; or
- (d) has acquired such financial or other interest as is likely to affect prejudicially his functions as such President or Member; or
- (e) has so abused his position as to render his continuance in office prejudicial to the public interest:

Provided that the President or the Member shall not be removed on any of the grounds specified in clauses (d) and (e) unless he has been informed of the charges against him and has been given an opportunity of being heard.

(13) The Government, on the recommendations of the Search-cum-Selection Committee, may suspend from office, the President or a Judicial or Technical Member in respect of whom proceedings for removal have been initiated under sub-section (12)

(14) Subject to the provisions of article 220 of the Constitution, the President or other Members, on ceasing to hold their office, shall not be eligible to appear, act or plead before the Principal Bench or the State Bench in which he was the President or, as the case may be a Member.”

(12) The Government, in consultation with the President may, for the administrative convenience, transfer—

(a) any Judicial Member or a Member Technical (State) from one Bench to another Bench, whether National or Regional; or

(b) any Member Technical (Centre) from one Bench to another Bench, whether National, Regional, State or Area.

(13) The State Government, in consultation with the State President may, for the administrative convenience, transfer a Judicial Member or a Member Technical (State) from one Bench to another Bench within the State.

(14) No act or proceedings of the Appellate Tribunal shall be questioned or shall be invalid merely on the ground of the existence of any vacancy or defect in the constitution of the Appellate Tribunal.

13. Appeals to the Appellate Tribunal

Section 112 of the CGST Act, 2017 deals with the provision of Appeals to the Appellate Tribunal as under:

➤ Appeal to be filed within 3 months

(1) Any person aggrieved by an order passed by the Appellate authority against him under Section 107 or Section 108 of the CGST Act, 2017 or the SGST Act, or the UTGST Act, may appeal to the Appellate Tribunal against such order within 3 months from the date on which the order is communicated to the person preferring the appeal.

➤ Appellate Tribunal refused to admit appeal if tax involvement less than ₹50,000/-

(2) The discretionary power has been conferred to the Appellate Tribunal to refuse to admit any such appeal, if the involvement of input tax credit, amount of fine, fee or penalty does not exceed fifty thousand rupees.

➤ Department's Appeal to be filed within 6 months

(3) In case of departmental appeal the Commissioner may, on his own motion, or upon request from the Commissioner of or State tax or Commissioner of Union territory tax, call for and examine the record of any order passed by the Appellate Authority or the Revisionary Authority for the purposes of satisfying himself as to the legality or proprietary of the said order and may, by order, direct any officer subordinate to him to apply to the Appellate Tribunal within six months from the date on which the said order has been passed.

(4) The officer with authorisation to apply to the Appellate Tribunal against such order. The appeal filed by the authorised officer to the Appellate Tribunal shall be considered as application filed under sub-section (1) of Section 108 of the CGST Act.

➤ **Memorandum of cross-objection to be filed within 45 days**

(5) On receipt of notice, respondent party against whom the application has been preferred may, file a memorandum of cross-objections to the Appellate Tribunal, within forty-five days of the receipt of the notice.

➤ **If Appellate Tribunal satisfied may admit cross-objection after expiry of 45 days**

(6) The Appellate Tribunal may admit an appeal after expiry of three months or expiry of 45 days for filing of a memorandum of cross-objections, if it is satisfied that there was sufficient reason for non-filing in the stipulated period.

➤ **No fees for the department's appeal**

(7) An appeal to the Appellate Tribunal shall be in the prescribed form and shall be the accompanied by a requisite fee. No such fee shall be payable in the case of the appeal filed by the department.

(8) No appeal shall be admitted before the Appellate Tribunal unless has paid—

(a) in full, such part of the amount of tax, interest, fine and penalty arising from the impugned order, as is admitted by him, and

➤ **No appeal to be filed without payment of 20% of pre-deposits**

(b) a sum equal to twenty per cent of the remaining amount of tax in dispute, in addition to the amount paid under sub-section (6) of Section 107, arising from the said order, in relation to which the appeal has been filed.

➤ **Maximum of ₹50 crores for pre-deposit**

The maximum amount to be deposited to the appeal from the appellate authority to appellate tribunal is 20% of the disputed tax amount along with the amount deposited under Section 107(6) subject to maximum of ₹50 Crores.

Amendment Act, 2018 (An amount pre-deposit payable for filing of appeal under the CGST Act, 2017 before the Appellate Authority and the Appellate Tribunal to be accepted at ₹25 Crore and ₹50 Crore respectively)

➤ **Recovery proceeding of balance amount will be stayed if Appellant comply pre-deposits.**

(9) where the appellant has paid the amount as per sub-section (8), the recovery proceedings for the balance amount shall be deemed to be stayed till the disposal of this appeal.

(10) Every application made before the Appellate Tribunal,—

(a) in an appeal for rectification of mistake or for any other purpose; or

(b) for restoration of an appeal or an application, shall be accompanied by a prescribed fee:

shall be accompanied such fees as may be prescribed.

14. Orders of Appellate Tribunal

Section 113 of the CGST Act, 2017 has prescribed the procedure for disposal of the Appellate Tribunal orders as under:

➤ **Appellate Tribunal passes order after giving an opportunity of hearing to the Appellant.**

(1) The Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the decision or order appealed against or may refer the case back to the Appellate Authority or the Revisionary Authority or to the original adjudicating authority, with such directions as it may think fit, for a fresh adjudication or decision after taking additional evidence, if necessary.

➤ **Adjournment of hearing only 3 occasions.**

(2) The Appellate Tribunal may, if sufficient cause is shown, at any stage of hearing of an appeal, grant time, from time to time, to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.

➤ **Appellate Tribunal may amend Order if any error apparent on the face of record:**

(3) The Appellate Tribunal may amend any order passed by it under sub-section (1) so as to rectify any error apparent on the face of the record, if such error is noticed by it on its own accord, or is brought to its notice by the Commissioner or the Commissioner of State tax or the Commissioner of the Union territory tax or the other party to the appeal within a period of three months from the date of the order:

Provided the Appellate Tribunal should allowed the party to heard in person before bring any amendment of order either reduce a refund or input tax credit or enhance tax liability of the party.

➤ **Appellate Tribunal shall decide appeal within one year.**

(4) The Appellate Tribunal shall, as far as possible, hear and decide every appeal within a period of one year from the date on which it is filed.

(5) The Appellate Tribunal shall send a copy of every order passed under this section to the Appellate Authority, or the Revisional Authority, or the original adjudicating authority, as the case may be, the appellant, the jurisdictional Commissioner or the Commissioner of State Tax or the Commissioner of Union Territory Tax.

(6) Every order passed by the Appellate Tribunal shall be final and binding on the parties and appealed can be filed against the said order under Section 117 & 118 of the CGST Act, 2017.

As per decision of 28th meeting of the GST Council, Amount of pre-deposit payable for filing of appeal before the Appellate Tribunal to be capped at ₹25 crores and ₹50 crores respectively.

15. Pension, Provident Fund and Gratuity

Pension, Provident Fund and gratuity shall not be admissible for the service rendered in the Tribunal.

15.1 Financial and Administrative powers of President

Section 114 of CGST Act, 2017 prescribed that the President shall exercise such financial and administrative powers over the Appellate Tribunal as may be prescribed.

16. Rules and procedures of Appellate Tribunal

16.1 Rule 110 of CGST Rules

(1) An appeal to the Appellate Tribunal under sub-section (1) of section 112 shall be filed along with the relevant documents either electronically or otherwise as may be notified by the Registrar, in **FORM GST APL-05**, on the common portal and a provisional acknowledgement shall be issued to the appellant immediately.

(2) A memorandum of cross-objections to the Appellate Tribunal under sub-section (5) of section 112 shall be filed either electronically or otherwise as may be notified by the Registrar, in **FORM GST APL-06**.

(3) The appeal and the memorandum of cross objections shall be signed in the manner specified in rule 26.

(4) A certified copy of the decision or order appealed against along with fees as specified in sub-rule (5) shall be submitted to the Registrar within seven days of the filing of the appeal under sub-rule (1) and a final acknowledgement, indicating the appeal number shall be issued thereafter in **FORM GST APL-02** by the Registrar:

(5) The fees for filing of appeal or restoration of appeal shall be one thousand rupees for every one lakh rupees of tax or input tax credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty determined in the order appealed against, subject to a maximum of twenty-five thousand rupees.

(6) There shall be no fee for application made before the Appellate Tribunal for rectification of errors referred to in sub-section (10) of section 112.

16.2 Application to the Appellate Tribunal - Rule 111 of CGST Rules

(1) An application to the Appellate Tribunal under sub-section (3) of section 112 shall be made electronically or otherwise, in **FORM GST APL-07**, along with the relevant documents on the common portal.

(2) A certified copy of the decision or order appealed against shall be submitted within seven days of filing the application under sub-rule (1) and an appeal number shall be generated by the Registrar.

16.3 Production of additional evidence before the Appellate Authority or the Appellate Tribunal - Rule 112 of CGST Rules

(1) The appellant shall not be allowed to produce before the Appellate Authority or the Appellate Tribunal any evidence, whether oral or documentary, other than the evidence produced by him during the course of the proceedings

before the adjudicating authority or, as the case may be, the Appellate Authority except in the following circumstances, namely:—

- (a) where the adjudicating authority or, as the case may be, the Appellate Authority has refused to admit evidence which ought to have been admitted; or
 - (b) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the adjudicating authority or, as the case may be, the Appellate Authority; or
 - (c) where the appellant was prevented by sufficient cause from producing before the adjudicating authority or, as the case may be, the Appellate Authority any evidence which is relevant to any ground of appeal; or
 - (d) where the adjudicating authority or, as the case may be, the Appellate Authority has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.
- (2) No evidence shall be admitted under sub-rule (1) unless the Appellate Authority or the Appellate Tribunal records in writing the reasons for its admission.

(3) The Appellate Authority or the Appellate Tribunal shall not take any evidence produced under sub-rule (1) unless the adjudicating authority or an officer authorised in this behalf by the said authority has been allowed a reasonable opportunity—

- (a) to examine the evidence or document or to cross-examine any witness produced by the appellant; or
- (b) to produce any evidence or any witness in rebuttal of the evidence produced by the appellant under sub-rule (1).

(4) Nothing contained in this rule shall affect the power of the Appellate Authority or the Appellate Tribunal to direct the production of any document, or the examination of any witness, to enable it to dispose of the appeal.

16.4 Order of Appellate Authority or Appellate Tribunal - Rule 113 of CGST Rules

(1) The Appellate Authority shall, along with its order under sub-section (11) of section 107, issue a summary of the order in **FORM GST APL-4** clearly indicating the final amount of demand confirmed.

(2) The jurisdictional officer shall issue a statement in **FORM GST APL-04** clearly indicating the final amount of demand confirmed by the Appellate Tribunal.

16.5 Penalty to be deposited before filing an Appeal to Appellate Authority for the detention of Goods/Conveyance

(Clause 116 of Finance Act, 2021 - Effective Date: January 01, 2022)

- Section 107 of the CGST Act provides provision relating to filing of an appeal before the Appellate Authority against the order of the Adjudicating Authority. A person may also file an appeal if the goods or

the conveyance has been detained by the Proper Officer and he has issued an order under Section 129(3) of the CGST Act

- The Finance Act, 2021 has provided that the appeal may be filed by a taxable person against the order of detention of goods or conveyance by a proper officer only if the person has deposited 25% of penalty amount as mentioned under an order issued in Section 129 (3) of the CGST Act.

(Notified *vide* Notification No. 39/2021-Central Tax, dated 21.12.2021)

CBIC issued clarification in respect of Appeal to Appellate Tribunal-Limitation

In case any issue which has been decided against the registered person by the adjudicating authority or refund application has been rejected by the appropriate authority and appeal against the said order is pending before the appellate authority. But the appellate process is being kept pending by several appellate authorities on the grounds that the appellate tribunal has not been constituted and that till such time no remedy is available against their Order-in-Appeal, such appeals cannot be disposed of.

However, on the recommendations of the GST Council, the Government issued the **Central Goods and Services Tax (Ninth Removal of Difficulties) Order, 2019** *vide* Order No. 09/2019-Central Tax, dated December 3, 2019. It was provided through the said Order that the appeal to tribunal can be made within three months (six months in case of appeals by the Government) from the date of communication of order or date on which the President of the State President, as the case may be, of the Appellate Tribunal enters office, whichever is later.

CBIC *vide Circular No. 132/2/2020-GST, dated March 18, 2020*, has clarified that the prescribed time limit to make an application to the appellate tribunal will be counted from the date on which President or the State President enters the office.

16.6 Goods and Services Tax Appellate Tribunal (Appointment and Conditions of Service of President and Members) Rules, 2023

The Ministry of Finance has issued notification to notify Goods and Services Tax Appellate Tribunal (Appointment and Conditions of Service of President and Members) Rules, 2023. These rules shall apply to the President, Judicial Member, Technical Member (Centre) and Technical Member (State) of the Principal Bench and State Bench of Goods and Services Tax Appellate Tribunal.

CHAPTER I

PRELIMINARY

1. Short title, commencement and application.—(1) These rules may be called the Goods and Services Tax Appellate Tribunal (Appointment and Conditions of Service of President and Members) Rules, 2023.

(2) They shall come into force on the date of their publication in the Official Gazette.

(3) These rules shall apply to the President, Judicial Member, Technical Member (Centre) and Technical Member (State) of the Principal Bench and State Bench of Goods and Services Tax Appellate Tribunal.

- 2. Definitions.**—(1) In these rules, unless the context otherwise requires,—
- (a) “Act” means the Central Goods and Services Tax Act, 2017 (12 of 2017);
 - (b) “Committee” means the Search-cum-Selection Committee constituted under clause (a) or clause (b) of sub-section (4) of section 110 of the Act;
 - (c) “Form” means a Form appended to these rules;
 - (d) “Member” means a Technical Member (Centre) or Technical Member (State) or Judicial Member of the Goods and Services Tax Appellate Tribunal;
 - (e) “section” means a section of the Act;
 - (f) “Tribunal” means Goods and Services Tax Appellate Tribunal constituted under section 109 of the Act.

(2) Words and expressions used herein and not defined but defined in the Act shall have the same meaning as respectively assigned to them in the Act.

CHAPTER II

APPOINTMENT OF PRESIDENT AND MEMBER

3. Selection for posts of President and Members.—(1) The Committee may cause a vacancy circular to be issued through the Member-Secretary, giving details of the posts of Members proposed to be filled up, including the following—

- (a) number of existing and anticipated vacancies;
- (b) qualifications;
- (c) salary and allowances;
- (d) format for application; and
- (e) last date for filing of applications,

in Form-I after making such modifications as may be deemed fit by the Committee.

(2) The Committee shall scrutinise, or cause to be scrutinised, every application received in response to the circular, against the qualifications and may shortlist such number of eligible candidates for personal interaction as it may deem fit.

(3) For the post of President, the Committee may, either cause a vacancy circular to be issued and call for applications or search for suitable persons eligible for appointment and make an assessment for selection to the post of President.

(4) The Committee shall make its recommendations based on the overall assessment of eligible candidates including assessment through the personal interaction after taking into account the suitability, record of past performance, integrity as well as adjudicating and experience keeping in view the requirements

of the Tribunal and shall recommend a panel of two names for every post for which selection is being done in accordance with the provisions of sub-section (6) of section 110 of the Act.

4. Selection for re-appointment.—(1) An application for re-appointment shall be considered in the same manner as that for the original appointment, along with the applications of all other persons in response to the vacancy circular.

(2) While making its assessment for suitability to a post, the Committee shall give additional weightage to persons seeking re-appointment on the basis of their experience in the Tribunal and while doing so, shall take into account, the performance of the person while working as a President or Member in the Tribunal.

5. Medical fitness of President and Members.—(1) No person shall be appointed as President, Judicial Member or Technical Member (Centre) of the Principal Bench or the State Bench of the Tribunal or as Technical Member (State) of the Principal Bench unless he is declared medically fit by an authority specified by the Central Government in this behalf.

(2) No person shall be appointed as Technical Member (State) of the State Bench of the Tribunal unless he is declared medically fit by an authority specified in this behalf by the State in which the said State Bench is located.

6. Retirement from parent service on appointment as President or Member.—Where, the person appointed as President or Member is a serving Judge of the Supreme Court or a High Court or a serving Member of an organised Service, he shall either resign or obtain voluntary retirement before joining the Tribunal.

CHAPTER III

REMOVAL OF PRESIDENT OR MEMBER

7. Procedure for inquiry into complaints.—(1) Where a written complaint alleging any definite charge of the nature referred to in sub-section (12) of section 110 of the Act in respect of President or Member is received by the Central Government, it shall make a preliminary scrutiny of such complaint.

(2) Where, on preliminary scrutiny, the Central Government is of the opinion that there are reasonable grounds for making an inquiry into the truth of any allegation referred to in sub-rule (1), it shall make a reference to the concerned Committee.

(3) The said Committee shall conduct an inquiry or cause an inquiry to be conducted by a person who is, or has been, a -

- (a) Judge of Supreme Court or Chief Justice of a High Court, where the inquiry is against the President; or
- (b) Judge of a High Court, where the inquiry is against a Member.

(4) The inquiry shall be completed within such time or such further time as may be specified by the Central Government preferably within six months.

(5) After the conclusion of the inquiry, the Committee shall submit its report to the Central Government stating therein its findings and the reasons thereof on each of the charges separately with such observations on the whole case as it may think fit.

(6) The Committee shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908) but shall be guided by the principles of natural justice and shall have power to regulate its own procedure, including the fixing of date, place and time of its inquiry.

CHAPTER IV

SALARY AND ALLOWANCES

8. Salary.—(1) The President of the Tribunal shall, be paid a salary of rupees two lakh fifty thousand (fixed) per month.

(2) The Member shall be paid a salary of rupees two lakh twenty-five thousand per month.

(3) In case, a person appointed as the President, or Member, is in receipt of any pension, the pay of such person shall be reduced by the gross amount of pension drawn by him.

9. Allowances.—(1) The President and Member shall be entitled to draw allowances and benefits as are admissible to a Government of India officer holding Group 'A' post carrying the same pay.

(2) Notwithstanding anything contained in sub-rule (1), the President or Members shall have option to avail of accommodation to be provided by the Central Government as per the rules for the time being in force or shall be eligible for reimbursement of house rent subject to a limit of—

- (a) rupees one lakh fifty thousand per month in case of President of the Tribunal; and
- (b) rupees one lakh twenty-five thousand per month in case of Members of the Tribunal.

10. Transport allowance.—The President, or a Member shall be entitled to the facility of staff car for journeys for official and private purposes at the same terms and conditions as applicable to a Government of India officer holding Group 'A' post carrying the same pay.

CHAPTER V

PENSION, PROVIDENT FUND, GRATUITY AND LEAVE

11. Pension, Provident Fund and Gratuity.—Pension, Provident Fund and gratuity shall not be admissible for the service rendered in the Tribunal.

12. Leave.—(1) The President or Member shall be entitled to thirty days of earned leave for every year of service.

(2) Casual Leave not exceeding eight days may be granted to the President and a Member in a calendar year.

(3) The payment of leave salary during leave shall be governed by rule 40 of the Central Civil Services (Leave) Rules, 1972.

(4) The President or Member shall be entitled to encashment of leave in respect of the earned Leave standing to his credit, subject to the condition that maximum leave encashment, including the amount received at the time of retirement from previous service shall not in any case exceed the prescribed limit under the Central Civil Service (Leave) Rules, 1972.

(5) Leave sanctioning authority for-

- (a) Member, shall be the President;
- (b) President or Member in case of absence of President, shall be the Central Government.

(6) The Central Government shall be the sanctioning authority for foreign travel to the President and Members.

CHAPTER VI

POWERS OF PRESIDENT AND VICE PRESIDENT

13. Powers of President.—The President shall exercise the powers of Head of the Department for the purpose of:-

- (a) Delegation of Financial Power Rules, 1978;
- (b) General Financial Rules, 2017;
- (c) Fundamental Rules and Supplementary Rules; and
- (d) Central Civil Services (Classification, Control and Appeal) Rules, 1965

14. Powers of Vice-President.—The Vice-President shall exercise the powers of the President provided under section 114 of the Act for the relevant State Benches for the purpose of:-

- (a) allocation of appeals amongst members within a bench under his jurisdiction;
- (b) deciding the appeals to be heard by Single Member as per provisions of the Act;
- (c) transfer of appeals amongst the State Benches within his jurisdiction;
- (d) refer cases under clause (a) of sub-section (9) of section 109 of the Act to a Member in a State Bench within his jurisdiction;
- (e) such other administrative and financial powers as may be assigned by the President by a general or special order.

CHAPTER VII

MISCELLANEOUS

15. Declaration of Financial and other Interests.—The President or the Member shall, before entering upon his office, declare his assets, and his liabilities and financial and other interests.

16. Other conditions of service.—(1) The terms and conditions of service of a President or Member with respect to which no express provision has been made in these rules, shall be such as are admissible to a Government of India officer holding Group 'A' post carrying the same pay.

(2) The President, or Member shall not undertake any arbitration assignment while functioning in these capacities in the Tribunal.

(3) The President, or Member of the Tribunal, shall not, for a period of two years from the date on which they cease to hold office, accept any employment in, or connected with the management or administration of, any person who has been a party to a proceeding before the Tribunal:

Provided that nothing contained in this rule shall apply to any employment under the Central Government or a State Government or a local authority or in any statutory authority or any corporation established by or under any Central, State or Provincial Act or a Government company as defined in clause (45) of section 2 of the Companies Act, 2013 (18 of 2013).

17. Oath of office and secrecy.—Every person appointed to be the President, or Member shall, before entering upon his office, make and subscribe an oath of office and secrecy in Form II and Form III annexed to these rules.

18. Power to relax.—Where the Central Government is of the opinion that it is necessary or expedient so to do, it may, on the recommendations of the Council, by order and for reasons to be recorded in writing, relax any of the provisions of these rules with respect to any class or category of persons.

19. Interpretation.—If any question arises relating to the interpretation of these rules, the decision of the Central Government thereon, on the recommendations of the Council, shall be final.

17. CBIC Circular on Limitation of filing Appeal

C.B.I & C. Circular No. 132/2/2020-GST, dated 18-3-2020.

Clarification in respect of appeal in regard to non-constitution of Appellate Tribunal:

Various representations have been received wherein the issue has been decided against the registered person by the adjudicating authority or refund application has been rejected by the appropriate authority and appeal against the said order is pending before the appellate authority. It has been gathered that the appellate process is being kept pending by several appellate authorities on the grounds that the appellate tribunal has been not constituted and that till such time no remedy is available against their Order-in-Appeal, such appeals cannot be disposed. Doubts have been raised across the field formations in respect of the appropriate procedure to be followed in absence of appellate tribunal for appeal to be made under section 112 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the “CGST Act”).

2. The matter has been examined in detail. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of the law across field formations, the Board, in exercise of its powers conferred by section 168(1) of the CGST Act, hereby issues the following clarifications and guidelines.

3.1 Appeal against an adjudicating authority is to be made as per the provisions of Section 107 of the CGST Act. The sub-section (1) of the section reads as follows:—

“107. (1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory

Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person.”

3.2 Relevant rules have been prescribed for implementation of the above Section. The relevant rule for the same is rule 109A of Central Goods and Services Tax Rules, 2017 which reads as follows:

“*109A. Appointment of Appellate Authority.*—(1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act may appeal to — (a) the Commissioner (Appeals) where such decision or order is passed by the Additional or Joint Commissioner; (b) any officer not below the rank of Joint Commissioner (Appeals) where such decision or order is passed by the Deputy or Assistant Commissioner or Superintendent, within three months from the date on which the said decision or order is communicated to such person.”

3.3 Hence, if the order has been passed by Deputy or Assistant Commissioner or Superintendent, appeal has to be made to the appellate authority appointed who would not be an officer below the rank of Joint Commissioner. Further, if the order has been passed by Additional or Joint Commissioner, appeal has to be made to the Commissioner (Appeal) appointed for the same.

4.1 The appeal against the order passed by appellate authority under Section 107 of the CGST Act lies with appellate tribunal. Relevant provisions for the same is mentioned in the Section 112 of the CGST Act which reads as follows:—

“*112 (1) Any person aggrieved by an order passed against him under section 107 or section 108 of this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act may appeal to the Appellate Tribunal against such order within three months from the date on which the order sought to be appealed against is communicated to the person preferring the appeal.*”

4.2 The appellate tribunal has not been constituted in view of the order by Madras High Court in case of Revenue Bar Assn. v. Union of India and therefore the appeal cannot be filed within three months from the date on which the order sought to be appealed against is communicated. In order to remove difficulty arising in giving effect to the above provision of the Act, the Government, on the recommendations of the Council, has issued the Central Goods and Services Tax (Ninth Removal of Difficulties) Order, 2019, dated 03.12.2019. It has been provided through the said Order that the appeal to tribunal can be made within three months (six months in case of appeals by the Government) from the date of communication of order or date on which the President or the State President, as the case may be, of the Appellate Tribunal enters office, whichever is later.

4.3 Hence, as of now, the prescribed time limit to make application to appellate tribunal will be counted from the date on which President or the State President enters office. The appellate authority while passing order may mention

in the preamble that appeal may be made to the appellate tribunal whenever it is constituted within three months from the President or the State President enters office. Accordingly, it is advised that the appellate authorities may dispose all pending appeals expeditiously without waiting for the constitution of the appellate tribunal.

18. Appeal to High Court

Section 117 of the CGST Act, 2017 deals with the provision of appeal to High Court, any person aggrieved by any order passed by the State Benches of the Appellate Tribunal may file an appeal to the High Court and the High Court may admit such appeal, if it is satisfied that the case involves a substantial question of law.

➤ **Appeal to High Court within 180 days of receipt of Order**

An appeal shall be filed within a period of one hundred and eighty days from the date on which the order appealed against is received by the aggrieved person and it shall be in such form, verified in such manner as may be prescribed:

Provided that the High Court may entertain an appeal after the expiry of the said period if it is satisfied that there was sufficient cause for not filing it within such period.

Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question and the appeal shall be heard only on the question so formulated, and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.

The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.

The High Court may determine any issue which—

- (a) has not been determined by the State Benches; or
- (b) has been wrongly determined by the State Bench or Area Benches, by reason of a decision on such question of law as herein referred to in sub-section (3).

➤ **Heard by a Bench of two judges of the High Court**

Where an appeal has been filed before the High Court, it shall be heard by a Bench of not less than two Judges of the High Court, and shall be decided in accordance with the opinion of such Judges or of the majority, if any, of such Judges.

- **In case of difference of opinion case should be heard by the other judges and opinion of the majority of judges shall be accepted.**

Where there is no such majority, the Judges shall state the point of law upon which they differ and the case shall, then, be heard upon that point only, by one or more of the other Judges of the High Court and such point shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it.

Where the High Court delivers a judgment in an appeal filed before it under this section, effect shall be given to such judgment by either side on the basis of a certified copy of the judgment.

Save as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908, relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this section.

18.1 Appeal to the High Court - Rule 114 of CGST Rules

(1) An appeal to the High Court under sub-section (1) of section 117 shall be filed in **FORM GST APL-08**.

(2) The grounds of appeal and the form of verification as contained in **FORM GST APL-08** shall be signed in the manner specified in rule 26.

18.2 Demand confirmed by the Court - Rule 115 of CGST Rules

The jurisdictional officer shall issue a statement in **FORM GST APL-04** clearly indicating the final amount of demand confirmed by the High Court or, as the case may be, the Supreme Court.

18.3 Case Law maintainability of writ petition before the High Court

Article 226 of the Constitution of India empowers High Courts to issue direction to any person or authority, within those jurisdictions for the enforcement of any of the rights conferred by part III of constitution and any other purpose. The phrase 'any other purpose' empowers High Courts to issue direction also in other judicial cases. The power of judicial review can be rightly exercised by High Courts under Article 226. In this regard Article 226 has been conferred wider scope than Article 32 of the constitution of India. This is basic structure of the constitution and settled principle.

Except for a period when Article 226 was amended by the Constitution (42nd Amendment) Act, 1976, the power relating to alternative remedy has been considered to be a rule of self imposed limitation. It is essentially a rule of policy, convenience and discretion and never a rule of law. Despite the existence of an alternative remedy it is within the jurisdiction of discretion of the High Courts to grant relief under Article 226 of the Constitution. Normally, the High Courts should not interfere if there is an adequate efficacious alternative remedy. If somebody approaches the High Court without availing alternative remedy provided the High Court should ensure that he has made out strong case or that there exist good grounds to invoke the extraordinary jurisdiction.

18.4 Article 226 of the Constitution confers on all the High Court's a very wide power in the matter of issuing writs

Constitutional Benches in the case of *K. S. Rashid and Sons v Income Tax Investigation Commission and Ors.* AIR (1954) SC 207; *Sangram Singh v Election Tribunal, Kotah and Ors.* AIR (1955) SC 425; *Union of India v T.R. Varma* AIR (1957) SC 882; *State of U.P. and Ors v Mohammad Nooh* AIR (1958) SC 86 and *M/s. K. S. Venkataraman and Co. (P) Ltd. v State of Madras* AIR (1966) SC 1089, held that Article 226 of the Constitution confers on all the High Courts a very wide power in the matter of issuing writs. However, the remedy of writ is an absolutely discretionary remedy and the High Court has always the discretion to refuse to grant any writ if it is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere. The court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of principles of natural justice or procedure required for decision has not been adopted.

Thus, it can be said that despite an alternative remedy, the writ petition can be entertained in appropriate cases where there is violation of principles of natural justice, or procedure required for decision has not been adopted or there is an allegation of infringement of fundamental rights or where the orders or proceedings are wholly without jurisdiction or the virus of an Act is challenged.

18.5 Article 226 is not meant to short circuit or circumvent statutory provisions

The Apex Court decision in the case of *Assistant Collector of Central Excise v Dunlop India Ltd and Ors.* [1985 (19) E.L.T. 22 (SC)], held that Article 226 is not meant to short circuit or circumvent statutory provisions and the High Court must entertain the writ petition only when statutory remedies are entirely ill-suited to meet the demands of extraordinary situations and where interference is necessary to prevent public injury and vindication of public justice.

18.6 The question of re-opening the case does not arise

The Hon'ble High Court of Madras in the case of *M/s. Kamachi Steels Ltd. v Commissioner of Central Excise, Chennai*, reported in 2015 (317) E.L.T. 444 (Mad.), while admitting an writ petition held that after the case has already been settled by the Settlement Commission, the question of re-opening the same does not arise, unless and until it is established that fraud has been committed.

18.7 If impugned order has been passed on account of sheer non-application of mind remanded for fresh hearing

The High Court of Madras in an another case of *M/s. Sujhan Instruments v Joint Commissioner of Central Excise, Chennai*, reported in 2015 (317) E.L.T. 446 (Mad), while admitting an writ petition held that impugned order has been passed on account of sheer non-application of mind and based on irrelevant consideration, without reference to the orders passed by the superior authorities and impugned order is vitiated with an error apparent on the face of record. Thus, matter is remanded for fresh hearing.

18.8 Thus, there is no absolute bar in entertaining a writ petition under Article 226 of Constitution of India despite existence of an alternative efficacious

remedy. Moreover, when there has been a manifest injustice on the face of the record – on facts, writ petition entertained as strong *prima facie* case made out by the party. Hence, if any action initiated against the party without proper justification then the party can challenge the allegation in the appropriate Court of Law under Article 226 and Article 32 of the Constitution of India.

19. Appeal to Supreme Court

Section 118 of the CGST Act, 2017 provides the provision of appeal to Supreme Court; an appeal shall lie to the Supreme Court-

- (a) from any order passed by the Principal Bench of the Appellate Tribunal; or
- (b) from any judgment or order passed by the High Court in an appeal made under Section 117 in any case which, on its own motion or on an application made by or on behalf of the party aggrieved, immediately after passing of the judgment or order, the High Court certifies to be a fit one for appeal to the Supreme Court.

The provisions of the Code of Civil Procedure, 1908, relating to appeals to the Supreme Court shall, so far as may be, apply in the case of appeals under this section as they apply in the case of appeals from decrees of a High Court.

Where the judgment of the High Court is varied or reversed in the appeal, effect shall be given to the order of the Supreme Court in the manner provided in Section 117 in the case of a judgment of the High Court.

19.1 Sums due to be paid

Section 119 of the CGST Act, 2017 prescribed sums due to be paid, notwithstanding that an appeal has been preferred to the High Court or the Supreme Court, sums due to the Government as a result of an order passed by the Principal Benches of the Appellate Tribunal under sub-section (1) of Section 113 or an order passed by the State Benches of the Appellate Tribunal under sub-section (1) of Section 113 or an order passed by the High Court under Section 117, as the case may be, shall be payable in accordance with the order so passed.

19.2 Appeal not to be filed in certain cases

Section 120 of the CGST Act, 2017 prescribed that the Board may, on the recommendations of the Council, from time to time, issue orders or instructions or directions fixing such monetary limits, as it may deem fit, for the purposes of regulating the filing of appeal or application by the officer of the central tax under the provisions of this Chapter.

Where, in pursuance of the orders or instructions or directions issued under sub-section (1), the officer of the central tax has not filed an appeal or application against any decision or order passed under the provisions of this Act, it shall not preclude such officer of the central tax from filing appeal or application in any other case involving the same or similar issues or questions of law.

Notwithstanding the fact that no appeal or application has been filed by the officer of the central tax pursuant to the orders or instructions or directions issued under sub-section (1), no person, being a party in appeal or application shall

contend that the 5 of 1908 officer of the central tax has acquiesced in the decision on the disputed issue by not filing an appeal or application.

The Appellate Tribunal or court hearing such appeal or application shall have regard to the circumstances under which appeal or application was not filed by the officer of the central tax in pursuance of the orders or instructions or directions issued under sub-section (1).

19.3 Non-appealable decisions and Orders

Section 121 of the CGST Act, 2017 prescribed that, notwithstanding anything to the contrary in any provisions of this Act, no appeal shall lie against any decision taken or order passed by an officer of central tax if such decision taken or order passed relates to any one or more of the following matters, namely:—

- (a) an order of the Commissioner or other authority empowered to direct transfer of proceedings from one officer to another officer; or
- (b) an order pertaining to the seizure or retention of books of account, register and other documents; or
- (c) an order sanctioning prosecution under this Act; or
- (d) an order passed under Section 80.

Chapter 23

Offences and Penalties

Synopsis

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The term offence is an ugly word in the eyes of law. An offence occurs when there is breach of law. So offence is an illegal act and wrong doing by a person. An offence may be against a person, public or the Government and institution. In order to control offences and punish offender a set of penal provisions have been

framed under Civil, Criminal and Tax laws. An offence under GST is a breach of the provisions of GST Act and GST Rules. There are certain penal provision has been incorporated under GST to control offences and to penalize the offender.

The Chapter XIX covering Sections 122 to 138 of the CGST Act, 2017 deals with the provision of offences and penalties.

The term offence has not been defined under GST law, but Section 122 of the CGST Act has specified the various situations, activities and violation of provision of GST by the tax payer is called as offence. There are 21 offences under GST, summarized as follows:

1. Offences on account of Non-Compliances and Violation of GST Law - Section 122 of CGST Act

(1) Where a taxable person fails to comply or violates the provisions of CGST Act and CGST Rules in connection with carry out his/her business commits offence on the following situations:

- (i) supplies of any goods and/or services without issue of any invoice or issue an incorrect or false invoice with regard to any such supply;
- (ii) issues invoice or bill without supply of goods and/or services or both in violation of the provisions of this Act or the rules made thereunder;
- (iii) collects any amount as tax but fails to pay the same to Government beyond a period of three months from the date on which such payment becomes due.
- (iv) collects any tax in contravention of the provisions of the CGST Act, but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;
- (v) fails to deduct the tax in accordance with the provisions of sub-section (1) of Section 51 CGST Act, or deducts an amount which is less than the amount required to be deducted under the said sub-section, or where he fails to pay to the Government under sub-section (2) thereof, the amount deducted as tax.
- (vi) fails to collect tax in accordance with the provisions of sub-section (1) of Section 52 or collects an amount which is less than the amount required to be collected under the said sub-section or where he fails to pay to the Government the amount collected as tax under sub-section (3) of Section 52;
- (vii) takes or utilizes input tax credit without actual receipt of goods or services or both either fully or partially, in contravention of the provisions of this Act or the rules made thereunder;
- (viii) fraudulently obtains refund of tax under this Act;
- (ix) takes or distributes input tax credit in contravention of Section 20, or the rules made thereunder;
- (x) falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information or return with an intention to evade payment of tax due under this Act;

- (xi) is liable to be registered under this Act but fails to obtain registration;
- (xii) furnishes any false information with regard to registration particulars, either at the time of applying for registration, or subsequently;
- (xiii) obstructs or prevents any officer in discharge of his duties under this Act;
- (xiv) transports any taxable goods without the cover of documents as may be specified in this behalf;
- (xv) suppresses his turnover leading to evasion of tax under this Act;
- (xvi) fails to keep, maintain or retain books of account and other documents in accordance with the provisions of the Act or the rules made thereunder;
- (xvii) fails to furnish information or documents called for by an officer in accordance with the provisions of this Act and rules made thereunder or furnishes false information or documents during any proceedings under this Act;
- (xviii) supplies, transports or stores any goods which he has reasons to believe are liable to confiscation under this Act;
- (xix) issues any invoice or documents by using the registration number of another registered person;
- (xx) tampers with, or destroys any material evidence or document;
- (xxi) disposes off or tampers with any goods that have been detained, seized, or attached under this Act,

If a registered person, who involves in the cited activities, with contravention or violation of the CGST Act/CGST rules shall be liable to Pay a penalty or rupees ten thousand or an amount equivalent to the tax evaded, tax not deducted under Section 51 or short deducted, deducted but not paid to the Government or tax not collected under Section 52 or short -collected or collected not paid to the Government or input tax credit availed of or passed on or distributed irregularity, or the refund claimed fraudulently, whichever is higher amount.

➤ **Penalty amount equivalent to the tax evaded or input tax credit availed or passed**

(1A) (Penalty for certain offences): Inserted a new sub-section (1A) so as to make the beneficiary who retains benefit or at whose instance a supply has been made without the issuance of an invoice, or invoice has been issued without supply, or excess ITC has been availed/distributed liable for penalty as that of actual supplier/recipient, shall be liable to a penalty of an amount equivalent to the tax evaded or input tax credit availed of or passed on. *Vide* Notification No. 92/2020-CT, dated 22-12-2020

(1B) Any electronic commerce operator who—

- (i) allows a supply of goods or services or both through it by an unregistered person other than a person exempted from registration by a notification issued under this Act to make such supply;
- (ii) allows an inter-State supply of goods or services or both through it by a person who is not eligible to make such inter-State supply; or

- (iii) fails to furnish the correct details in the statement to be furnished under sub-section (4) of section 52 of any outward supply of goods effected through it by a person exempted from obtaining registration under this Act, shall be liable to pay a penalty of ten thousand rupees, or an amount equivalent to the amount of tax involved had such supply been made by a registered person other than a person paying tax under section 10, whichever is higher.” (vide Section 155 of the Finance Act, 2023)

A new sub-section (1B) in section 122 of the CGST Act so as to provide for penal provisions applicable to Electronic Commerce Operator in case of contravention of provisions relating to supplies of goods or services made through them by unregistered persons or composition taxpayers. This provision effective from 01.10.2023 vide Notification No. 48/2023-CT, dated 29.09.2023.

Finance Bill, 2024 proposes, Penalty for failure to register certain machines used in manufacture of goods as per special procedure

122A. (1) Notwithstanding anything contained in this Act, where any person, who is engaged in the manufacture of goods in respect of which any special procedure relating to registration of machines has been notified under section 148, acts in contravention of the said special procedure, he shall, in addition to any penalty that is paid or is payable by him under Chapter XV or any other provisions of this Chapter, be liable to pay a penalty equal to an amount of one lakh rupees for every machine not so registered.

In addition to the penalty under sub-section (1), every machine not so registered shall be liable for seizure and confiscation: Provided that such machine shall not be confiscated where—(a) the penalty so imposed is paid, and (b) the registration of such machine is made in accordance with the special procedure within three days of the receipt of communication of the order of penalty.

2. Offence Non-payment/wrong availment or utilized of Input Tax Credit

(2) Any registered person who supplies any goods or services or both on which any tax has not been paid or short - paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilised,—

- (a) for any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty of ten thousand rupees or ten per cent of the tax due from such person, whichever is higher;
- (b) for reason of fraud or any wilful-misstatement or suppression of facts to evade tax, shall be liable to a penalty equal to ten thousand rupees or the tax due from such person, whichever is higher.

3. Offences are Liable to Confiscation (Penalty of ₹25,000/-)

(3) Any registered person who fails to comply the following provision shall be liable to pay penalty which may extended to twenty-five thousand rupees,—

- (a) aids or abets any of the offences specified in the above cited provisions;
- (b) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with any goods which he knows or has reason to believe are liable to confiscation under this Act or the rules made thereunder;
- (c) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reason to believe are in contravention of any provisions of this Act or the rules made thereunder;
- (d) fails to appear before the officer of central tax, when issued with a summon for appearance to give evidence or produce a document in an enquiry;
- (e) fails to issue invoice in accordance with the provisions of this Act or the rules made thereunder or fails to account for an invoice in his books of account.

4. Penalty for failure to furnish information return

Section 123 of the CGST Act, specified that if a person who is required to furnish an information return under Section 150 fails to do so within the period specified in the notice issued under sub-section (3) thereof, the proper officer may direct that such person shall be liable to pay a penalty of one hundred rupees for each day of the period during which the failure to furnish such return continues:

➤ **Non-furnishing of return liable to pay a penalty of ₹100/- for each day.**

Provided that the penalty imposed under this section shall not exceed five thousand rupees.

5. Fine for failure to furnish statistics

Section 124 of the CGST Act, specified if any person required to furnish any information or return under Section 151 of the CGST Act—

- (a) without reasonable cause fails to furnish such information or return as may be required under that section, or
- (b) wilfully furnishes or causes to furnish any information or return which he knows to be false,

In view of the above acts, he shall be punishable with a fine which may extend to ten thousand rupees and in case of a continuing offence to a further fine which may extend to **one hundred rupees for each day after the first day during which the offence continues subject to a maximum limit of twenty five thousand rupees.**

6. General Penalty (₹25,000/-)

Section 125 of the CGST Act, specified the provision of General penalty and any person, who contravenes any of the provisions of this Act or any rules, made thereunder for which no penalty is separately provided for this Act, shall be liable to a penalty which may extend to twenty-five thousand rupees.

7. General discipline related to penalty

Section 126 of the CGST Act, specified the provision of general discipline related to penalty as follows:

1. No officer under this Act shall impose any penalty for minor breaches (amount less than five thousand) of tax regulations or procedural requirements and in particular, any omission or mistake in documentation which is easily rectifiable if the same is an error apparent on the face of record and made without fraudulent intent or gross negligence.
2. The penalty imposed under this Act shall depend on the facts and circumstances of each case and shall be commensurate with the degree and severity of the breach.
3. **No penalty shall be imposed on any person without giving him an opportunity of being heard.**
4. The officer under this Act shall while imposing penalty in order for a breach of any law, regulation or procedural requirement, specify the nature of the breach and applicable law, regulation or procedure under which the amount of penalty for the breach has been specified.
5. When a person voluntarily discloses to an officer under this Act the circumstances of a breach of the tax law, regulation or procedural requirement prior to the discovery of the breach by the quantifying a penalty for that person.
6. The provisions of this section shall not apply in such cases where the penalty specified under this Act is either a fixed sum or expressed as a fixed percentage.

8. Power to impose penalty in certain cases

Section 127 of the CGST Act, prescribed that where the proper officer is of the view that a person is liable to a penalty and the same is not covered under any proceedings under section 62 or section 63 or section 73 or section 74 or section 129 or section 130, he may issue an order levying such penalty after giving a reasonable opportunity of being heard to such person.

9. Power to waive penalty or fee or both

Section 128 of the CGST Act, prescribed that the Government may The Government may, by notification, waive in part or full, any penalty referred to in section 122 or section 123 or section 125 or any late fee referred to in section 47 for such class of taxpayers and under such mitigating circumstances as may be specified therein on the recommendations of the Council.

10. Detentions, seizure and release of goods and conveyances in transit**10.1 Meaning of Seizure**

The term ‘seizure’ has not been specifically defined in the GST Law. In Law Lexicon Dictionary, ‘seizure’ is defined as the act of taking possession of property by an officer under legal process. It generally implies taking possession

forcibly contrary to the wishes of the owner of the property or who has the possession and who was unwilling to part with the possession.

10.2 Meaning of Detention

The term ‘detention’ means holding goods or stops movement of goods in transit without required documents as per law. As per Section 129 of the CGST/ SGST Act, an officer authorised proper officer has power to detain goods along with conveyance (like a truck or other types of vehicle) transporting the goods in transit in contravention of the provisions of CGST/SGST Act.

10.3 Distinction between ‘Seizure’ and ‘Detention’

Denial access to the owner of the property or the person who possesses the property at a particular point of a time by legal order/notice is called detention. Seizure is taking over of actual possession of the goods by the department. Detention order is issued when it is suspected that the goods are liable to confiscation. Seizure can be made only on the reasonable belief which is arrived at after inquiry/investigation that the goods are liable to confiscation. Hence, detention is the pre-activity to seizure as per law.

10.4 Precautions in respect of Seizure

There are certain safeguards are provided in section 67 of CGST Act in respect of the power of seizure and these are summarized as under:

1. Seized goods or documents should not be retained beyond the period necessary for their examination;
2. Photocopies of the documents can be taken by the person from whose custody documents are seized;
3. For seized goods, if a notice is not issued within six months of its seizure, goods shall be returned to the person from whose possession it was seized. This period of six months can be extended on justified grounds up to a further period of maximum six months;
4. An inventory of seized goods shall be made by the seizing officer;
5. Certain categories of goods to be specified under CGST Rules (such as perishable, hazardous etc.) can be disposed of immediately after seizure;
6. Provisions of Code of Criminal Procedure 1973 relating to search and seizure shall apply.

10.5 Statutory Provisions: Detention, seizure and release of goods and conveyances in transit

Section 129 of the CGST Act, prescribed that the provisions of detention and seizure of goods in transit in the following situations:

- (1) where any person transports any goods or stores such goods while they are in transit in contravention of the provisions of this Act or the rules made thereunder, all such goods and conveyance shall liable to detention or seizure and after detention or seizure, shall be released by the proper officer.
 - (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;”;
- (c) upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form as prescribed.

Provided that no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.

(2) *Omitted.*

- (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).
- (4) No penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.
- (5) On payment of amount referred in sub-section (1), all proceedings in respect of the notice specified in sub-section (3) shall be deemed to be concluded.
- (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 15 days may be reduced by the proper officer.

11. Confiscation of goods or conveyances and levy of penalty

Section 130 of the CGST Act, prescribed that (1) where any person—

- (i) supplies or receives any goods in contravention of any of the provisions of this Act or rules made thereunder with intent to evade payment of tax; or

- (ii) does not account for any goods on which he is liable to pay tax under this Act; or
- (iii) supplies any goods liable to tax under this Act without having applied for the registration; or
- (iv) contravenes any of the provisions of this Act or rules made thereunder with intent to evade payment of tax, or
- (v) uses any conveyance as means of transport for carriage of goods in contravention of the provisions of the Act, the carriage so used without the knowledge of owner or his agent.

then, all such goods or conveyances shall be liable to confiscation and the person shall be liable to penalty under Section 122 of the Act.

(2) Whenever confiscation of any goods or conveyance is authorized by this Act, the officer adjudging it shall give to the owner of the goods an option to pay in lieu of confiscation such fine as the said officer thinks fit:

Provided that such fine shall not exceed the market value of the goods confiscated, less the tax chargeable thereon.

Provided further that the aggregate of such fine and penalty leviable shall not be less than penalty equal to 100% of the tax payable on such goods.

Provided also that where any such conveyance is used for the carriage of the goods or passengers for hire, the owner of the conveyance shall be given an option to pay in lieu of the confiscation of the conveyance a fine equal to the tax payable on the goods being transported thereon.

(3) *Omitted.*

(4) No order of confiscation of goods or conveyance or for imposition of penalty shall be issued without giving the person an opportunity of being heard.

(5) Where any goods or conveyance are confiscated under this Act, the title of such goods or conveyance shall thereupon vest in the Government.

(6) The proper officer adjudging confiscation shall take and hold possession of the things confiscated and every officer of Police, on the requisition of such proper officer, shall assist him in taking and holding such possession.

(7) The proper officer may, after satisfying himself and after giving reasonable time not exceeding three months to pay fine in lieu of confiscation, dispose of such goods or conveyance and deposit the sale proceeds thereof with the Government.

12. Confiscation or penalty not to interfere with other punishment

Section 131 of the CGST Act, prescribed that no confiscation made or penalty imposed under the provisions of this Act or the rules made thereunder shall prevent the infliction of any other punishment to which the person affected thereby is liable under the provisions of this Act or under any other law.

13. Punishment for certain offences

Section 132 of the CGST Act, prescribed that whoever commits any of the following shall be considered as offences, namely:—

- (a) supplies any goods or services or both without issue of any invoice, in violation of the provisions of this Act or the rules made thereunder, with the intention to evade tax;
- (b) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilization of input tax credit or refund of tax;
- (c) avails input tax credit using such invoice or bill referred to in clause (b) or fraudulently avails input tax credit without any invoice or bill;
- (d) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;
- (e) evades tax, or fraudulently obtains refund and where such offence is not covered under clauses (a) to (d);
- (f) falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information with an intention to evade payment of tax due under this Act;
- (g) *Omitted.*
- (h) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with, any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;
- (i) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions of this Act or the rules made thereunder;
- (j) *Omitted*
- (k) *Omitted*
- (l) attempts to commit, or abets the commission of any of the offences mentioned in clauses (a) to (f) and clause (h) and (i) of this section.
- (m) of this section, shall be punishable—
 - (i) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds five hundred lakh rupees, with imprisonment for a term which may extend to five years and with fine;
 - (ii) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds two hundred lakh rupees but does not exceed five hundred lakh rupees, with imprisonment for a term which may extend to three years and with fine;
 - (iii) in the case of an offence specified in clause (b), where the amount of tax evaded or the amount of input tax credit wrongly availed or

utilised or the amount of refund wrongly taken exceeds one hundred lakh rupees but does not exceed two hundred lakh rupees, with imprisonment for a term which may extend to one year and with fine;

- (iv) in cases where he commits or abets the commission of an offence specified in clause (f), he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.
- (v) Section 156 of the FA, 2023 – Section 132(1) of the CGST Act: Decriminalization of certain offences
- (vi) Decriminalization of the offences specified under clauses (g), (j) and (k) of Section 132(1) of the CGST Act which is related to obstructing or preventing any officer in the discharge of his duties, tampering with, or destroying any material evidence or documents, or failure to supply any information or supplies false information.
- (vii) Monetary limit for prosecution: Further, this amendment will increase the limit for launching prosecution from INR 1 Crore to INR 2 Crores except for the offence of issuance of invoice without supply of goods or services. Thus, in case of offences, other than fake invoices, prosecution provisions to be initiated if the value of taxes is more than Rs. 2 Crores and for fake invoices, the prosecution will continue as for the threshold tax amount of Rs. 1 Crore. This is effective from 01.10.2023 *vide* Notification No. 48/2023-CT, dated 29.09.2023.

(2) Where any person convicted of an offence under this section is again convicted of an offence under this section, then, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to five years and with fine.

(3) The imprisonment referred to in clauses (i), (ii) and (iii) of sub-section (1) and sub-section (2) shall, in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court, be for a term not less than six months.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences under this Act, except the offences referred to in sub-section (5) shall be non-cognizable and bailable.

(5) The offences specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) and punishable under clause (i) of that sub-section shall be cognizable and non-bailable.

(6) A person shall not be prosecuted for any offence under this section except with the previous sanction of the Commissioner.

Section 132 has amended so as to make the offence of fraudulent availment of ITC without invoice or bill, cognizable and non-bailable offence under sub-section (1) of Section 69 and to make any person who retains the benefit of certain transactions and at whose instance such transactions are conducted liable for punishment. Vide Notification No. 92/2020-CT, dated 22-12-2020.

13.1 Compounding of amount for the offence committed under section 132 of the CGST Act. (Procedure for compounding offence Rule-162)

(1) An applicant may, either before or after the institution of prosecution, make an application under sub-section (1) of section 138 in **FORM GST CPD-01** to the Commissioner for compounding of an offence.

(2) On receipt of the application, the Commissioner shall call for a report from the concerned officer with reference to the particulars furnished in the application, or any other information, which may be considered relevant for the examination of such application.

(3) The Commissioner, after taking into account the contents of the said application, may, by order in **FORM GST CPD-02**, on being satisfied that the applicant has made full and true disclosure of facts relating to the case, allow the application indicating the compounding amount and grant him immunity from prosecution or reject such application within ninety days of the receipt of the application.

In order to align the recommendation of the 50th GST Council's meeting, the CBIC vide *Notification No. 38/2023-Central Tax, dated August 04, 2023* has made the following amendments in Rule 162 of the CGST Rules:

- Inserted Rule 162(3A) of the CGST Rules

"The Commissioner shall determine the compounding amount under sub-rule (3) as per the Table below:—

Table

| Sr. No. | Offence | Compounding amount if offence is punishable under clause (i) of sub-section (1) of section 132 | Compounding amount if offence is punishable under clause (ii) of sub-section (1) of section 132 |
|---------|---|--|---|
| 1 | 2 | 3 | 4 |
| 1 | <i>Offence specified in clause (a) of sub-section (1) of section 132 of the Act</i> | <i>Up to seventy-five per cent of the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken, subject to minimum of fifty per cent of such amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken.</i> | <i>Up to sixty per cent of the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken, subject to minimum of forty per cent of such amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken.</i> |

| 1 | 2 | 3 | 4 |
|---|---|---|---|
| 2 | <i>Offence specified in clause (c) of subsection (1) of section 132 of the Act</i> | Do | Do |
| 3 | <i>Offence specified in clause (d) of subsection (1) of section 132 of the Act</i> | Do | Do |
| 4 | <i>Offence specified in clause (e) of subsection (1) of section 132 of the Act</i> | Do | Do |
| 5 | <i>Offence specified in clause (f) of subsection (1) of section 132 of the Act</i> | Do | Do |
| 6 | <i>Offence specified in clause (h) of subsection (1) of section 132 of the Act</i> | Amount equivalent to twenty-five per cent of tax evaded. | Amount equivalent to twenty-five per cent of tax evaded |
| 7 | <i>Offence specified in clause (i) of subsection (1) of section 132 of the Act</i> | Do | Do |
| 8 | <i>Attempt to commit the offences or abets the commission of offences mentioned in clause (a), (c) to (f) and clauses (h) and (i) of subsection (1) of section 132 of the Act</i> | Amount equivalent to twenty-five per cent of such amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken. | Amount equivalent to twenty-five per cent of such amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken. |

Provided that where the offence committed by the person falls under more than one category specified in the Table above, the compounding amount, in such case, shall be the amount determined for the offence for which higher compounding amount has been prescribed. The changes is from October 01, 2023. Vide Notification No.48/2023-CT, dated 29.09.2023

(4) The application shall not be decided under sub-rule (3) without affording an opportunity of being heard to the applicant and recording the grounds of such rejection.

(5) The application shall not be allowed unless the tax, interest and penalty liable to be paid have been paid in the case for which the application has been made.

(6) The applicant shall, within a period of thirty days from the date of the receipt of the order under sub-rule (3), pay the compounding amount as ordered by the Commissioner and shall furnish the proof of such payment to him.

(7) In case the applicant fails to pay the compounding amount within the time specified in sub-rule (6), the order made under sub-rule (3) shall be vitiated and be void.

(8) Immunity granted to a person under sub-rule (3) may, at any time, be withdrawn by the Commissioner, if he is satisfied that such person had, in the course of the compounding proceedings, concealed any material particulars or had given false evidence. Thereupon such person may be tried for the offence with respect to which immunity was granted or for any other offence that appears to have been committed by him in connection with the compounding proceedings and the provisions the Act shall apply as if No such immunity had been granted.

14. Liability of officers and certain other persons

Section 133 of the CGST Act, prescribed that where any person engaged in connection with the collection of statistics under section 151 or compilation or computerisation thereof or if any officer of central tax having access to information specified under sub-section (1) of section 150, or if any person engaged in connection with the provision of service on the common portal or the agent of common portal, wilfully discloses any information or the contents of any return furnished under this Act or rules made thereunder otherwise than in execution of his duties under the said sections or for the purposes of prosecution for an offence under this Act or under any other Act for the time being in force, he shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to twenty-five thousand rupees, or with both.

(2) Any person—

- (a) who is a Government servant shall not be prosecuted for any offence under this section except with the previous sanction of the Government;
- (b) who is not a Government servant shall not be prosecuted for any offence under this section except with the previous sanction of the Commissioner.

15. Cognizance of offences

Section 134 of the CGST Act, prescribed that no court shall take cognizance of any offence punishable under this Act or the rules made thereunder except with the previous sanction of the Commissioner, and no court inferior to that of a Magistrate of the First Class, shall try any such offence.

15.1 Presumption of culpable mental state

Section 135 of the CGST Act, prescribed that in any prosecution for an offence under this Act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

15.2 Relevancy of statements under certain circumstances

Section 136 of the CGST Act prescribed that A statement made and signed by a person on appearance in response to any summons issued under section 70 during the course of any inquiry or proceedings under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains,—

- (a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable; or
- (b) when the person who made the statement is examined as a witness in the case before the court and the court is of the opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interest of justice.

16. Offences by companies

Section 137 of the CGST Act, prescribed that when a offence committed by a person under this Act is a company, shall be deemed to be guilty of the offence and shall to be proceeded against and punished accordingly.

17. Compounding of offences

Section 138 of the CGST Act, specified that (1) any offence under this Act may, either before or after the institution of prosecution, be compounded by the Commissioner on payment, by the person accused of the offence, to the Central Government or the State Government, as the case be, of such compounding amount, shall be determined by the Commissioner:

Provided that nothing contained in this section shall apply to—

- (a) a person who has been allowed to compound once in respect of any of the offences specified in clauses (a) to (f), (h), (i) and 1 of sub-section (1) of section 132 ;”
- (b) *Omitted;*
- (c) a person who has been accused of committing an offence under this Act which is also an offence under any other law for the time being in force;

- (d) a person who has been convicted for an offence under this Act by a court;
- (e) a person who has been accused of committing an offence specified in clause (g) or clause (j) or clause (k) of sub-section (1) of section 132; and
- (f) any other class of persons or offences as may be prescribed:

Provided further that any compounding allowed under the provisions of this section shall not affect the proceedings, if any, instituted under any other law:

Provided also that compounding shall be allowed only after making payment of tax, interest and penalty involved in such offences.

(2) The amount for compounding of offences under this section shall be such as may be prescribed, subject to the minimum amount not being less than “twenty-five per cent of the tax involved and the maximum amount not being more than one hundred per cent of the tax involved;”

(3) On payment of such compounding amount as may be determined by the Commissioner, no further proceedings shall be initiated under this Act against the accused person in respect of the same offence and any criminal proceedings, if already initiated in respect of the said offence, shall stand abated.

Section 157 of the FA, 2023 – Section 138(1) of the CGST Act: No Compounding of offences: Fake/bogus invoice cases are excluded from the option of compounding of offences.

Reduction in Compounding fees: Reduction of amount for compounding of various offences except offence of fake invoice, by reducing the minimum and maximum amount for compounding as mentioned below:

| | Earlier | Now |
|----------------|---|--------------------------------|
| Minium | Higher of INR 10,000 or 50%of the tax involved | 25% of the tax involved |
| Maximum | Higher of INR 30,000 or 150% of the tax involved | 00% of the tax involved |

[Notification No. 38/2023-Central Tax, dated August 04, 2023] with effect from 01.10.2023 Vide Notification No. 48/2023-CT, dated 29.09.2023

18. Procedure for compounding of offences - Rule 162 of CGST Rules

(1) An applicant may, either before or after the institution of prosecution, make an application under sub-section (1) of section 138 in **FORM GST CPD-01** to the Commissioner for compounding of an offence.

(2) On receipt of the application, the Commissioner shall call for a report from the concerned officer with reference to the particulars furnished in the application, or any other information, which may be considered relevant for the examination of such application.

(3) The Commissioner, after taking into account the contents of the said application, may, by order in **FORM GST CPD-02**, on being satisfied that the applicant has co-operated in the proceedings before him and has made full and

true disclosure of facts relating to the case, allow the application indicating the compounding amount and grant him immunity from prosecution or reject such application within ninety days of the receipt of the application.

(4) The application shall not be decided under sub-rule (3) without affording an opportunity of being heard to the applicant and recording the grounds of such rejection.

(5) The application shall not be allowed unless the tax, interest and penalty liable to be paid have been paid in the case for which the application has been made.

(6) The applicant shall, within a period of thirty days from the date of the receipt of the order under sub-rule (3), pay the compounding amount as ordered by the Commissioner and shall furnish the proof of such payment to him.

(7) In case the applicant fails to pay the compounding amount within the time specified in sub-rule (6), the order made under sub-rule (3) shall be vitiated and be void.

(8) Immunity granted to a person under sub-rule (3) may, at any time, be withdrawn by the Commissioner, if he is satisfied that such person had, in the course of the compounding proceedings, concealed any material particulars or had given false evidence. Thereupon such person may be tried for the offence with respect to which immunity was granted or for any other offence that appears to have been committed by him in connection with the compounding proceedings and the provisions the Act shall apply as if no such immunity had been granted.

19. Amendments relating to Detention, Seizure and release of goods & conveyances in transit

(Clause 117 of Finance Act, 2021 - Effective Date: January 01, 2022)

➤ Section 129 provides that where any person transports/stores any goods while they are in transit in contravention of the CGST Act/Rules, such goods and conveyance used as a means of transport for carrying the said goods are liable to detention or seizure. The goods so seized/detained can be released on the payment tax and penalty. The payment conditions for releasing the goods and conveyance have been changed. The comparative table reads as under in respect of Goods and Conveyance would be release subject to the below payment:

| Situation | Nature of Goods | Existing Provisions till 31.12.2021 | As per amendment made in Finance Act, 2021 and with effect from 1-1-2022 |
|----------------------------|-----------------|---|--|
| If the owner comes forward | Taxable Goods | Applicable tax 100% penalty and | Penalty equal to 200% of tax payable on such goods |
| | Exempted Goods | Penalty 2% of the value of goods or ₹25,000, whichever is lower | Penalty 2% of the value of goods or ₹25,000.00 whichever is lower. |

| Situation | Nature of Goods | Existing Provisions till 31.12.2021 | As per amendment made in Finance Act, 2021 and with effect from 1-1-2022 |
|-----------------------------------|-----------------|---|--|
| If the owner doesn't come forward | Taxable Goods | Applicable tax and penalty equal to 50% of the value of goods | Penalty equal to 50% of the value of such goods or 200% of tax payable on such goods whichever is higher |
| | Exempted Goods | 5% of the value of goods or ₹25000, whichever is lower | Penalty 5% of the value of goods or ₹25000, whichever is lower |

- Further, as per the existing procedure for detaining or seizing goods or conveyances, the proper officer is required to issue a notice specifying tax and penalty. Thereafter, he would be required to pass an order for payment of applicable tax and penalty. In case the person transporting goods or owner failed to make payment of tax and penalty within 14 days of detention or seizure, proceedings under Section 130 (confiscation of goods or conveyances) are initiated.
- Finance Act, 2021 has delinked the proceedings of Detention, seizure and release of goods and conveyances in transit with the provisions of Section 130 (*Supra*)
- Now, the proper officer detaining or seizing goods or conveyance shall issue a notice within 7 days. Thereafter, he shall pass an order within 7 days from the date of service of such notice for payment of penalty
- If person transporting goods or owner failed to make payment of penalty within 15 days (proper officer can reduce this period in case of perishable/hazardous goods) of receipt of order, the goods or conveyance shall liable to be sold or disposed of in such manner and time which will be prescribed to recover penalty payable. Notably, it has also been provided that the conveyance shall be released on payment by the transporter of penalty payable or ₹1 lacs whichever is less.
- In most of the cases transporters are not aware of the nature of the supply etc. therefore levying of penalty on them for releasing conveyance does not seem to be fair.

(Notified *vide* Notification No. 39/2021-Central Tax. dated 21.12.2021

20. Amendments in Finance Act, 2021 relating to Confiscation provisions

(Clause 118 of Finance Act, 2021 - Effective Date: January 01, 2022)

- Section 130 of the CGST Act provides several circumstances under which goods/conveyances would be liable to confiscated and penalty would be levied in cases such as supplies any goods liable to tax under

this Act without having applied for registration, supply or receipt of any goods in contravention of the provisions of GST legislation with the intent to evade payment of tax etc. Currently, Section 129 of the CGST provides for the penalty which shall not be less than the amount of penalty leviable Section 129 (Supra)

- The Finance Act, 2021 has delinked the proceedings under Section 130 relating to the confiscation of goods or conveyances and levy of penalty from the proceedings under section 129 relating to detention, seizure and release of goods and conveyances in transit.

(Notified *vide* Notification No. 39/2021-Central Tax, dated 21.12.2021)

21. Instruction

*C.B.I & C, Instruction No. Instruction No. 04/2022-23
[GST – Investigation], dated 1-9-2022*

Guidelines for Launching of Prosecution under the Central Goods & Services Tax Act, 2017

Prosecution is the institution or commencement of legal proceeding; the process of exhibiting formal charges against the offender.

2. Section 132 of the Central Goods and Services Tax Act, 2017 (CGST Act, 2017) codifies the offences under the Act which warrant institution of criminal proceedings and prosecution. Whoever commits any of the offences specified under sub-section (1) and sub-section (2) of section 132 of the CGST Act, 2017, can be prosecuted.

3. Sanction of prosecution:

3.1 Sanction of prosecution has serious repercussions for the person involved, therefore, the nature of evidence collected during the investigation should be carefully assessed. One of the important considerations for deciding whether prosecution should be launched is the availability of adequate evidence. The standard of proof required in a criminal prosecution is higher than adjudication proceeding as the case has to be established beyond reasonable doubt. Therefore, even cases where demand is confirmed in adjudication proceedings, evidence collected should be weighed so as to likely meet the above criteria for recommending prosecution. Decision should be taken on case-to-case basis considering various factors, such as, nature and gravity of offence, quantum of tax evaded, or ITC wrongly availed, or refund wrongly taken and the nature as well as quality of evidence collected.

3.2. Prosecution should not be filed merely because a demand has been confirmed in the adjudication proceedings. Prosecution should not be launched in cases of technical nature, or where additional claim of tax is based on a difference of opinion regarding interpretation of law. Further, the evidence collected should be adequate to establish beyond reasonable doubt that the person had guilty mind, knowledge of the offence, or had fraudulent intention or in any manner possessed mens-reas for committing the offence. It follows, therefore, that in the case of public limited companies, prosecution should not be launched

indiscriminately against all the Directors of the company but should be restricted to only persons who oversaw day-to-day operations of the company and have taken active part in committing the tax evasion etc. or had connived at it.

4. Decision on prosecution should normally be taken immediately on completion of the adjudication proceedings, except in cases of arrest where prosecution should be filed as early as possible. Hon'ble Supreme Court of India in the case of *Radheshyam Kejriwal [2011 (266) ELT 294 (SC)]* has, inter-alia, observed the following:

- (i) Adjudication proceedings and criminal proceedings can be launched simultaneously;
- (ii) Decision in adjudication proceedings is not necessary before initiating criminal prosecution;
- (iii) Adjudication proceedings and criminal proceedings are independent in nature to each other;
- (iv) The findings against the person facing prosecution in the adjudication proceedings is not binding on the proceeding for criminal prosecution;
- (v) The finding in the adjudication proceedings in favour of the person facing trial for identical violation will depend upon the nature of finding. If the exoneration in adjudication proceedings is on technical ground and not on merit, prosecution may continue; and
- (vi) In case of exoneration, however, on merits where the allegation is found to be not sustainable at all and the person held innocent, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue, the underlying principle being the higher standard of proof in criminal cases.

In view of the above observations of Hon'ble Supreme Court, prosecution complaint may even be filed before adjudication of the case, especially where offence involved is grave, or qualitative evidences are available, or it is apprehended that the concerned person may delay completion of adjudication proceedings. In cases where any offender is arrested under section 69 of the CGST Act, 2017, prosecution complaint may be filed even before issuance of the Show Cause Notice.

5. Monetary limits:

5.1 Monetary Limit: Prosecution should normally be launched where amount of tax evasion, or misuse of ITC, or fraudulently obtained refund in relation to offences specified under sub-section (1) of section 132 of the CGST Act, 2017 is more than Five Hundred Lakh rupees. However, in following cases, the said monetary limit shall not be applicable:

- (i) **Habitual evaders:** Prosecution can be launched in the case of a company/taxpayer habitually involved in tax evasion or misusing Input Tax Credit (ITC) facility or fraudulently obtained refund. A company/taxpayer would be treated as habitual evader, if it has been involved in two or more cases of confirmed demand (at the first adjudication level or

above) of tax evasion/fraudulent refund or misuse of ITC involving fraud, suppression of facts etc. in past two years such that the total tax evaded and/or total ITC misused and/or fraudulently obtained refund exceeds Five Hundred Lakh rupees. DIGIT database may be used to identify such habitual evaders.

- (ii) **Arrest Cases:** Cases where during the course of investigation, arrests have been made under section 69 of the CGST Act.

6. Authority to sanction prosecution:

6.1 The prosecution complaint for prosecuting a person should be filed only after obtaining the sanction of the Pr. Commissioner/Commissioner of CGST in terms of sub-section (6) of section 132 of CGST Act, 2017.

6.2 In respect of cases investigated by DGGI, the prosecution complaint for prosecuting a person should be filed only after obtaining the sanction of Pr. Additional Director General/Additional Director General, Directorate General of GST Intelligence (DGGI) of the concerned zonal unit/Hqrs.

7. Procedure for sanction of prosecution:

- 7.1 In cases of arrest(s) made under section 69 of the CGST Act, 2017:

7.1.1 Where during the course of investigation, arrest(s) have been made and no bail has been granted, all efforts should be made to file prosecution complaint in the Court within sixty (60) days of arrest. In all other cases of arrest, prosecution complaint should also be filed within a definite time frame. The proposal of filing complaint in the format of investigation report prescribed in Annexure-I, should be forwarded to the Pr. Commissioner/Commissioner, within fifty (50) days of arrest. The Pr. Commissioner/Commissioner shall examine the proposal and take decision as per section 132 of CGST Act, 2017. If prosecution sanction is accorded, he shall issue a sanction order along with an order authorizing the investigating officer (at the level of Superintendent) of the case to file the prosecution complaint in the competent court.

7.1.2 In cases investigated by DGGI wherever an arrest has been made, procedure as detailed in para 7.1.1 should be followed by officers of equivalent rank of DGGI.

7.1.3 The Additional/Joint Commissioner or Additional/Joint Director in the case of DGGI, must ensure that all the documents/evidence and list of witnesses are kept ready before forwarding the proposal of filing complaint to Pr. Commissioner/Commissioner or Pr. ADG/ADG of DGGI.

7.2 In case of filing of prosecution against legal person, including natural person:

7.2.1 Section 137 (1) of the Act provides that where an offence under this Act has been committed by a company, every person who, at the time offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. Section 137(2) of the Act provides that where an offence

under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. Thus, in the case of Companies, both the legal person as well as natural person are liable for prosecution under section 132 of the CGST Act. Similarly, under sub-section (3) of section 137, the provisions have been made for partnership firm or a Limited Liability Partnership or a Hindu Undivided Family or a Trust.

7.2.2 Where it is deemed fit to launch prosecution before adjudication of the case, the Additional/Joint Commissioner or Additional/Joint Director, DGGI, as the case may be, supervising the investigation, shall record the reason for the same and forward the proposal to the sanctioning authority. The decision of the sanctioning authority shall be informed to the concerned adjudicating authority so that there is no need for him to examine the case again from the perspective of prosecution.

7.2.3 In all cases (other than those mentioned at para 7.2.2 and arrests where prosecution complaint has already been filed before adjudication), the adjudicating authority should invariably indicate at the time of passing the order itself whether it considers the case fit for prosecution, so that it can be further processed and sent to the Pr. Commissioner/Commissioner for obtaining his sanction of prosecution.

7.2.4 In cases, where Show Cause Notice has been issued by DGGI, the recommendation of adjudicating authority for filing of prosecution shall be sent to the Pr. Additional Director General/Additional Director General, DGGI of the concerned zonal unit/Hqrs.

7.2.5 Where at the time of passing of adjudication order, no view has been taken on prosecution by the Adjudicating Authority, the adjudication branch shall re-submit the file within 15 days from the date of issue of adjudication order to the Adjudicating Authority to take view on prosecution.

7.2.6 Pr. Commissioner/Commissioner or Pr. Additional Director General/Additional Director General of DGGI may on his own motion also, taking into consideration inter alia, the seriousness of the offence, examine whether the case is fit for sanction of prosecution irrespective of whether the adjudicating authority has recommended prosecution or not.

7.2.7 An investigation report for the purpose of launching prosecution should be carefully prepared in the format given in Annexure-I, within one month of the date of receipt of the adjudication order or receipt of recommendation of Adjudicating Authority, as the case may be. Investigation report should be signed by an Deputy/Assistant Commissioner, endorsed by the jurisdictional Additional/Joint Commissioner, and sent to the Pr. Commissioner/Commissioner for taking a decision on sanction for launching prosecution. In respect of cases booked by DGGI, the said report shall be prepared by the officers of DGGI, signed by the

Deputy/Assistant Director, endorsed by the supervising Additional/Joint Director and sent to the Pr. Additional Director General/Additional Director General of DGGI for taking a decision on sanction for launching prosecution. Thereafter, the competent authority shall follow the procedure as mentioned in para 7.1.1.

7.2.8 Once the sanction for prosecution has been obtained, prosecution in the court of law should be filed as early as possible, but not beyond a period of sixty days by the duly authorized officer (of the level of Superintendent). In case of delay in filing complaint beyond 60 days, the reason for the same shall be brought to the notice of the sanctioning authority i.e., Pr. Commissioner/Commissioner or Pr. Additional Director General/Additional Director General, by the officer authorised for filing of the complaint.

7.2.9 In the cases investigated by DGGI, except for cases pertaining to single/multiple taxpayer(s) under Central Tax administration in one Commissionerate where arrests have not been made and the prosecution is not proposed prior to issuance of show cause notice, prosecution complaints shall be filed and followed up by DGGI. In other cases, the complaint shall be filed by the officer at level of Superintendent of the jurisdictional Commissionerate, authorized by Pr. Commissioner/Commissioner of CGST. However, in all cases investigated by DGGI, the prosecution shall continue to be sanctioned by appropriate officer of DGGI.

8. Appeal against Court order in case of inadequate punishment/acquittal:

8.1 The Prosecution Cell in the Commissionerate shall examine the judgment of the Court and submit their recommendations to the Pr. Commissioner/Commissioner. Where Pr. Commissioner/Commissioner is of the view that the accused person has been let off with lighter punishment than what is envisaged in the Act or has been acquitted despite the evidence being strong, filing of appeal should be considered against the order within the stipulated time. Before filing of appeal in such cases, concurrence of Pr. CC/CC should be obtained. Sanction for appeal in such cases shall, however, be accorded by Pr. Commissioner/Commissioner.

8.2 In respect of cases booked by DGGI, the Prosecution Cell in the Directorate shall examine the judgment of the court and submit their recommendations to the Pr. Additional Director General/Additional Director General who shall take a view regarding acceptance of the order or filing of appeal. However, before filing of appeal, concurrence of DG or Pr. DG (for cases booked by HQ Unit) should be obtained.

9. Procedure for withdrawal of prosecution:

9.1 Procedure for withdrawal of sanction-order of prosecution

9.1.1 In cases where prosecution has been sanctioned but complaint has not been filed and new facts or evidence have come to light necessitating review of the sanction for prosecution, the Commissionerate should immediately bring the same to the notice of the sanctioning authority. After considering the new facts and evidence, the sanctioning authority, if satisfied, may recommend to the

jurisdictional Pr. Chief Commissioner/Chief Commissioner that the sanction for prosecution be withdrawn who shall then take a decision.

9.1.2 In the cases investigated by DGGI, such withdrawal of sanction order may be made with the approval of Director General of DGGI of concerned sub-national unit. In the cases booked by DGGI, Hqrs. Pr. Director General shall be competent to approve the withdrawal of sanction order.

9.2 Procedure for withdrawal of complaint already filed for prosecution

9.2.1 Attention is invited to judgment of Hon'ble Supreme Court on the issue of relation between adjudication proceedings and prosecution in the case of Radheshyam Kejriwal, supra. Hon'ble Supreme Court in para 43 have observed as below: "In our opinion, therefore, the yardstick would be to judge as to whether allegation in the adjudication proceeding as well as proceeding for prosecution is identical and the exoneration of the person concerned in the adjudication proceeding is on merits. In case it is found on merit that there is no contravention of the provisions of the Act in the adjudication proceeding, the trial of the person concerned shall be in abuse of the process of the court."

The said ratio is equally applicable to GST Law. Therefore, where it is found on merit that there is no contravention of the provisions of the Act in the adjudication proceedings and such order has attained finality, Pr. Commissioner/Commissioner or Pr. Additional Director General/Additional Director General after taking approval of Pr. Chief Commissioner/Chief Commissioner or Pr. Director General/Director General, as the case may be, would ensure filing of an application through Public Prosecutor in the court to allow withdrawal of prosecution in accordance with law. The withdrawal can only be affected with the approval of the court.

10. General guidelines

10.1 It has been reported that delay in the Court proceedings is often due to non-availability of the records required to be produced before the Court or due to delay in drafting of the complaint, listing of the exhibits etc. It shall be the responsibility of the officer who has been authorized to file complaint, to take charge of all documents, statements and other exhibits that would be required to be produced before a Court. The list of exhibits etc. should be finalized in consultation with the Public Prosecutor at the time of drafting of the complaint. No time should be lost in ensuring that all exhibits are kept in safe custody. Where a complaint has not been filed even after a lapse of 60 days from the receipt of sanction for prosecution, the reason for delay shall be brought to the notice of the Pr. Commissioner/Commissioner or the Pr. Additional Director General/Additional Director General of DGGI by the Additional/Joint Commissioner in charge of the Commissionerate or Additional/Joint Director of DGGI, responsible for filing of the complaint.

10.2 Filing of prosecution need not be kept in abeyance on the ground that the taxpayer has gone in appeal/revision. However, to ensure that the proceeding in appeal/revision are not unduly delayed because the case records are required for the purpose of prosecution, a parallel file containing copies of essential documents relating to adjudication should be maintained.

10.3 The Superintendent in-charge of adjudication section should endorse copy of all adjudication orders to the prosecution section. The Superintendent in charge of prosecution section should monitor receipt of all serially numbered adjudication orders and obtain copies of adjudication orders of missing serial numbers from the adjudication section every month. In respect of adjudication orders related to DGGI cases, Superintendent in charge of adjudication section should ensure endorsing a copy of adjudication order to DGGI. Concerned Zonal Units/Hqrs. of DGGI shall also follow up the status of adjudication of the case from the concerned Commissionerate or adjudicating authority.

11. Publication of names of persons convicted:

11.1 Section 159 of the CGST Act, 2017 grants power to the Pr. Commissioner/Commissioner or any other officer authorised by him on his behalf to publish name and other particulars of the person convicted under the Act. It is directed that in deserving cases, the department should invoke this section in respect of all persons who are convicted under the Act.

12. Monitoring of prosecution:

12.1 Prosecution, once launched, should be vigorously followed. The Pr. Commissioner/Commissioner of CGST or Pr. Additional Director General/Additional Director General of DGGI should monitor cases of prosecution at monthly intervals and take the corrective action wherever necessary to ensure that the progress of prosecution is satisfactory. In DGGI, an Additional/Joint Director in each zonal unit and DGGI (Hqrs) shall supervise the prosecution related work and take stock of the pending prosecution cases. For keeping a track of prosecution cases, entries of all prosecution cases should promptly be made in DIGIT/Investigation Module, within 48 hours of sanction of prosecution and the entries must be updated from time to time. Additional/Joint Commissioner or Additional/Joint Director, in-charge of supervising prosecution cases shall ensure making timely entries in the database.

13. Compounding of offence

13.1 Section 138 of the CGST Act, 2017 provides for compounding of offences by the Pr. Commissioner/Commissioner on payment of compounding amount. The provisions regarding compounding of offence should be brought to the notice of person being prosecuted and such person be given an offer of compounding by Pr. Commissioner/Commissioner or Pr. Additional Director General/Additional Director General of DGGI, as the case may be.

14. Transitional Provisions

14.1 All cases where sanction for prosecution is accorded after the issue of these instructions shall be dealt in accordance with the provisions of these instructions irrespective of the date of the offence. Cases where prosecution has been sanctioned but no complaint has been filed before the magistrate shall also be reviewed by the prosecution sanctioning authority considering the provisions of these instructions.

15. Inspection of prosecution work by the Directorate General of Performance Management

15.1 Director General, Directorate General of Performance Management and Pr. Chief Commissioners/Chief Commissioners, who are required to inspect the Commissionerate, should specifically check whether instructions in this regard are being followed scrupulously and make a mention of the implementation of the guidelines in their inspection report apart from recording of statistical data. Similarly exercise should also be carried out in DGII.

16. Where a case is considered suitable for launching prosecution and where adequate evidence is forthcoming, securing conviction largely depends on the quality of investigation. It is, therefore, necessary for senior officers to take personal interest in the investigation of important cases of GST evasion and in respect of cases having money laundering angle and to provide guidance and support to the investigating officers.

17. To ensure proper training to the officers posted for prosecution work, the Pr. Director General, National Academy of Customs, Indirect Taxes and Narcotics (NACIN), Faridabad, should organize separate training courses on prosecution/arrests etc, from time to time and should incorporate a series of lectures on this issue in the courses organized for investigation. The Pr. Commissioner/Commissioner or Pr. ADG/ADG of DGII should judiciously sponsor officers for such courses.

Budget proposal -2024 for new penalty provision

A special procedure for manufacturers of tobacco products was notified in Notification 04/2024-CT dated 05-01-2024 which is made with effect from 1st April 2024. In this regard a new section is proposed to be included for imposing penalty on contravention of such notified procedure.

The new section proposes to impose penalty of ₹1 lakh per machine (packing machines used for filling and packing of packages) which are not registered as per the special procedure.

In addition to this penalty, such machines would also be liable for seizure and confiscation, subject to the condition that the imposed penalty is paid and the said machine gets registered within 3 days from the communication of the order of penalty.

22. Case Law

Release of goods on payment of fine permissible even during pendency of confiscation proceedings:

The Bombay High Court has held that the intent of Section 130(2) of the CGST Act, 2017 is to provide an option to the owner to redeem the goods before he is divested of his ownership and while the process of adjudication is going on. The Court in this regard dissected the said section using the present continuous words ‘officer adjudicating it’ and the words ‘owner of the goods’, while

comparing it with sub-section 130(7) which used the words 'confiscated goods'. According to the Court, incorporation of Section 130(2) over and apart from Section 130(7) was an indication that even before the owner is divested of his ownership, he must have an option to pay fine in lieu of confiscation. It also observed that absence of the use of the words 'provisional release' or non-reference to Section 67(6) was not determinative of the intent of the section.

The High Court held that to obtain the release of the goods or conveyances, while the adjudication proceedings are continuing, the taxpayer needs to pay only the fine and not the tax, penalty and charges thereon. Observing that the words 'be liable' in Section 130(3) only conveys a possibility of attracting the obligation and not an imperative obligation, shorn of fair procedure, the Court was of the view that the tax, penalty and charges are to be paid after adjudication. Dismissing the review petition filed by the Revenue department, the court also held that fine in lieu of confiscation needs to be calculated only based on market value as defined under Section 2(73) and not on the maximum retail price. [*State Tax Officer v Y. Balakrishnan* 2021 VIL 828 KER]

Chapter 24

Anti-Profiteering Measures

Synopsis

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1. Introduction

Anti-profiteering measures are globally accepted policy implemented by the various countries for combating temporary inflationary prices of goods and services during transitional phase of switch over to new tax regime. On learning the experiences from the Global economy on anti-profiteering measures, the National Anti-profiteering Authority has been constituted by the Central Government to control rise in prices of goods and services after implementation of new tax regime (GST) in the country.

The very objective of anti-profiteering measures is to provide benefit of GST to the consumers in terms of reduced prices and not allow more profit margins to the businessmen in the cost of rise in prices of goods and services resulting inflation in the country.

2. Provisions of Anti-Profiteering measures

Section 171 of CGST Act, 2017 has prescribed the provisions of Anti-Profiteering measure. The relevant portion of Goods and Services Tax Act, 2017 is reproduced as under:

“171. Anti-profiteering Measure.—(1) Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices.

(2) The Central Government may, on recommendation of the Council, by notification, constitute an Authority, or empower an existing Authority constituted under any law for the time being in force, to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the said goods or services or both supplied by him.

(3) The Authority referred to in sub-section (2) shall exercise such powers and discharge such functions as may be prescribed.”

The Finance (No. 2) Act, 2019 - After sub-section 3, inserted 3A.

(3A) Where the Authority referred to in sub-section 2, after holding examination as required under the said sub-section comes to the conclusion that any registered person has profiteered under sub-section (1), such person shall be liable to pay penalty equivalent to 10% of the amount so profiteered:

Provided that no penalty shall be leviable if the profiteered amount is deposited within thirty days of the date of passing of the order by the Authority.

*Explanation.—*For the purposes of this section, the expression “profiteered” shall mean the amount determined on account of not passing the benefit of reduction in rate of tax on supply of goods or services or both or the benefit of input tax credit to the recipient by way of commensurate reduction in the price of the goods or services or both.”

Thus, it is crystal clear from the above CGST Act provision that anti-profiteering authority has to keep watch on business or to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him, this is to ensure that the consumer is protected from arbitrary price increase in the name of GST. Accordingly, the GST Council had approved setting up of a five-member National Anti-Profiteering Authority. The provision of anti-profiteering authority has been incorporated under Rules 123 to 133 of the CGST Rules, 2017, which provides details of information on formation, appointment, duties and responsibilities of Anti-Profiteering Authority in GST regime is summarized as under:

3. Constitution of the Authority - [(Rule 122 of CGST Rules) omitted]

The National Anti-profiteering Authority shall be a five-member committee consisting of the following:

- (a) Chairman who holds or has held a post equivalent in rank to a Secretary to the Government of India; and
- (b) four Technical Members who are or have been Commissioners of State tax or central tax or have held an equivalent post under the Excise, Customs or VAT laws will be eligible for appointment as technical members in the authority to be nominated by the Council.

Provided that a person shall not be selected as a Technical Member if he has attained the age of sixty-two years.

Provided further that the Central Government with the approval of the Chairperson of the Council may terminate the appointment of the Technical Member at any time.

4. Tenure of Authority

The Authority shall cease to exist after the expiry of two years from the date on which the Chairman assumes charge. The Chairman and the four members of the Authority have to be less than 62 years. The Chairman and members of the Authority will have a term of two years or until they attain the age of 65 years, which is earlier, and shall be eligible for reappointment unless the Council recommends otherwise.

5. Constitution of the Standing Committee and Screening Committees - Rule 123 of CGST Rules

(1) The Council may constitute a Standing Committee on Anti-profiteering which shall consist of such officers of the State Government and Central Government as may be nominated by it.

(2) A State level Screening Committee shall be constituted in each State by the State Governments which shall consist of-

- (a) one officer of the State Government, to be nominated by the Commissioner, and
- (b) one officer of the Central Government, to be nominated by the Chief Commissioner.

6. Remunerations/allowances of the Authority - [(Rule 124 of CGST Rules) Omitted]

(1) The Chairman, who would be a secretary level officer, shall be paid a monthly salary of ₹2,25,000/- (fixed) plus other allowances and benefits of similar ranking officers, if retired officer is selected as chairman, he shall be paid a monthly salary of ₹2,25,000/- reduced by the amount of pension.

(2) The technical member shall be paid a monthly salary of ₹2,05,400/- (fixed) plus allowances and entitled to other benefits as applicable to an additional secretary rank officer. If a retired officer is selected as a Technical Member, he shall be paid a monthly salary ₹2,05,400/- reduced by the amount of pension.

(3) The Authority referred to in sub-section (2) shall exercise such powers and discharge such functions as may be prescribed.

(3A) Where the Authority referred to in sub-section (2), after holding examination as required under the said sub-section comes to the conclusion that any registered person has profiteered under sub-section (1), such person shall be liable to pay penalty equivalent to ten per cent. of the amount so profiteered:

Provided that no penalty shall be leviable if the profiteered amount is deposited within thirty days of the date of passing of the order by the Authority.

Explanation.—For the purposes of this section, the expression "profiteered" shall mean the amount determined on account of not passing the benefit of reduction in rate of tax on supply of goods or services or both or the benefit of input tax credit to the recipient by way of commensurate reduction in the price of the goods or services or both

7. Secretary to the Authority - [(Rule 125 of CGST Rules) (omitted)]

An officer not below the rank of Additional Commissioner, working in the Directorate General of Anti-profiteering shall be the Secretary to the Authority.

8. Power to determine the methodology and procedure - Rule 126 of CGST Rules

The Authority may determine the methodology and procedure for determination as to whether the reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit has been passed on by the registered person to the recipient by way of commensurate reduction in prices.

9. Duties of the Authority - Rule 127 of CGST Rules

The Authority would have the following duties,—

- (i) to determine whether any reduction in the rate of tax on any supply of goods or services or the benefit of input tax credit has been passed on to the recipient by way of commensurate reduction in prices;
- (ii) to identify the registered person who has not passed on the benefit of reduction in the rate of tax on supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices;
- (iii) to order,
 - (a) reduction in prices;
 - (b) return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest at the rate of eighteen percent from the date of collection of the higher amount till the date of the return of such amount or recovery of the amount not returned, as the case may be, in case the eligible person does not claim return of the amount or is not identifiable, and depositing the same in the Fund referred to in section 57;
 - (c) imposition of penalty as specified in the Act; and (d) cancellation of registration under the Act.

- (iv) to furnish a performance report to the Council by the tenth day of the close of each quarter.

10. Examination of Application - Rule 128 of CGST Rules

All applications from interested parties on issues of local nature shall first be examined by the State level Screening Committee constituted in each State by the State Governments consisting of an officer of the State Government, to be nominated by the Commissioner, and an officer of the Central Government, to be nominated by the Chief Commissioner.

The Screening Committee on being satisfied that the supplier has not passed on the reduction in rate of tax on any supply of goods or services or the benefit of input tax credit on to the recipient by way of commensurate reduction in prices , and found that contravened the provisions of Section 171, will forward the application with its recommendations to the Standing Committee on Anti-profiteering, which shall consist of such officers of the State Government and Central Government as may be nominated by the GST council, for further action.

The Standing Committee shall, within a period of two months from the date of the receipt of a written application, an interested party or from a Commissioner or any other person, examine the accuracy and adequacy of the evidence provided in the application to determine whether there is *prima facie* evidence to support the claim of the applicant is satisfied that the supplier has not passed on the benefit of reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices, it shall refer the matter to the Director General of Safeguards for a detailed investigation.

11. Investigation and conduct of proceedings - Rule 129 of CGST Rules

(1) Where the Standing Committee is satisfied that there is a *prima-facie* evidence to show that the supplier has not passed on the benefit of reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices, it shall refer the matter to the Director General of Anti-profiteering for a detailed investigation.

(2) The Director General of Anti-profiteering shall conduct investigation and collect evidence necessary to determine whether the benefit of reduction in the rate of tax on any supply of goods or services or the benefit of input tax credit has been passed on to the recipient by way of commensurate reduction in prices.

(3) The Director General of Anti-profiteering shall, before initiation of the investigation, issue a notice to the interested parties containing, *inter alia*, information on the following, namely:—

- (a) the description of the goods or services in respect of which the proceedings have been initiated;
- (b) summary of the statement of facts on which the allegations are based; and
- (c) the time limit allowed to the interested parties and other persons who may have information related to the proceedings for furnishing their reply.

(4) The Director General of Anti-profiteering may also issue notices to such other persons as deemed fit for a fair enquiry into the matter.

(5) The Director General of Anti-profiteering shall make available the evidence presented to it by one interested party to the other interested parties, participating in the proceedings.

(6) The Director General of Anti-profiteering shall complete the investigation within a period of months of the receipt of the reference from the Standing Committee or within such extended period not exceeding a further period of three months for reasons to be recorded in writing as may be allowed by the Authority and, upon completion of the investigation, furnish to the Authority, a report of its findings along with the relevant records.

12. Confidentiality of information - Rule 130 of CGST Rules

(1) The evidence or information presented to the Director General of Anti-profiteering by one interested party can be made available to the other interested parties, participating in the proceedings. The evidence provided will be kept confidential and provisions of Section 11 of the Right to information Act, 2005 (22 of 2005), shall apply *mutatis mutandis* to the disclosure of any information which is provided on a confidential basis.

(2) The Director General of Anti-profiteering may require the parties providing information on confidential basis to furnish non-confidential summary thereof and if, in the opinion of the party providing such information, the said information cannot be summarised, such party may submit to the Director General of Anti-profiteering a statement of reasons as to why summarisation is not possible.

13. Co-operation with other agencies or statutory authorities - Rule 131 of CGST Rules

Where the Director General of Anti-profiteering deems fit, he may seek opinion of any other agency or statutory authorities in the discharge of his duties.

14. Proceedings by the Authority

The Director General of Anti-profiteering can seek opinion of any other agency or statutory authorities in the discharge of his duties. The Director General of Anti-profiteering, or an officer authorised by him will have the power to summon any person necessary either to give evidence or to produce a document or any other thing. He will also have same powers as that of a civil court and every such inquiry will be deemed to be a judicial proceeding.

The Director General of Anti-profiteering will complete the investigation within a period of three months or within such extended period not exceeding a further period of three months for reasons to be recorded in writing as allowed by the Standing Committee and, upon completion of the investigation, furnish to the Authority, a report of its findings along with the relevant records.

15. Power to summon persons to give evidence and produce documents - Rule 132 of CGST Rules

The Director General of Anti-profiteering, or an officer authorised by him in this behalf, shall be deemed to be the proper officer to exercise the power to

summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing under 79 Section 70 and shall have power in any inquiry in the same manner, as provided in the case of a civil court under the provisions of the Code of Civil Procedure, 1908 (5 of 1908).

Every such inquiry so initiated by the Authority shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860).

16. Order by the Authority - Rule 133 of CGST Rules

The Authority shall (after granting an opportunity of hearing to the interested parties if so requested in writing) within a period of six months from the date of the receipt of the report from the Director General of Safeguards determine whether a registered person has passed on the benefit of the reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices.

(2) An opportunity of hearing shall be granted to the interested parties by the Authority where any request is received in writing from such interested parties.

(3) The Authority may seek the clarification, if any, from the Director General of Anti Profiteering on the report submitted under sub-rule (6) of rule 129 during the process of determination under sub-rule (1).

(4) Where the Authority determines that a registered person has not passed on the benefit of the reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices, the Authority may order-

- (a) reduction in prices;
- (b) return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest at the rate of eighteen per cent from the date of collection of the higher amount till the date of the return of such amount or recovery of the amount including interest not returned, as the case may be;
- (c) the deposit of an amount equivalent to fifty per cent of the amount determined under the above clause [along with interest at the rate of eighteen per cent from the date of collection of the higher amount till the date of deposit of such amount in the Fund constituted under section 57 and the remaining fifty per cent. of the amount in the Fund constituted under section 57 of the Goods and Services Tax Act, 2017 of the concerned State, where the eligible person does not claim return of the amount or is not identifiable;
- (d) imposition of penalty as specified under the Act; and
- (e) cancellation of registration under the Act.

Explanation: For the purpose of this sub-rule, the expression, - concerned State means the State or Union Territory in respect of which the Authority passes an order.

(4) If the report of the Director General of Anti-profiteering referred to in sub-rule (6) of rule 129 recommends that there is contravention or even non-contravention of the provisions of section 171 or these rules, but the Authority is of the opinion that further investigation or inquiry is called for in the matter, it may, for reasons to be recorded in writing, refer the matter to the Director General of Anti-profiteering to cause further investigation or inquiry in accordance with the provisions of the Act and these rules.

(5) (a) Notwithstanding anything contained in sub-rule (4), where upon receipt of the report of the Director General of Anti-profiteering referred to in sub-rule (6) of rule 129, the Authority has reasons to believe that there has been contravention of the provisions of section 171 in respect of goods or services or both other than those covered in the said report, it may, for reasons to be recorded in writing, within the time limit specified in sub-rule (1), direct the Director General of Anti-profiteering to cause investigation or inquiry with regard to such other goods or services or both, in accordance with the provisions of the Act and these rules.

(b) The investigation or enquiry under clause (a) shall be deemed to be a new investigation or enquiry and all the provisions of rule 129 shall *mutatis mutandis* apply to such investigation or enquiry.

17. Decision to be taken by the majority - [(Rule 134 of CGST Rules) Omitted]

(1) A minimum of three members of the Authority shall constitute quorum at its meetings.

(2) If the Members of the Authority differ in their opinion on any point, the point shall be decided according to the opinion of the majority of the members present and voting, and in the event of equality of votes, the Chairman shall have the second or casting vote.

18. Compliance by the registered person - Rule 135 of CGST Rules

Any order passed by the Authority under these rules shall be immediately complied with by the registered person failing which action shall be initiated to recover the amount in accordance with the provisions of the Integrated Goods and Services Tax Act or the Central Goods and Services Tax Act or the Union territory Goods and Services Tax Act or the State Goods and Services Tax Act of the respective States, as the case may be.

19. Monitoring of the order by the filed formations - Rule 136 of CGST Rules

The Authority may require any authority of central tax, State tax or Union territory tax to monitor the implementation of the order passed by it.

20. Tenure of Authority - [(Rule 137 of CGST Rules) omitted]

The Authority shall cease to exist after the expiry of four years from the date on which the Chairman enters upon his office unless the Council recommends otherwise. (Omitted)

21. Tenure of National Anti-profiteering Authority extended to 5 years from 4 years.

Notification No. 37/2021-Central Tax, dated December 1st, 2021

The CBIC has issued Central Goods and Services Tax (Ninth Amendment) Rules, 2021 to amend Rule 137 of CGST Rules, 2017. Now, the tenure of National Anti-profiteering Authority is further extended by one more year to 5 years from existing 4 years. This amendment shall be effective from November 30th, 2021. Earlier the tenure was extended to 4 years from 2 years by the Central Goods and Services Tax (Fifth Amendment) Rules, 2019.

Govt. empowered the Competition Commission as Authority under 171(2) of CGST Act, 2017 has been notified w.e.f. 1-12-2022:

The CBIC vide *Notification No. 23/2022-Central Tax* and *Notification No. 24/2022-Central Tax* both dated November 23, 2022 has empowered the Competition Commission of India (“CCI”) established under the Competition Act, 2002 as an authority under Section 171(2) with effect from December 1, 2022 to examine whether the Input Tax Credit (“ITC”) availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.

In this regard, some relevant rules (Rules 122, 124, 125, 134, 137) to Anti Profiteering have been omitted. The effective date of notification shall be December 01, 2022.

22. CBIC Clarification**Functions of National Anti-profiteering Authority from CCI and C.B.I. & C.**

The National Anti-profiteering Authority (NAA) has been constituted under GST to determine whether the reduction in tax rates or benefit of ITC is being passed on to the recipient by way of commensurate reduction in prices.

Whereas, the CCI eliminates practices having adverse effect on competition to protect the interest of the consumers. CBIC deals with the task of formulation of policy and laws and implementing the same on the levy and collection of duties/taxes.

The Central Board of Excise and Customs (“CBEC”) (now rechristened Central Board of Indirect Taxes and Customs “CBIC”) deals with the task of formulation of policy and laws and implementing the same on the levy and collection of the following duties/taxes like Custom Duty, Central Excise on certain Items etc.

C.B.E. & C. releases simplified Anti-profiteering application form “APAF-1”

C.B.E.&C. releases simplified application form for anti-profiteering complaints; Accordingly, affected consumers can file their grievance using Form APAF-1, which is made more convenient to use, before Standing Committee or State level Screening Committee in terms of Rule 128 of CGST Rules; New form requires general information about applicant and supplier who has not passed on benefit, as well as particulars of goods/services and details of reduction in tax rate/benefit of ITC: C.B.E. & C.

23. Case Law

Anti-profiteering provisions attracted for adopting incorrect methodology to pass on benefit of rate of reduction: NAA

[*Director General of Anti-profiteering v Nestle India Ltd.* (2019) 112 taxmann.com 202 (NAA)]

The respondent is a subsidiary of Nestle group and is engaged in manufacturing and sale of various food products including coffee, noodles, chocolates, etc. GST rates on several products supplied by the respondent were reduced from 28% to 18% w.e.f. 15.11.2017 and from 18% to 12% w.e.f. 25.01.2018. Before, any notice of investigation of profiteering was issued; the applicant *suo moto* deposited the profiteered amount of around ₹16 crore in the Consumer Welfare Fund. National Anti-profiteering Authority ordered investigation by Director General of Anti-profiteering (DGAP) against the respondent.

As per the DGAP's report, the respondent has resorted to profiteering by increasing base prices of around 300 stock keeping units (SKU) which were impacted by the rate reduction. The respondent passed on the benefit at the aggregate level of the SKU or at the product level where it was required to pass such benefit on every SKU so that the benefit could reach every buyer of that SKU. Hence, the methodology adopted by the respondent to pass on the benefit of rate reduction was incorrect. Therefore, the total profit made by the respondent was determined at around ₹89 crores. The NAA directed the respondent to reduce the prices proportionately and to deposit the balance profit in the Consumer Welfare Fund.

* * *

Section 171 of the Central Goods and Services Tax Act, 2017 — Anti - Profiteering Measure

Under section 171 any benefit of reduction in rate of taxes or benefit of input tax credit on any supply of goods or services can only be by way of commensurate reduction in prices. When a statute clearly provides for a manner in which something is to be done, and a duty is cast upon supplier to extend benefit of rate reduction by way of commensurate reduction in prices, supplier cannot insist that instead of reducing prices, he will give extra grammage of product - *L'Oreal India (P) Ltd. v Union of India* (2022) 143 taxmann.com 131 (Delhi)

* * *

Section 171 of the Central Goods and Services Tax Act, 2017 — anti - profiteering measure.

Anti-profiteering provisions were violated when benefit of additional input tax credit had not been passed on to buyers of flat and shop by way of commensurate reduction in price, therefore respondent was to be directed to pass on profiteered amount with 18% interest - *Dhiraj Shetty v Bhagwati Infra* [2022] 143 taxmann.com 255 (NAA).

* * *

No profiteering if base price increased for non-eligibility of ITC.

In *Jirrushu N Bhattacharya v NP Foods* reported in 2018 (17) G.S.T.L. 627 (N.A.P.A.), observed that the base price of the product from ₹130/- to ₹145/- when the GST was reduced from 18% to 5%. Thus it was further alleged that the Respondent had indulged in profiteering in contravention of the provisions of Section 171 of CGST Act, 2017. Based on the above facts it is clear that the Respondent has not contravened the provisions of Section 171 of the CGST Act, 2017 and hence there is no merit in the application filed by the Applicant No. 1 and the same is accordingly dismissed.”

* * *

No profiteering if there was no reduction in GST rate after 1-7-2017

In *State Level Screening Committee on Anti-profiteering, Kerala v Zebra Distributors*, reported in 2019 (20) G.S.T.L. 396 (N.A.P.A.), held “that there is no profiteering in the absence of evidencing of profiteering and apparent from documentary evidence that base price of both products remaining same for both periods when GST rate reduced from 28% to 18% - Allegation of profiteering not established.”

* * *

Penalty for not passing of benefit of ITC to buyers.

In *Sukhbir Rohilla v Pyramid Infratech (P.) Ltd.* reported in 2018 (19) G.S.T.L. 65 (N.A.P.A), Held that “It is evident from the above that the Respondent has denied benefit of ITC to the buyers of the flats being constructed by him under the above Policy in contravention of the provisions of Section 171(1) of the CGST Act, 2017 and has thus realized more price from them than he was entitled to collect and has also compelled them to pay more GST than that they were required to pay by issuing incorrect tax invoices and hence he has committed an offence under Section 122(1)(i) of the CGST Act, 2017 and therefore, he is liable for imposition of penalty. Accordingly, a Show Cause Notice be issued to him directing him to explain why the penalty prescribed under Section 122 of the above Act read with Rule 133(3)(d) of the CGST Rules, 2017 should not be imposed on him.”

Additional input tax credit benefit accrued in GST period was required to be passed on to home buyers; CCI directs assessee to pass on amount which was yet to be passed on to home buyers.

The competition commission of India in the case of Director General of Anti-profiteering vs. MICL Realty LLP, reported in (2024) 14 Centax 149 (CCI), held that ITC in pre-GST period as percentage of turnover was 4.19% and it was 4.26 in GST period – Assessee had benefited from additional ITC of 0.07% - Out of 85 units, 33 units were sold in post-GST period and ITC benefit was required to be passed on for 52 units – Excess benefit passed on to most of the buyers but ₹35,114 required to be passed on to 4 home buyers – Anti-profiteering provision was violated - Amount profiteered determined as ₹35,114 and was directed to

pass on same with interest – Penalty was not to be imposed as relevant provision was introduced after period involved in present case,

Delhi HC upholds validity of National Anti-profiteering Authority law.

The Delhi High Court on 29.01.2024 upheld the validity of legal provisions pertaining to the National Anti-Profiteering Authority (NAA).

The verdict was given by a bench of Acting Chief Justice Manmohan and Justice Dinesh Kumar Sharma on a batch of cases comprising over 100 petitions by several entities, including Philips India, Reckitt Benckiser, Gillette India and Procter and Gamble Home Products etc.

"We have upheld the constitutional validity of section 171 (of CGST Act) as well as rules 122, 124, 126, 127, 129, 133 and 134 of the (CGST) rules of 2017," the court said. The court stated that section 171 mandates that a tax foregone has to be passed on as commensurate reduction in price and it is a consumer welfare measure introduced in public interest.

The rules in question pertain to the establishment and functioning of the Anti-Profiteering Authority.

While pronouncing the order, the court further it was possible that there may be cases of arbitrary exercise of power under the anti-profiteering mechanism but the remedy for the same is to set aside the order of merits and not striking down the provision itself which invests such power in the authority.

Chapter 25

Job Work under GST

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Job work means outsourcing of manufacturing activities for completion of a product beyond the premises of the principal manufacturer. The principal manufacturer gets the manufacturing facilities through job worker to meet requirement of customers. Job work is one of the most cost effective ways to get the finished goods without any investment on plant and machinery for manufacturing process. The importance of Job work has tremendously increased due to market competition on first moving consumer goods and outsourcing of goods available in cheaper prices. In Indian market context, domestic production mainly depends upon Job Work.

1. Meaning of Job work in Pre-GST era

In pre-GST era job work was carried as per Notification No. 214/86-C.E. and defined “job work” means processing or working upon of raw materials or semi-finished goods supplied to the job worker, so as to complete a part or of the process resulting in the manufacture or finishing of an article or any operation which is essential for the aforesaid process.

2. Meaning of job work under GST

Section 2(68) of CGST Act, 2017, “job work” means any treatment or process undertaken by a person on goods belonging to another registered person and expression “job worker” shall be construed accordingly.

The registered person on whose goods (inputs or capital goods) job work is performed is called the “principal” for the purpose of Section 143 of the CGST Act. The principal must be a registered taxable person under Section 25 of the CGST Act, 2017. The person who undertakes to carry job working of another person is called “job worker”.

The transaction between principal and job worker is fully covered under scope of supply and GST is payable thereon. But there is exception in terms of Section 143(1) of the CGST Act, 2017 prescribed that registered person can send any inputs or capital goods, without payment of tax, to a Job worker for job work and then subsequently send to another job worker and likewise.

3. Facility of Job Working

As per Section 143(1) of CGST Act, 2017, the inputs and capital goods can be sent for job work and Section 19(7) of CGST Act, 2017, Mould and dies, jigs and fixtures, or tools sent out to a job worker for job work.

Explanation: For purposes of job work, input includes intermediate goods arising from any treatment or process carried out on the inputs by the principal or the job worker.

4. Job work procedure

The procedure of Job work has been specified under Chapter XXI as Miscellaneous provisions under CGST Act, 2017. Section 143(1) of CGST Act, provides that a registered person (principal) may under intimation and subject to such conditions as may be prescribed, send inputs or capital goods, without payment of tax, to a job worker for job work and if required, from there subsequently send to another job worker and so on. Subsequently, on completion of the job work (by the last job worker), the principal shall bring back the goods to his place of business or supply (including export) the same directly from the place of business/premises of the job worker within one year in case of inputs or within three years in case of capital goods (except moulds and dies, jigs and fixtures or tools). The commissioner has been empowered to extend the time limit for return of inputs and capital goods up to a period of one year and two years respectively.

5. Responsibility of the Principal manufacturer on job working

Section 143(1)(a) and (b) of CGST Act, 2017 prescribed that principal manufacturer shall comply the following responsibilities:

- (a) bring back inputs, after completion of job work or otherwise, or capital goods, other than moulds and dies, jigs and fixtures, or tools, within one year and three years, respectively, of their being sent out, to any of his place of business, without payment of tax;

- (b) supply such inputs, after completion of job work or otherwise, or capital goods, other than moulds and dies, jigs and fixtures, or tools, within one year and three years, respectively, of their being sent out from the place of business of a job worker on payment of tax within India, or with or without payment of tax for export, as the case may be.

6. Job worker place additional place of business

In order to comply the provisions of Section 143(1)(b) of CGST Act, the principal manufacturer has to declare the job worker premise as additional place of business because after the completion of job work of goods, instead of bringing back job work goods into his own premises, he can directly supply such goods to customers either payment of GST or without payment of GST for export of goods. The principal manufacturer does not require to declare addition place of business in a case—

- (i) where the job worker is registered under Section 25; or
- (ii) where the principal is engaged in the supply of such goods as may be notified by the Commissioner.

7. Accounting of job working of inputs and capital goods

Section 143(2) of CGST Act, prescribed that the responsibility for keeping proper accounts for the inputs or capital goods sent for job work lies with the principal.

8. GST shall be payable by the principal manufacturer on “Deemed Supply” in case of non-compliances

Section 143(3) of the CGST Act, where the inputs sent for job work are not received back by the principal after completion of job work or otherwise in accordance with the provisions of clause (a) of sub-section (1) or are not supplied from the place of business of the job worker in accordance with the provisions of clause (b) of sub-section (1) within a period of one year of their being sent out, it shall be deemed that such inputs had been supplied by the principal to the job worker on the day when the said inputs were sent out.

Section 143(4) of the CGST Act, where the capital goods, other than moulds and dies, jigs and fixtures, or tools, sent for job work are not received back by the principal in accordance with the provisions of clause (a) of sub-section (1) or are not supplied from the place of business of the job worker in accordance with the provisions of clause (b) of sub-section (1) within a period of three years of their being sent out, it shall be deemed that such capital goods had been supplied by the principal to the job worker on the day when the said capital good sent out.

9. Special provisions of job work relating to moulds and dies, jigs and fixtures, or tools

Section 19(7) of CGST Act, specified that time limit of returning goods after Job work within one/three years is not applicable in case moulds and dies, jigs and fixtures, or tools sent out a job worker for job work. The job worker can be retained at place of job work. The further disposal of these goods as scrap liable

for payment of GST by job worker if he is registered otherwise principal has to pay GST on sale of such scrap.

10. Documents for movement of inputs and Capital goods to job worker

Rule 55(1)(c) of CGST Rules, 2017 provides that for the purpose of transportation of goods for job work, the principal manufacturer may issue a delivery challan, serially numbered not exceeding sixteen characters, in one or multiple series, in lieu of invoice at the time of removal of goods for transportation , containing the following details , namely:—

- (i) date and number of the delivery challan;
- (ii) name, address and Goods and Services Tax Identification Number of the consigner, if registered;
- (iii) name, address and Goods and Services Tax Identification Number or Unique Identity Number of the consignee, if registered;
- (iv) Harmonized System of Nomenclature code and description of goods;
- (v) quantity (provisional, where the exact quantity being supplied is not known);
- (vi) taxable value;
- (vii) tax rate and tax amount – central tax, State tax, integrated tax, Union territory tax or cess, where the transportation is for supply to the consignee;
- (viii) place of supply, in case of inter-State movement; and
- (ix) signature.

Sub-rule (2) of Rules 55, the delivery Challan shall be prepared in triplicate, in case of supply of goods (a) Original for consignee, (b) Duplicate for transporter and (c) Triplicate for consigner.

11. Taking input tax credit in respect of inputs and capital goods sent for job work

In terms of Section 19(1) and 19(4) of CGST Act, the principal shall, subject to such conditions and restrictions as may be prescribed, be allowed to take credit of input tax on inputs and capital goods sent to a job worker for job work.

Further, as per Section 19(2) and 19(5) of the CGST Act, the principal shall be entitled to take credit of input tax on inputs and capital goods, even both are directly sent to a job worker for job work without their being first brought to his place of business.

Section 19(3) of CGST Act, where the inputs sent for job work are not received back by the principal after completion of job work or otherwise or are not supplied from the place of business of the job worker in accordance with clause (a) or clause (b) of sub-section (1) of section 143 within one year of being sent out, it shall be deemed that such inputs had been supplied by the principal to the job worker on the day when the said inputs were sent out:

Provided that where the inputs are sent directly to a job worker, the period of one year shall be counted from the date of receipt of inputs by the job worker.

Section 19(6) of CGST Act, where the capital goods sent for job work are not received back by the principal within a period of three years of being sent out, it shall be deemed that such capital goods had been supplied by the principal to the job worker on the day when the said capital goods were sent out:

Provided that where the capital goods are sent directly to a job worker, the period of three years shall be counted from the date of receipt of capital goods by the job worker

Section 19(7) Nothing contained in sub-section (3) or sub-section (6) shall apply to moulds and dies, jigs and fixtures, or tools sent out to a job worker for job work.

12. Conditions and restrictions in respect of inputs and capital goods sent to the job-worker

Rule 45 of CGST Rules, 2017 provides conditions and restrictions in respect of inputs and capital goods sent to the job worker and the sub-rules as under

(1) The inputs, semi - finished goods or capital goods shall be sent to the job worker under the cover of a challan issued by the principal, including where such goods are sent directly to a job-worker, and where the goods are sent from one job worker to another job worker, the challan may be issued either by the principal or the job worker sending the goods to another job worker:

Provided that the challan issued by the principal may be endorsed by the job worker, indicating therein the quantity and description of goods where the goods are sent by one job worker to another or are returned to the principal:

Provided further that the challan endorsed by the job worker may be further endorsed by another job worker, indicating therein the quantity and description of goods where the goods are sent by one job worker to another or are returned to the principal.

(2) The challan issued by the principal to the job worker shall contain the details specified in Rule 55.

(3) The details of challans in respect of goods dispatched to a job worker or received from a job worker or sent from one job worker to another during a quarter shall be included in **FORM GST ITC-04** furnished for that period on or before the twenty- fifth day of the month succeeding the said quarter or within such further period as may be extended by the Commissioner by a notification in this behalf:

Provided that any extension of the time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.

(4) Where the inputs or capital goods are not returned to the principal within the time stipulated in Section 143, it shall be deemed that such inputs or capital goods had been supplied by the principal to the job worker on the day when the

said inputs or capital goods were sent out and the said supply shall be declared in **FORM GSTR-1** and the principal shall be liable to pay the tax along with applicable interest.

As per decision of 28th meeting of the GST Council, the Jurisdictional Commissioner to be empowered to extend the time limit for return of inputs and capital goods sent on job work up to a period of one year and two years respectively.

13. Disposal of scrap and waste after job working

Section 143(5) of CGST Act, specified that, any waste and scrap generated during the job work may be supplied by the job worker directly from his place of business on payment of tax, if such job worker is registered, or by the principal, if the job worker is not registered.

14. Levy and collection of tax on supply of services by job worker

The concept of supply has been adopted to levy tax in place of manufacture of excisable goods and supply of taxable services. As per Section 7(1) (d) of CGST Act, for the purpose of expression of “Supply” includes “the activities to be treated as supply of goods or supply of services as referred to in Schedule II”.

Schedule II of Section 7 provides the activities to be treated as supply of goods or supply of services and Schedule II(3) any treatment or process which is applied to another person's goods is a supply of services.

Thus, job work process has carried by the job worker on behalf of the principal and will attract GST on job work Charges, in case of threshold limit of ₹ 20 lakh of aggregate turnover exceeds in a financial year of a job worker. If the aggregate turnover exceeds the threshold limit the job worker would be required to obtain registration under Section 25.

Further, the value of goods or services used by the job worker for carrying out the job work will be included in the value of services supplied by the job worker. After completion of job work, if the goods directly supply to the customers from the premises of the job worker, the value of such supply will be included in the aggregate turnover of the principal.

It is to be noted that in the erstwhile Central Excise and Service Tax provisions where job work charges or supply of services are subject to service tax only, if the process carried by job worker does not amount to manufacture.

15. Job Work under GST (conditions and restrictions)

As per 31 GST Council's recommendations due date for filing details of goods or capital goods sent to job worker and received back in **Form GST ITC-04** extended to 30th June 2019 for the period July, 2017 to March, 2019 *vide* Notification No. 15/2019-Central Tax, dated 28.09.2019.

Further, sub-rule (3) of Rule 45, has been amended to omit the words “or sent from one job worker to another”, which implies that effectively goods cannot be sent from one job worker to another job worker through **FORM GST-04**.

[Notification No. 78/2018-C.T., dated 31-12-2018]

16. C.B.I & C, Circular

Circular No. 38/12/2018, dated 26.03.2018, This circular is revised in view of the amendment carried out in section 143 of the CGST Act, 2017 vide section 29 of the CGST (Amendment) Act, 2018 revised vide CBIC, Circular No. 88/07/2019-GST, dated 1st February 2019, has clarified the following with regard to Job worker, summarized as under:—

- Amended Para 2 - As per clause (68) of section 2 of the CGST Act, 2017, “job work” means any treatment or process undertaken by a person on goods belonging to another registered person and the expression “job worker” shall be construed accordingly. The registered person on whose goods (inputs or capital goods) job work is performed is called the “Principal” for the purposes of section 143 of the CGST Act. The said section which encapsulates the provisions related to job work, provides that the registered principal may, without payment of tax, send inputs or capital goods to a job worker for job work and, if required, from there subsequently to another job worker and so on. Subsequently, on completion of the job work (by the last job worker), the principal shall either bring back the goods to his place of business or supply (including export) the same directly from the place of business/premises of the job worker within the time specified under section 143.
- Amended Para 3. It may be noted that the responsibility of keeping proper accounts of the inputs and capital goods sent for job work lies with the principal. Moreover, if the time frame specified under section 143 for bringing back or further supplying the inputs/capital goods is not adhered to, the activity of sending the goods for job work shall be deemed to be a supply by the principal on the day when the said inputs/capital goods were sent out by him. Thus, essentially, sending goods for job work is not a supply as such, but it acquires the character of supply only when the inputs/capital goods sent for job work are neither received back by the principal nor supplied further by the principal from the place of business/premises of the job worker within the specified time period (under section 143) of being sent out. It may be noted that the responsibility for sending the goods for job work as well as bringing them back or supplying them has been cast on the principal.
- Amended Para 6.1 Doubts have been raised about the requirement of obtaining registration by job workers when they are located in the same State where the principal is located or when they are located in a State different from that of the principal. It may be noted that the job worker is required to obtain registration only if his aggregate turnover, to be computed on all India basis, in a financial year exceeds the specified threshold limit as specified in sub-section (1) of section 22 of the said Act, read with clause (iii) of the *Explanation* to the said section in case both the principal and the job worker are located in the same State.

Where the principal and the job worker are located in different States, the requirement for registration flows from clause (i) of section 24 of the CGST Act which provides for compulsory registration of suppliers making any inter-State supply of services. However, exemption from registration has been granted in case the aggregate turnover of the inter-State supply of taxable services does not exceed the specified threshold limit as specified in sub-section (1) of section 22 of the said Act, read with clause (iii) of the *Explanation* to the said section in a financial year *vide* Notification No. 10/2017-Integrated Tax dated 13.10.2017 as amended *vide* Notification No. 3/2019-Integrated Tax, dated 29.01.19. Therefore, it is clarified that a job worker is required to obtain registration only in cases where his aggregate turnover, to be computed on all India basis, in a financial year exceeds the threshold limit regardless of whether the principal and the job worker are located in the same State or in different States.

- Amended Para: 9.4.(i) Supply of job work services: The job worker, as a supplier of services, is liable to pay GST if he is liable to be registered. He shall issue an invoice at the time of supply of the services as determined in terms of section 13 read with section 31 of the CGST Act. The value of services would be determined in terms of section 15 of the CGST Act and would include not only the service charges but also the value of any goods or services used by him for supplying the job work services, if recovered from the principal. Doubts have been raised whether the value of moulds and dies, jigs and fixtures or tools which have been provided by the principal to the job worker and have been used by the latter for providing job work services would be included in the value of job work services. In this regard, attention is invited to section 15 of the CGST Act which lays down the principles for determining the value of any supply under GST. Importantly, clause (b) of sub-section (2) of section 15 of the CGST Act provides that any amount that the supplier is liable to pay in relation to the supply but which has been incurred by the recipient will form part of the valuation for that particular supply, provided it has not been included in the price for such supply. Accordingly, it is clarified that the value of such moulds and dies, jigs and fixtures or tools may not be included in the value of job work services provided its value has been factored in the price for the supply of such services by the job worker.
- Amended Para 9.6 Thus, if the inputs or capital goods are neither returned nor supplied from the job worker's place of business/premises within the specified time period, the principal would issue an invoice for the same and declare such supplies in his return for that particular month in which the time period of one year/three years has expired. The date of supply shall be the date on which such inputs or capital goods were initially sent to the job worker and interest for the intervening period shall also be payable on the tax. If such goods are returned by the job

worker after the stipulated time period, the same would be treated as a supply by the job worker to the principal and the job worker would be liable to pay GST if he is liable for registration in accordance with the provisions contained in the CGST Act read with the rules made thereunder. Further, there is no requirement of either returning back or supplying the goods from the job worker's place of business/premises as far as moulds and dies, jigs and fixtures, or tools are concerned.

C.B.I & C, Circular No. 38/12/2018, dated 26-3-2018.

Clarification on issues related to Job Work

Various representations have been received regarding the procedures to be followed for sending goods for job work and the related compliance requirements for the principal and the job worker. In view of the difficulties being faced by the taxpayers and to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under section 168(1) of the Central Goods and Services Tax Act, 2017, (hereinafter referred to as the "CGST Act") hereby clarifies the various issues raised as below:

2. As per clause (68) of section 2 of the CGST Act, 2017, "job work" means any treatment or process undertaken by a person on goods belonging to another registered person and the expression "job worker" shall be construed accordingly. The registered person on whose goods (inputs or capital goods) job work is performed is called the "Principal" for the purposes of section 143 of the CGST Act. The said section which encapsulates the provisions related to job work, provides that the registered principal may, without payment of tax, send inputs or capital goods to a job worker for job work and, if required, from there subsequently to another job worker and so on. Subsequently, on completion of the job work (by the last job worker), the principal shall either bring back the goods to his place of business or supply (including export) the same directly from the place of business/premises of the job worker within one year in case of inputs or within three years in case of capital goods (except moulds and dies, jigs and fixtures or tools).

3. It may be noted that the responsibility of keeping proper accounts of the inputs and capital goods sent for job work lies with the principal. Moreover, if the time frame of one year/three years for bringing back or further supplying the inputs/capital goods is not adhered to, the activity of sending the goods for job work shall be deemed to be a supply by the principal on the day when the said inputs/capital goods were sent out by him. Thus, essentially, sending goods for job work is not a supply as such, but it acquires the character of supply only when the inputs/capital goods sent for job work are neither received back by the principal nor supplied further by the principal from the place of business/premises of the job worker within one/three years of being sent out. It may be noted that the responsibility for sending the goods for job work as well as bringing them back or supplying them has been cast on the principal.

4. With respect to the above legal requirements, various issues have been raised on the following aspects:

- (a) Scope/ambit of job work;
- (b) Requirement of registration for a principal/job worker;
- (c) Supply of goods by the principal from the job worker's place of business/premises;
- (d) Movement of goods from the principal to the job worker and the documents and intimation required therefore.
- (e) Liability to issue invoice, determination of place of supply and payment of GST; and
- (f) Availability of input tax credit to the principal and the job worker.

5. Scope/ambit of job work: Doubts have been raised on the scope of job work and whether any inputs, other than the goods provided by the principal, can be used by the job worker for providing the services of job work. It may be noted that the definition of job work, as contained in clause (68) of section 2 of the CGST Act, entails that the job work is a treatment or process undertaken by a person on goods belonging to another registered person. Thus, the job worker is expected to work on the goods sent by the principal and whether the activity is covered within the scope of job work or not would have to be determined on the basis of facts and circumstances of each case. Further, it is clarified that the job worker, in addition to the goods received from the principal, can use his own goods for providing the services of job work.

6. Requirement of registration for the principal/job worker: It is important to note that the provisions of section 143 of the CGST Act are applicable to a registered person. Thus, it is only a registered person who can send the goods for job work under the said provisions. It may also be noted that the registered person (principal) is not obligated to follow the said provisions. It is his choice whether or not to avail of the benefit of these special provisions.

6.1 Doubts have been raised about the requirement of obtaining registration by job workers when they are located in the same State where the principal is located or when they are located in a State different from that of the principal. It may be noted that the job worker is required to obtain registration only if his aggregate turnover, to be computed on all India basis, in a financial year exceeds the specified threshold limit (i.e. ₹20 lakhs or ₹10 lakhs in case of special category States except Jammu & Kashmir) in case both the principal and the job worker are located in the same State. Where the principal and the job worker are located in different States, the requirement for registration flows from clause (i) of section 24 of the CGST Act which provides for compulsory registration of suppliers making any inter-State supply of services. However, exemption from registration has been granted in case the aggregate turnover of the inter State supply of taxable services does not exceed ₹ 20 lakhs or ₹ 10 lakhs in case of special category States except Jammu & Kashmir in a financial year *vide* Notification No. 10/2017-Integrated Tax dated 13.10.2017. Therefore, it is

clarified that a job worker is required to obtain registration only in cases where his aggregate turnover, to be computed on all India basis, in a financial year exceeds the threshold limit regardless of whether the principal and the job worker are located in the same State or in different States.

7. Supply of goods by the principal from job worker's place of business/premises: Doubts have been raised as to whether the principal can supply goods directly from the job worker's place of business/premises to its end customer and if yes, whether the supply will be regarded as having been made by the principal or by the job worker. It is clarified that the supply of goods by the principal from the place of business/premises of the job worker will be regarded as supply by the principal and not by the job worker as specified in section 143(1)(a) of the CGST Act.

8. Movement of goods from the principal to the job worker and the documents and intimation required there for:

8.1 Issues: Doubts have been raised about the documents required to be issued for sending the goods (i) by the principal to the job worker, (ii) from one job worker to another job worker; and (iii) from the job worker back to the principal.

8.2 Legal provisions: Section 143 of the CGST Act provides that the principal may send and/or bring back inputs/capital goods for job work without payment of tax, under intimation to the proper officer and subject to the prescribed conditions. Rule 45 of the CGST Rules provides that the inputs, semi-finished goods or capital goods being sent for job work (including that being sent from one job worker to another job worker for further job work or those being sent directly to a job worker) shall be sent under the cover of a challan issued by the principal, containing the details specified in rule 55 of the CGST Rules. This rule has been amended *vide* Notification No. 14/2018-Central tax dated 23.03.2018 to provide that a job worker may endorse the challan issued by the principal. The principal is also required to file FORM GST ITC-04 every quarter stating the said details. Further, as per the provisions contained in rule 138 of the CGST Rules, an e-way bill is required to be generated by every registered person who causes movement of goods of consignment value exceeding fifty thousand rupees even in cases where such movement is for reasons other than for supply (e.g. in case of movement for job work). Further, the third proviso to rule 138(1) of the CGST Rules provides that the e-way bill shall be generated either by the principal or by the registered job worker irrespective of the value of the consignment, where goods are sent by a principal located in one State/Union territory to a job worker located in any other State/Union territory.

8.3 As mentioned above, rule 45 of the CGST Rules provides that inputs, semi-finished goods or capital goods shall be sent to the job worker under the cover of a challan issued by the principal, including in cases where such goods are sent directly to a job worker. Further, rule 55 of the CGST Rules provides that the consignor may issue a delivery challan containing the prescribed particulars in case of transportation of goods for job work. It may be noted that

rule 45 provides for the issuance of a challan by the principal whereas rule 55 provides that the consignor may issue the delivery challan. It is also important to note that as per the provisions contained in rule 138 of the CGST Rules, an e-way bill is required to be generated by every registered person who causes movement of goods of consignment value exceeding fifty thousand rupees even in cases where such movement is for reasons other than for supply (e.g. in case of movement for job work). The third proviso to rule 138(1) of the CGST Rules provides that the e-way bill shall be generated either by the principal or by the registered job worker irrespective of the value of the consignment, where goods are sent by a principal located in one State/Union territory to a job worker located in any other State/Union territory. It may also be noted that as per *Explanation 1* to rule 138(3) of the CGST Rules, where the goods are supplied by an unregistered supplier to a registered recipient, the movement shall be said to be caused by such recipient if the recipient is known at the time of commencement of the movement of goods. In other words, the e-way bill shall be generated by the principal, wherever required, in case the job worker is unregistered.

8.4 Clarification: On conjoint reading of the relevant legal provisions, the following is clarified with respect to the issuance of challan, furnishing of intimation and other documentary requirements in this regard:

- (i) Where goods are sent by principal to only one job worker: The principal shall prepare in triplicate, the challan in terms of rules 45 and 55 of the CGST Rules, for sending the goods to a job worker. Two copies of the challan may be sent to the job worker along with the goods. The job worker should send one copy of the said challan along with the goods, while returning them to the principal. The FORM GST ITC-04 will serve as the intimation as envisaged under section 143 of the CGST Act, 2017.
- (ii) Where goods are sent from one job worker to another job worker: In such cases, the goods may move under the cover of a challan issued either by the principal or the job worker. In the alternative, the challan issued by the principal may be endorsed by the job worker sending the goods to another job worker, indicating there in the quantity and description of goods being sent. The same process may be repeated for subsequent movement of the goods to other job workers.
- (iii) Where the goods are returned to the principal by the job worker: The job worker should send one copy of the challan received by him from the principal while returning the goods to the principal after carrying out the job work.
- (iv) Where the goods are sent directly by the supplier to the job worker: In this case, the goods may move from the place of business of the supplier to the place of business/premises of the job worker with a copy of the invoice issued by the supplier in the name of the buyer (*i.e.* the principal) wherein the job worker's name and address should also be mentioned as the consignee, in terms of rule 46(o) of the CGST Rules. The buyer (*i.e.*, the principal) shall issue the challan under rule 45 of the CGST Rules

and send the same to the job worker directly in terms of para (i) above. In case of import of goods by the principal which are then supplied directly from the customs station of import, the goods may move from the customs station of import to the place of business/premises of the job worker with a copy of the Bill of Entry and the principal shall issue the challan under rule 45 of the CGST Rules and send the same to the job worker directly.

- (v) Where goods are returned in piecemeal by the job worker: In case the goods after carrying out the job work, are sent in piecemeal quantities by a job worker to another job worker or to the principal, the challan issued originally by the principal cannot be endorsed and a fresh challan is required to be issued by the job worker.
- (vi) Submission of intimation: Rule 45(3) of the CGST Rules provides that the principal is required to furnish the details of challans in respect of goods sent to a job worker or received from a job worker or sent from one job worker to another job worker during a quarter in FORM GST ITC-04 by the 25th day of the month succeeding the quarter or within such period as may be extended by the Commissioner. It is clarified that it is the responsibility of the principal to include the details of all the challans relating to goods sent by him to one or more job worker or from one job worker to another and its return therefrom. The FORM GST ITC-04 will serve as the intimation as envisaged under section 143 of the CGST Act.

9. Liability to issue invoice, determination of place of supply and payment of GST:

9.1 Issues: Doubts have been raised about the time, value and place of supply in the hands of principal or job worker as also about the issuance of invoices by the principal or job worker, as the case may be, with regard to the supply of goods from principal to the recipient from the job worker's place of business/premises and the supply of services by the job worker.

9.2 Legal provisions: As mentioned earlier, section 143 of the CGST Act provides that the inputs/capital goods may be sent for job work without payment of tax and unless they are brought back by the principal, or supplied from the place of business/premises of the job worker within a period of one/three years, as the case may be, it would be deemed that such inputs or capital goods (other than moulds and dies, jigs and fixtures or tools) have been supplied by the principal to the job worker on the day when the said inputs or capital goods were sent out. Further, the job worker is liable to pay GST on the supply of job work services.

9.3 The provisions relating to time of supply are contained in sections 12 and 13 of the CGST Act and that for determining the value of supply are in section 15 of the CGST Act. The provisions relating to place of supply are contained in section 10 of the IGST Act, 2017. Further, the provisions relating to the issuance

of an invoice are contained in section 31 of the CGST Act read with rule 46 of the CGST Rules.

9.4 On conjoint reading of all the provisions, the following is clarified with respect to the issuance of an invoice, time of supply and value of supply:

- (i) **Supply of job work services:** The job worker, as a supplier of services, is liable to pay GST if he is liable to be registered. He shall issue an invoice at the time of supply of the services as determined in terms of section 13 read with section 31 of the CGST Act. The value of services would be determined in terms of section 15 of the CGST Act and would include not only the service charges but also the value of any goods or services used by him for supplying the job work services, if recovered from the principal. Doubts have been raised whether the value of moulds and dies, jigs and fixtures or tools which have been provided by the principal to the job worker and have been used by the latter for providing job work services would be included in the value of job work services. In this regard, attention is invited to section 15 of the CGST Act which lays down the principles for determining the value of any supply under GST. Importantly, clause (b) of sub-section (2) of section 15 of the CGST Act provides that any amount that the supplier is liable to pay in relation to the supply but which has been incurred by the recipient will form part of the valuation for that particular supply, provided it has not been included in the price for such supply. Accordingly, it is clarified that the value of such moulds and dies, jigs and fixtures or tools may not be included in the value of job work services provided its value has been factored in the price for the supply of such services by the job worker. It may be noted that if the job worker is not registered, GST would be payable by the principal on reverse charge basis in terms of the provisions contained in section 9(4) of the CGST Act. However, the said provision has been kept in abeyance for the time being.
- (ii) **Supply of goods by the principal from the place of business/premises of job worker:** Section 143 of the CGST Act provides that the principal may supply, from the place of business/premises of a job worker, inputs after completion of job work or otherwise or capital goods (other than moulds and dies, jigs and fixtures or tools) within one year or three years respectively of their being sent out, on payment of tax within India, or with or without payment of tax for exports, as the case may be. This facility is available to the principal only if he declares the job worker's place of business/premises as his additional place of business or if the job worker is registered. Since the supply is being made by the principal, it is clarified that the time, value and place of supply would have to be determined in the hands of the principal irrespective of the location of the job worker's place of business/premises. Further, the invoice would have to be issued by the principal. It is also clarified that in case of exports directly from the job worker's place of business/premises, the LUT or

bond, as the case may be, shall be executed by the principal. Illustration: The principal is located in State A, the job worker in State B and the recipient in State C. In case the supply is made from the job worker's place of business/premises, the invoice will be issued by the supplier (principal) located in State A to the recipient located in State C. The said transaction will be an inter-State supply. In case the recipient is also located in State A, it will be an intra-State supply.

- (iii) **Supply of waste and scrap generated during the job work:** sub - section (5) of Section 143 of the CGST Act provides that the waste and scrap generated during the job work may be supplied by the registered job worker directly from his place of business or by the principal in case the job worker is not registered. The principles enunciated in para (ii) above would apply *mutatis mutandis* in this case.

9.5 Violation of conditions laid down in section 143: As per the provisions contained in section 143 of the CGST Act, if the inputs or capital goods (other than moulds and dies, jigs and fixtures or tools) are neither received back by the principal nor supplied from the job worker's place of business within the specified time period, the inputs or capital goods (other than moulds and dies, jigs and fixtures or tools) would be deemed to have been supplied by the principal to the job worker on the day when such inputs or capital goods were sent out to the first job worker.

9.6 Thus, if the inputs or capital goods are neither returned nor supplied from the job worker's place of business/premises within the specified time period, the principal would issue an invoice for the same and declare such supplies in his return for that particular month in which the time period of one year/three years has expired. The date of supply shall be the date on which such inputs or capital goods were initially sent to the job worker and interest for the intervening period shall also be payable on the tax. If such goods are returned by the job worker after the stipulated time period, the same would be treated as a supply by the job worker to the principal and the job worker would be liable to pay GST if he is liable for registration in accordance with the provisions contained in the CGST Act read with the rules made thereunder. It may be noted that if the job worker is not registered, GST would be payable by the principal on reverse charge basis in terms of the provisions contained in section 9(4) of the CGST Act. However, the said provision has been kept in abeyance for the time being. Further, there is no requirement of either returning back or supplying the goods from the job worker's place of business/premises as far as moulds and dies, jigs and fixtures, or tools are concerned.

10. Availability of input tax credit to the principal and job worker: Doubts have been raised regarding the availability of input tax credit (ITC) to the principal in respect of inputs/capital goods that are directly received by the job worker. Doubts have also been raised whether the job worker is eligible for ITC in respect of inputs, etc. used by him in supplying job work services. It is clarified that, in view of the provisions contained in clause (b) of sub-section (2)

of section 16 of the CGST Act, the input tax credit would be available to the principal, irrespective of the fact whether the inputs or capital goods are received by the principal and then sent to the job worker for processing, etc. or whether they are directly received at the job worker's place of business/premises, without being brought to the premises of the principal. It is also clarified that the job worker is also eligible to avail ITC on inputs, etc. used by him in supplying the job work services if he is registered.

* * *

Job worker clarification:

Circular No. 38/12/2018 dated 26.03.2018 has been revised in view of the amendment carried out in section 143 of the CGST Act, 2017 vide section 29 of the CGST (Amendment) Act, 2018 revised vide CBIC, Circular No. 88/07/2019-GST dated 1st February 2019, has clarified the following with regard to Job worker, summarized as under:—

- Amended Para 2 - As per clause (68) of section 2 of the CGST Act, 2017, "job work" means any treatment or process undertaken by a person on goods belonging to another registered person and the expression "job worker" shall be construed accordingly. The registered person on whose goods (inputs or capital goods) job work is performed is called the "Principal" for the purposes of section 143 of the CGST Act. The said section which encapsulates the provisions related to job work, provides that the registered principal may, without payment of tax, send inputs or capital goods to a job worker for job work and, if required, from there subsequently to another job worker and so on. Subsequently, on completion of the job work (by the last job worker), the principal shall either bring back the goods to his place of business or supply (including export) the same directly from the place of business/premises of the job worker within the time specified under section 143.
- Amended Para 3. It may be noted that the responsibility of keeping proper accounts of the inputs and capital goods sent for job work lies with the principal. Moreover, if the time frame specified under section 143 for bringing back or further supplying the inputs/capital goods is not adhered to, the activity of sending the goods for job work shall be deemed to be a supply by the principal on the day when the said inputs/capital goods were sent out by him. Thus, essentially, sending goods for job work is not a supply as such, but it acquires the character of supply only when the inputs/capital goods sent for job work are neither received back by the principal nor supplied further by the principal from the place of business/premises of the job worker within the specified time period (under section 143) of being sent out. It may be noted that the responsibility for sending the goods for job work as well as bringing them back or supplying them has been cast on the principal.
- Amended Para 6.1 Doubts have been raised about the requirement of obtaining registration by job workers when they are located in the same

State where the principal is located or when they are located in a State different from that of the principal. It may be noted that the job worker is required to obtain registration only if his aggregate turnover, to be computed on all India basis, in a financial year exceeds the specified threshold limit as specified in sub-section (1) of section 22 of the said Act, read with clause (iii) of the *Explanation* to the said section in case both the principal and the job worker are located in the same State. Where the principal and the job worker are located in different States, the requirement for registration flows from clause (i) of section 24 of the CGST Act which provides for compulsory registration of suppliers making any inter-State supply of services. However, exemption from registration has been granted in case the aggregate turnover of the inter-State supply of taxable services does not exceed the specified threshold limit as specified in sub-section (1) of section 22 of the said Act, read with clause (iii) of the *Explanation* to the said section in a financial year *vide* Notification No. 10/2017-Integrated Tax dated 13.10.2017 as amended *vide* Notification No 3/2019-Integrated Tax, dated 29.01.19. Therefore, it is clarified that a job worker is required to obtain registration only in cases where his aggregate turnover, to be computed on all India basis, in a financial year exceeds the threshold limit regardless of whether the principal and the job worker are located in the same State or in different States.

- Amended Para: 9.4. (i) Supply of job work services: The job worker, as a supplier of services, is liable to pay GST if he is liable to be registered. He shall issue an invoice at the time of supply of the services as determined in terms of section 13 read with section 31 of the CGST Act. The value of services would be determined in terms of section 15 of the CGST Act and would include not only the service charges but also the value of any goods or services used by him for supplying the job work services, if recovered from the principal. Doubts have been raised whether the value of moulds and dies, jigs and fixtures or tools which have been provided by the principal to the job worker and have been used by the latter for providing job work services would be included in the value of job work services. In this regard, attention is invited to section 15 of the CGST Act which lays down the principles for determining the value of any supply under GST. Importantly, clause (b) of sub-section (2) of section 15 of the CGST Act provides that any amount that the supplier is liable to pay in relation to the supply but which has been incurred by the recipient will form part of the valuation for that particular supply, provided it has not been included in the price for such supply. Accordingly, it is clarified that the value of such moulds and dies, jigs and fixtures or tools may not be included in the value of job work services provided its value has been factored in the price for the supply of such services by the job worker.

- Amended Para 9.6 Thus, if the inputs or capital goods are neither returned nor supplied from the job worker's place of business/premises within the specified time period, the principal would issue an invoice for the same and declare such supplies in his return for that particular month in which the time period of one year/three years has expired. The date of supply shall be the date on which such inputs or capital goods were initially sent to the job worker and interest for the intervening period shall also be payable on the tax. If such goods are returned by the job worker after the stipulated time period, the same would be treated as a supply by the job worker to the principal and the job worker would be liable to pay GST if he is liable for registration in accordance with the provisions contained in the CGST Act read with the rules made thereunder. Further, there is no requirement of either returning back or supplying the goods from the job worker's place of business/premises as far as moulds and dies, jigs and fixtures, or tools are concerned.

17. Advance Rulings

Supplies to job worker is exempted from payment of GST: AAR- Kerala

In Re: *Industrial Engineering Corporation* – 2019 (31) G.S.T.L. 345 (A.A.R. - GST). Held that the movement or supply of inputs and capital goods from the premises of a registered person to a job worker for job working, even though the said movement is qualifies as supply, is not liable to payment of GST as it is exempted in terms of Section 143(1) of the CGST/SGST Act, 2017. The job worker services for job working is qualify as supply in terms of Section 13 read with Section 31 of the CGST/SGST Act, 2017 and the supply of services by job worker is liable to pay GST. The job worker has to issue invoices not only for service charges but also the value of any goods or services used by him for supplying job work services, if the same has recovered from the principal and job worker is liable to pay GST on total value determined in terms of Section 15 of the CGST/SGST Act, 2017.

* * *

Activity of building and mounting of the body on the chassis made available by the customers will result in supply of services: AAR –GST-Tamil Nadu.

In Re: *Tube Investments of India Ltd.* reported in 2020 (42) G.S.T.L. 256 (A.A.R. - T.N.)

Supply of services - Activity of building and mounting of body on a truck chassis made available by customer to applicant - At no stage the ownership of the chassis is transferred to applicant - Consideration received by applicant is towards the manufacturing of the bus body on the chassis supplied by the principal - Activity of body building undertaken by applicant is to be classified as job work and thus, in terms of Section 7(1A) read with clause 3 of Schedule II to Central Goods and Services Tax Act, 2017, the same will be deemed to be a supply of service under SAC 9988 81 - "Motor vehicle and trailer manufacturing services" - Section 2 (68) of Central Goods and Services Tax Act, 2017

* * *

Job work - Generation of electricity by supply of coal or any other inputs by principal to job worker - No GST will be leviable on this supply - Job work charges payable to job worker by principal to be subjected to GST- App. A.A.R. - GST – Maharashtra.

In Re: *JSW Energy Limited* reported in 2020 (35) G.S.T.L. 456 (App. A.A.R. - GST - Mah.), held that the proposed arrangement of supply of coal or any other inputs by the principal *i.e.* JSL to the Appellant *i.e.* JEL for generation of electricity will be construed as job work. Accordingly, no GST will be leviable on this supply. Finally, the job work charges payable to JEL by JSL will be subjected to GST in terms of the provisions laid out in Notification No. 11/2017-C.T. (Rate), dated 28-6-2017 as amended by various subsequent notifications.

* * *

Supply to and from job worker processor cannot be treated as taxable supply- AAR-GST-Kerala.

In Re: *Bharat Petroleum Corporation Ltd.* reported in 2018 (19) G.S.T.L. 119 (A.A.R. - GST), held that transport of the inputs from principal for processing through pipe lines to the premises of job worker as well as return of processed goods after job work to the principal can't be treated as taxable supply as defined under Section 2(68) read with Section 143 of the CGST/KSGST Acts.

* * *

Processing natural gas and other inputs received from principal free of cost basis and manufacturing industrial gases from principal - Activity fell under scope of 'job work' - It was a provision of service GST payable- AAR-Kerala.

In Re: *Prodair Air Products India (P) Ltd* reported in 2018 (18) G.S.T.L. 817 (A.A.R. - GST), held that The activity undertaken by the applicant of processing natural gas and other inputs received from BPCL free of cost basis and manufacturing industrial gases from them shall fall under the scope of 'job work' under GST. The activity of the applicant being job work; is a provision of service, as the input as well as output is owned by the principal and not owned by the applicant and falls under Serial No. (ii) of the HSN 9988 taxable @ 18% GST is payable on the transaction value for which job work service is rendered.

Chapter 26

Electronic Way Bill

Synopsis

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1. Meaning of E-way Bill

In the pre-GST era, there was no concept of electronic way bill. A manual form of way bill was used under earlier VAT laws in most of the States. An electronic way bill is a physical transport document for transport of goods, which is incorporated under GST laws required for movement of goods, if the value of GST paid goods is more than ₹50,000/- through road, railways, airways and vessels except for certain specified goods as notified by the Government. The person in charge of a conveyance carrying any GST paid goods shall carry Tax

invoice along with E-way Bill and present to the Check post authority at entry point of any States or Union territory for scrutiny of Tax paid goods and also facilitates the transit checking of goods by the GST officer.

2. Advantages of E-way Bill

- (i) Easy access to E-way Bill portal by the supplier, recipient and transporter,
- (ii) Unique single document valid for across the country,
- (iii) Quick generation and cancellation of E-way Bill,
- (iv) To control tax evasion in the Country,
- (v) To ensure there is no pilferages of goods in transit, no mismatch of input tax credit,
- (vi) Hassle free movement of goods throughout the country,
- (vii) Tracking of the movement of goods with RFID mapped with vehicle,
- (viii) Provisions allowed for consolidation and extension of validity of E-way Bill,
- (ix) Easier for transit checking by the authorised officer.

3. Comparison of E-way Bill with erstwhile road permit

The comparative benefits of E-way Bill are summarized as under:

1. There is no need to follow with Commercial tax authority for issuance of way bills book and submission utilization of way bills Statement every month to the tax authority;
2. There is no need manual filling of way bill and has been replaced with electronic way bill;
3. Unlike earlier system E-way bill under GST regime is user friendly and convenient;
4. The generation of E-way Bill is easy and quick through various modes of generation;
5. There are several checks and balances for smooth tax administration and verification of E-way Bill by the GST officials to control tax evasion;
6. There is no need to vehicle to stand at entry point at check posts under GST regime to get verification by check post authority, thereby there is no physical existence of check post office at entry point of each State;
7. Under GST regime E-way Bill is ensuring faster movement of goods, resulting in reduction of transit time as well as cost of transportation.

4. Statutory provision of E-way Bill

Rule 138 of the CGST Rules, 2017 before its amendment stated that till such time an E-way Bill system is developed and approved by the Council, the Government may, by notification, specify the documents that the person in charge of a conveyance carrying any goods in transit shall carry the said documents. Provisions with regard to Electronic Way Bill Rules has been notified on 30th August, 2017 *vide* Notification No. 27/2017-CT, dated 30-8-2017 whereunder the provisions for providing for providing information to be

furnished prior to commencement of movement of goods and generation of E-way Bill were incorporated by amending Rule 138 and inserting new Rules from 138A to 138D in the CGST Rules, 2017. But the implementation of E-way Bill was deferred by the GST Council meeting. Thereafter, as per decision of the GST Council, the Central Government has decided to introduce E-way Bill for inter-State movement of goods w.e.f. 1-4-2018 *vide* Notified No. 12/2018-CT, dated 7-3-2018. For intra-State implementation of E-way Bill is to be made effective from 15th April, 2018 in a phased manner shall be completed by 1st June, 2018. For this purpose, States are to be divided into 4 lots to execute this phase rollout.

5. Requirement of E-way Bill

As mentioned above, E-way Bill is required where the value of goods of a consignment is more than ₹50,000/- except for certain specified goods for examples: goods meant for Job work, goods meant for export with Customs seal from factory to Port, airport, ICD, imported goods, goods sent on approval basis, exhibition or fairs purposes, removal for testing, removal from factory to weighbridge for weighment of goods and back to factory up to 20 kms., inward supply from unregistered person, SKD/CKD, Sales return, For own use and exempted goods.

5.1 Applicability of e-way bill provisions for movement of goods within the State

The provisions of e-way bill for movement of goods have been implemented with effect from 1-4-2018 all over India for inter-state movement of goods.

The following State Governments have waived requirement of e-way bill for the movement of goods within the State as per rule 138(14)(d) of CGST Rules and SGST Rules. The details of exemptions for the various States have been summarised as under:

| Name of the State | Exemptions from the requirement of e-way bill | Notifications No. and date |
|-------------------|---|---|
| 1. Bihar | e-way bill is required only if value exceeds ₹1 lac (earlier it was ₹2 lacs) | Notification No. So 180 dated 19-4-2018 amended on 14-1-2019 |
| 2. Chhattisgarh | e-way bill is not required for 15 specified goods | Notification No. F-10-31/2018/CT/V(46) dated 19-6-2018 |
| 3-Delhi | e-way bill is required if value exceeds ₹1 lac | Notification No. 3/2018 dated 15-6-2018 |
| 4-Goa | e-way bill is required only for specified 22 articles | Notification No. CCT/26-2/2018-19/36 dated 28-5-2018 |
| 5-Gujarat | E-way bill is not required for intra-city movement of goods, irrespective of value. In case of intra-State movement of goods, | Notification dated 19-9-2018 [Earlier Notification No. GSL/GST/RULE-138(14)] |

| Name of the State | Exemptions from the requirement of e-way bill | Notifications No. and date |
|--------------------|--|---|
| | e-way bill is required for all goods w.e.f.19-9-2-18 [earlier, it was required on for 19 types of goods]. e-way bill is not required for intra-State movement of flank, yarn, fabric and garments for job work. | /B.12 dated 11-4-2018, which has been rescinded on 19-9-2018] |
| 6-Himachal Pradesh | e-way bill is not required for 17 specified items | Notification No.12-4/78-EXN-TAX-17408 dated 31-5-2018 |
| 7-Jharkhand | Intra-State movement of goods threshold limits of ₹1 lacs and 12 specified goods , e-way bill is required for intra-State movement of goods if value exceeds ₹50,000/- | Notification No.66 dated 26-9-2018 |
| 8-Kerala | Exemptions provided to irrespective of value (a) sale of goods using sales van (b) Rubber latex, rubber sheets and rubber scrap, spices (c) Movement of goods to unregistered persons within 25 km. | Notification No.3/2018-State Tax dated 14-5-2018 |
| 9-Madhya Pradesh | Provisions of e-way bill will apply only to specified 11 items. | Notification No. F-A-3-08-2018-1-V(43) dated 24-4-2018 |
| 10-Maharashtra | e-way bill is not required upto value of ₹1 lacs intra-State movement of goods. | Notification No. 15E/2018 –State Tax dated 29-6-2018 |
| 11-Punjab | e-way bill for intra-State movement is not required if value is less than ₹1 lacs, e-way bill is not required for job work. | Notification No. PA/ETC/ 2018/175 dated 13-9-2018 |
| 12-Rajasthan | e-way bill is not requirement but relevant documents like tax invoice, delivery challan, bill of entry etc. should be carried for- (1) Movement of goods within State (for job work) | (1) Notification No. (1) F17(131)ACCT/GST 2017/3743 dated 6-8-2018 (2) F17(131)-Pt-II) ACCT/GST/2017/ 6672 dated 30-3-2021 |

| Name of the State | Exemptions from the requirement of e-way bill | Notifications No. and date |
|-------------------|---|--|
| | (2) Movement of goods within the State if value does not exceed ₹1 lac, except tobacco and if value does not exceed ₹1 lac. | |
| 13-Tamil Nadu | e-way for ₹1 lac. | Notification No. 09/2-2018 dated 31-5-2018 |
| 14-West Bengal | E-way bill is not required upto value of consignment ₹1 lac. No e-way bill for job working. | Notification No.13/2018-CT/GST dated 6-6-2018 and Notification No.14/2018-CT/GST dated 12-7-2018 |

6. Step to take registration on E-way Bill Common portal

- (i) E-way Bill portal for registration www.ewaygst.gov.in
- (ii) Click on “E-Way Bill Registration”
- (iii) Enter the GSTIN of the Registered Taxpayer as the consignor or the consignee and then enter the Captcha Code, then Click on “Go” tab, then, Click on Send OTP and verify the same, after checking the auto-filled details.
- (iv) Enter the OTP received on the registered mobile number and verify the same by clicking on the “verify OTP” button.
- (v) Create a “New User id and password” by your own choice. The user id should be of at least 8 characters without any special characters. Once all the details are provided correctly, system validates automatically and User id and password will be accepted in the system.

7. Format and details to be filled in E-way Bill

Format of E-way Bill has two parts and Format details as under:

The information shall be furnished in **Part A of FORM GST WEB-01:**

- A.1 - GSTIN of Supplier
- A.2 - GSTIN of Recipient
- A.3 - Place of Delivery
- A.4 - Document Number
- A.5 - Document Date
- A.6 - Value of Goods
- A.7 - HSN Code
- A.8 - Reason for Transportation

The information shall be furnished in **Part B of FORM GST WEB-01:**

- B.1 - Vehicle number for Road
- B.2 - Transport Document Number

8. How to generate E-way Bill

(1) Rule 138(1) of the CGST Rules, stated that information to be furnished prior to commencement of movement of goods and generation of E-way Bill, every registered person, who requiring movement of goods of consignment shall furnish electronically on the E-way Bill Portal before commencement of movement of goods relating (i) in relation to a supply; or (ii) for reasons other than supply; or (iii) due to inward supply from an unregistered person, for its generation, the registered person is required to furnish information relating to the said goods in **Part A of FORM GST EWB-01**, electronically, on the E-way Bill portal and shall be mapped to a Radio Frequency Identification Device embedded on to the conveyance:

Provided that the transporter, on an authorization received from the registered person, may furnish information in **Part A of FORM GST EWB-01**, electronically, on the common portal along with such other information as may be required on the common portal and a unique number will be generated on the said portal:

Provided further that where the goods to be transported are supplied through an e-commerce operator or a courier agency, on an authorization received from the consignor, the information in **Part A of FORM GST EWB-01** may be furnished by such e-commerce operator or courier agency and a unique number will be generated on the said portal:

Provided also that where goods are sent by a principal located in one State or Union territory to a job worker located in any other State or Union territory, the e-way bill shall be generated either by the principal or the job worker, if registered, irrespective of the value of the consignment:

Provided also that where handicraft goods are transported from one State or Union territory to another State or Union territory by a person who has been exempted from the requirement of obtaining registration under clauses (i) and (ii) of section 24, the e-way bill shall be generated by the said person irrespective of the value of the consignment.

Explanation 2.—For the purposes of this rule, the consignment value of goods shall be the value, determined in accordance with the provisions of section 15, declared in an invoice, a bill of supply or a delivery challan, as the case may be, issued in respect of the said consignment and also includes the central tax, State or Union territory tax, integrated tax and cess charged, if any, in the document and shall exclude the value of exempt supply of goods where the invoice is issued in respect of both exempt and taxable supply of goods.

(2) Information in **Part A of FORM GST EWB-01** can also be furnished by a transporter, on an authorisation received from the registered person. Similarly, where the goods are to be transported are supplied through an e-commerce operator or a courier agency, on an authorisation received from the consignee, the information in **Part A of FORM GST EWB-01** may be furnished by such e-commerce operator or courier agency.

(2A) Where the goods are transported by railways or by air or vessel, the E-way Bill shall be generated by the registered person, being the supplier or the recipient, who shall, either before or after the commencement of movement, furnish, on the common portal, the information in **Part B of FORM GST EWB-01**:

Provided that where the goods are transported by railways, the railways shall not deliver the goods unless the E-way Bill required under these rules is produced at the time of delivery.

Where goods move from a DTA unit to a SEZ unit or *vice versa* located in the same State, there is no requirement to generate an E-way Bill if the same has been exempted under Rule 138(14)(d) of the CGST Rules, 2017 - Circular No. 47/21/2018-GST, dated 8-6-2018.

(3) Where the goods are transported by the registered person as a consignor or the recipient of supply as the consignee, whether in his own conveyance or a hired one or by railways or by air or by vessel or a public conveyance, by road, after furnishing information in **Part B of FORM GST EWB-01** may generate the E-way Bill in **FORM GST EWB-01**.

Provided that the registered person or, the transporter may, at his option, generate and carry the E-way Bill even if the value of the consignment is less than fifty thousand rupees:

Provided further that where the movement is caused by an unregistered person either in his own conveyance or a hired one or through a transporter, he or the transporter may, at their option, generate the E-way Bill in **FORM GST EWB-01** on the common portal in the manner specified in this rule:

Provided also that where the goods are transported for a distance of upto fifty kilometers within the State or Union territory from the place of business of the consignor to the place of business of the transporter for further transportation, the supplier or the recipient, or as the case may be, the transporter may not furnish the details of conveyance in **Part B of FORM GST EWB-01**.

Explanation 1.—For the purposes of this sub-rule, where the goods are supplied by an unregistered supplier to a recipient who is registered, the movement shall be said to be caused by such recipient if the recipient is known at the time of commencement of the movement of goods.

Explanation 2.—The e-way bill shall not be valid for movement of goods by road unless the information in **Part B of FORM GST EWB-01** has been furnished except in the case of movements covered under the third proviso to sub-rule (3) and the proviso to sub-rule (5).

➤ **Furnishing of information in PART A of FORM GST EWB-01**

CBIC *vide* its Notification No. 15/2021-Central Tax, dated 18-05-2021 has made amendment to 138E of the CGST Rules, that asserts restriction on furnishing of information in PART A of FORM GST EWB-01, so as to substitute the words “in respect of any outward movement of goods of a registered person” with “in respect of a registered person, whether as a supplier or a recipient”

(4) Upon generation of the e-way bill on the common portal, a unique e-way bill number (EBN) shall be made available to the supplier, the recipient and the transporter on the common portal.

(5) Where the goods are transferred from one conveyance to another, the consignor or the recipient, who has provided information in **Part A** of the **FORM GST EWB-01**, or the transporter shall, before such transfer and further movement of goods, update the details of conveyance in the e-way bill on the common portal in **Part B** of **FORM GST EWB-01**:

Provided that where the goods are transported for a distance of upto fifty kilometers within the State or Union territory from the place of business of the transporter finally to the place of business of the consignee, the details of the conveyance may not be updated in the e-way bill.

(5A) The consignor or the recipient, who has furnished the information in **Part A** of **FORM GST EWB-01**, or the transporter, may assign the e-way bill number to another registered or enrolled transporter for updating the information in **Part B** of **FORM GST EWB-01** for further movement of the consignment:

Provided that after the details of the conveyance have been updated by the transporter in **Part B** of **FORM GST EWB-01**, the consignor or recipient, as the case may be, who has furnished the information in **Part A** of **FORM GST EWB-01** shall not be allowed to assign the e-way bill number to another transporter.

(6) After e-way bill has been generated in accordance with the provisions of sub-rule (1), where multiple consignments are intended to be transported in one conveyance, the transporter may indicate the serial number of e-way bills generated in respect of each such consignment electronically on the common portal and a consolidated e-way bill in **FORM GST EWB-02** maybe generated by him on the said common portal prior to the movement of goods.

(7) Where the consignor or the consignee has not generated the e-way bill in **FORM GST EWB-01** and the aggregate of the consignment value of goods carried in the conveyance is more than fifty thousand rupees, the transporter, except in case of transportation of goods by railways, air and vessel, shall, in respect of inter-State supply, generate the e-way bill in **FORM GST EWB-01** on the basis of invoice or bill of supply or delivery challan, as the case may be, and may also generate a consolidated e-way bill in **FORM GST EWB-02** on the common portal prior to the movement of goods:

Provided that where the goods to be transported are supplied through an e-commerce operator or a courier agency, the information in **Part A** of **FORM GST EWB-01** may be furnished by such e-commerce operator or courier agency.

(8) The information furnished in **Part A** of **FORM GST EWB-01** shall be made available to the registered supplier on the common portal who may utilize the same for furnishing the details in **FORM GSTR-1**:

Provided that when the information has been furnished by an unregistered supplier or an unregistered recipient in **FORM GST EWB-01**, he shall be informed electronically, if the mobile number or the e-mail is available.

(9) Where an e-way bill has been generated under this rule, but goods are either not transported or are not transported as per the details furnished in the e-way bill, the e-way bill may be cancelled electronically on the common portal within twenty-four hours of generation of the e-way bill:

Provided that an e-way bill cannot be cancelled if it has been verified in transit in accordance with the provisions of rule 138B:

Provided further that the unique number generated under sub-rule (1) shall be valid for a period of fifteen days for updation of **Part B of FORM GST EWB-01**.

(10) An e-way bill or a consolidated e-way bill generated under this rule shall be valid for the period as mentioned in column (3) of the Table below from the relevant date, for the distance, within the country, the goods have to be transported, as mentioned in column (2) of the said Table:—

| Sl. No. | Distance | Validity period |
|--------------------|--|--|
| | (1) | (2) |
| 1. | Upto 100 km. | One day in cases other than Over Dimensional Cargo Or multimodal shipment in which at least one leg involves transport by ship. |
| 2. | For every 100 km. or part thereof thereafter | One additional day in cases other than Over Dimensional Cargo or multimodal shipment in which at least one leg involves transport by ship. |
| 3. | Upto 20 km | One day in case of Over Dimensional Cargo [or multimodal shipment in which at least one leg involves transport by ship. |
| 4. | For every 20 km. or part thereof thereafter | One additional day in case of Over Dimensional Cargo [or multimodal shipment in which at least one leg involves transport by ship: |

Provided that the Commissioner may, on the recommendations of the Council, by notification, extend the validity period of an e-way bill for certain categories of goods as may be specified.

Provided further that where, under circumstances of an exceptional nature, including trans-shipment, the goods cannot be transported within the validity period of the e-way bill, the transporter may extend the validity period after updating the details in **Part B of FORM GST EWB-01**, if required.

Provided also that the validity of the e-way bill may be extended within eight hours from the time of its expiry.

(11) The details of the e-way bill generated under this rule shall be made available to the—

- (a) supplier, if registered, where the information in **Part A of FORM GST EWB-01** has been furnished by the recipient or the transporter; or

(b) recipient, if registered, where the information in **Part A** of **FORM GST EWB-01** has been furnished by the supplier or the transporter, on the common portal, and the supplier or the recipient, as the case may be, shall communicate his acceptance or rejection of the consignment covered by the e-way bill.

(12) Where the person to whom the information specified in sub-rule (11) has been made available does not communicate his acceptance or rejection within seventy-two hours of the details being made available to him on the common portal, or the time of delivery of goods whichever is earlier, it shall be deemed that he has accepted the said details.

(13) The e-way bill generated under this rule or under rule 138 of the Goods and Services Tax Rules of any State or Union territory shall be valid in every State and Union territory.

(14) Notwithstanding anything contained in this rule, no e-way bill is required to be generated—

- (a) where the goods being transported are specified in Annexure;
- (b) where the goods are being transported by a non-motorised conveyance;
- (c) where the goods are being transported from the customs port, airport, air cargo complex and land customs station to an inland container depot or a container freight station for clearance by Customs;
- (d) in respect of movement of goods within such areas as are notified under clause (d) of sub-rule (14) of rule 138 of the State or Union territory Goods and Services Tax Rules in that particular State or Union territory;
- (e) where the goods, other than de-oiled cake, being transported, are specified in the Schedule appended to notification No. 2/2017-Central tax (Rate) dated the 28th June, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R 674(E), dated the 28th June, 2017 as amended from time to time;
- (f) where the goods being transported are alcoholic liquor for human consumption, petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas or aviation turbine fuel;
- (g) where the supply of goods being transported is treated as no supply under Schedule III of the Act;
- (h) where the goods are being transported—
 - (i) under customs bond from an inland container depot or a container freight station to a customs port, airport, air cargo complex and land customs station, or from one customs station or customs port to another customs station or customs port, or
 - (ii) under customs supervision or under customs seal;
- (i) where the goods being transported are transit cargo from or to Nepal or Bhutan;
- (j) where the goods being transported are exempt from tax under notification No. 7/2017-Central Tax (Rate), dated 28th June 2017

published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R 679(E), dated the 28th June, 2017 as amended from time to time and notification No. 26/2017-Central Tax (Rate), dated the 21st September, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R 1181(E), dated the 21st September, 2017 as amended from time to time;

- (k) any movement of goods caused by defence formation under Ministry of defence as a consignor or consignee;
- (l) where the consignor of goods is the Central Government, Government of any State or a local authority for transport of goods by rail;
- (m) where empty cargo containers are being transported; and
- (n) where the goods are being transported upto a distance of twenty kilometers from the place of the business of the consignor to a weighbridge for weighment or from the weighbridge back to the place of the business of the said consignor subject to the condition that the movement of goods is accompanied by a delivery challan issued in accordance with rule 55.
- (o) where empty cylinders for packing of liquefied petroleum gas are being moved for reasons other than the supply.

C.B.I & C clarification

C.B.I & C, *vide* Notification No. 31/2019-Central Tax, dated 28-06-2019 has clarified restriction on furnishing information in Part- A of E-way bill: In clause (a) earlier only composition taxpayer registered under section 10 of the CGST Act were barred from filing in details in Part-A of Form GST EWB-01, if they have not submitted FORM CMP-08 for two consecutive quarters. Now this provision has been made applicable for such service providers as well, who are availing the benefit of Notification No. 2/2019-Central Tax dated 07-03-2019 at the rate of 6% would also not be allowed to furnish information in Part A of e-way bill (Effective from 21st August, 2019).

9. When to generate E-way Bill

The E-way Bill has to be generated before movement of GST paid goods and due to inward supply from unregistered person where GST is to be paid under reverse charge.

In case of movement of goods by railways, airways and waterways, the E-way Bill can be generated even after commencement of movement of goods.

10. Who is responsible for generating E-way Bill

The prime responsibility of generation of E-way Bill is that of registered supplier because he is in known of entire details of supplying along with transport details. However, a registered recipient can also generate E-way Bill on the basis of details provided by the supplier. The third person who can generate E-way Bill is the transporter who can generate it on the basis of information supplied by the supplier/recipient as the case may be. Transporter is also liable to issue a consolidated E-way Bill in case where multiple consignments are

intended to be transported in one conveyance. Further, in case of supplies by e-commerce operator, such operator can also generate E-way Bill.

Since, public conveyance has also been included as a mode of transport and the responsibility of generating E-way Bill in case of movement of goods by public transport would be that of the consignor or consignee.

Railway has been exempted from generation and carrying of E-way Bill with the condition that without the production of E-way Bill, railways will not deliver the goods to the recipient. But railways are required to carry invoice or delivery challan, etc. In case of movement of goods on account of job work, the registered job worker can also generate E-way Bill.

Provisions of Rule 138 of CGST Rules for taking action by various persons:

In terms of Rule 138 of the CGST Rules, 2017, the action need to be taken by the supplier, recipient or transporter of goods or e-commerce operator is summarized in Table as under:

| Sl. No. | Person liable to generate EWB | Action Required to be taken |
|----------------|--|--|
| 1 | Registered consignor/recipient as the case may be. | FORM GST EWB-01 required to be generated by first filing up Part A |
| 2 | In case of generation as above if mode of transport is own or hired vehicle or public conveyance | Also Fill Part B of FORM GST EWB-01 |
| 3 | In case of generation as above if mode of transport is Railways, Air or vessel | Also Fill Part B of FORM GST EWB-01 |
| 4 | Registered person is consignor or consignee and goods are handed over to transporter of goods | Also Fill Part B of FORM GST EWB-01 except that details of conveyance not required to be filled if distance to transporter's premises is upto 50 km. The registered person shall furnish the information relating to the transporter |
| 5 | Transporter of goods | Generate E-way Bill on the basis of authorisation and information shared by the registered person in Part A of FORM GST EWB-01 . However, details of conveyance in part B may not be filled if distance to consignee's premises is upto 50 Km. within same State. |
| 6 | Transporter of goods | Generate consolidated FORM GST EWB-01 in case of multiple consignments. |

| Sl. No. | Person liable to generate EWB | Action Required to be taken |
|---------|-------------------------------|--|
| 7 | Transporter of goods | Upload information in FORM GST EWB-04 in case vehicle intercepted and detained for more than thirty minutes |
| 8 | E-Commerce | E-Commerce operator can generate EWB on authorisation from consignor. |
| 9 | Courier | Courier service provider can generate EWB on authorisation from consignor. |

11. Compulsory generation of E-way Bill

The minimum consignment value limit prescribed in Rules for issuance of E-way Bill is ₹50,000/- . However, where goods are sent by a principal located in one State or Union territory to a job worker located in any other State or Union territory, the E-way Bill shall be generated either by the principal or the job worker, if registered, irrespective of the value of the consignment.

A person who has been exempted from registration under (i) and (ii) of Section 24 of the CGST Act, and making inter-State movement of handicraft goods shall generate E-way Bill irrespective of the value of the consignment.

12. Voluntary generation of E-way bill

A registered person or transporter has option to generate E-way Bill even in those cases where value of goods is less than ₹ 50,000/- . Like that an unregistered person who is causing movement of goods either in his own conveyance or a hired one or through a transporter, has an option, generate the E-way Bill in **FORM GST EWB-01** on the common portal. Similarly, where the goods are transported for a distance of less than 10 kilometers within the State or Union territory from the place of business of the consignor to the place of business of the transporter may not furnish the details of conveyance in **Part B FORM GST EWB-01**.

13. Meaning of Consignment value

Value for the purpose of E-way Bill shall be considered as consignment value, which is determined under Section 15 of the CGST Act and it includes the amount of CGST, SGST, UTGST, IGST and Cess charged in tax invoice, as the case may be but excludes value of exempted goods where the invoice is issued in respect of both exempted and taxable supply.

14. Change of Transporter

Further, it has been permitted the consignor/recipient or the transporter to assign the E-way Bill number to another registered or enrolled transporter for updating the information in **Part B of FORM GST EWB-01** for further movement of consignment. However, this facility cannot be exercise by consignor/recipient once the details of the conveyance have been updated by the transporter in **Part B of FORM GST EWB-01**.

15. Procedure to follow after furnishing information for generation of E-way Bill

(1) **Unique EBN number:** On furnishing details in **FORM GST EWB-01** on E-way Bill portal, thereby E-way Bill shall generate and a unique E-way Bill Number (EBN) shall be available to the supplier, the recipient and the transporter on E-way Bill portal. However, this unique number shall be valid for a period of fifteen days updation of **Part B of FORM GST EWB-01**.

(2) **Transshipment of goods in transit;** Any transporter transferring goods one conveyance to another in the course of transit shall, before such transfer and further movement of goods, update the details of conveyance in the E-way Bill on E-way Bill portal in **FORM GST EWB-01**, before such transfer of goods in another carrier, a new-E-way Bill shall generate for further movement. If the transported distance is less than 10 kilometers in that case updating of conveyance in the E-way Bill may not be required.

(3) **Consolidated E-way bill:** After E-way Bill has been generated and where there are multiple consignments are intended to be transported in one conveyance, the transporter may indicate the serial number of E-way Bill generated in respect of each such consignment and shall generate a consolidated E-way Bill in **FORM GST EWB-02** prior to the movement of goods.

(4) **Responsibility of Transporter:** In cases, where the consignor or the consignee has not generated **FORM GST EWB-01** even when the value of goods carried in the conveyance is more than ₹50,000/-, the transporter shall generate **FORM GST EWB-01** on basis of invoice/delivery challan, etc. and also generate a consolidated E-way Bill in **FORM GST EWB-02**, prior to movement of goods. Thus, responsibility is lies with the transporter to generate E-way Bill in such cases.

(5) **Intimation to the Supplier/recipient:** The details of information furnished in **Part A of FORM GST EWB-01** shall be made available to the registered supplier/recipient on E-way Bill portal, for use the same for furnishing return in **FORM GSTR-1**. In case of unregistered supplier, the information would be furnished either by phone or e-mail, if the same is available.

16. Cancellation of E-way Bill - Rule 138(9)

Where an E-way Bill has been generated, but goods are either not being transported or are not being transported as per the details furnished, the E-way Bill may be cancelled electronically, within 24 hours of generation, provided that an E-way Bill cannot be cancelled if it has been verified in transit. The facility of cancellation of E-way Bill is also available through SMS to the supplier, recipient and the transporter, as the case may be as per Explanation to CGST Rule 138(14).

17. Validity period of E-way Bill

An E-way Bill or consolidated E-way Bill has generated on E-way Bill portal shall be valid for the period, which is depending upon the distance for the goods have to be transported is summarized as in the below Table:

| Sr. No. | Distance | Validity period |
|---------|---|--|
| (1) | (2) | (3) |
| 1 | Upto 100 Km. | One day in cases other than Over Dimensional Cargo. |
| 2 | For every 100 Km or part thereof thereafter. (Other than ODC) | One additional day in cases other than over Dimensional Cargo. |
| 3 | Upto 20 Km. (ODC) | One day in case of Over Dimensional Cargo |
| 4 | For every 20 km. or part thereof thereafter. | One additional day in case of Over Dimensional Cargo. |

18. Relevant date for counting validity period

The “relevant date” for the purpose of validity means the date on which the E-way Bill has been generated and the period of validity shall be calculated from the time at which the E-way Bill has been generated and each day shall be counted as the period expiring at midnight of the day immediately following the date of generation of E-way Bill i.e. twenty-four hours considering time frame.

Rule 138(10) An E-way Bill or a consolidated E-way Bill generated under this rule shall be valid for the period as mentioned in Column (3) of the Table below from the relevant date, for the distance, within the country, the goods have to be transported, as mentioned in Column (2) of the said Table:—

| Table Sl. No. | Distance | Validity period |
|---------------|--|---------------------|
| (1) | (2) | (3) |
| 1. | Upto 100 km. | One day |
| 2. | For every 100 km. or part thereof thereafter | One additional day: |

Validity of e-way bill narrowed by increasing distance from 100 km. to 200 km. per day- w.e.f. 01-01-2021

E-way bill will now be valid for 1 day for every 200 km of travel, as against 100 km earlier, in cases other than Over Dimensional Cargo or multimodal shipment in which at least one leg involves transport by ship.

For every 200 km. or part thereof thereafter, one additional day will be allowed. *Vide* Notification No. 94/2020-C.T, dated 22-12-2020.

19. Power of extension of validity

The Commissioner has the power to extend the validity period of E-way Bill for certain categories of goods as may be specified in the notification to be issued by him on recommendation of GST Council.

Further where, under circumstances of an exceptional nature, the goods cannot be transported within the validity period of the E-way Bill, the transporter may generate another E-way Bill after updating the details in **Part B of FORM GST EWB-01**.

Explanation.—For the purposes of this rule, the “relevant date” shall mean the date on which the E-way Bill has been generated and the period of validity shall be counted from the time at which the E-way Bill has been generated and each day shall be counted as twenty-four hours.

20. Extension of valid period by the transporter

Where under circumstances of an exceptional nature, including transhipment, the goods cannot be transported within the validity period of the E-way Bill; the transporter may extend the validity period after updating the details in **Part B of FORM GST EWB-01**.

The details of the E-way Bill generated under this rule shall be made available to the – Rule 138(11)

- (a) supplier, if registered, where the information in **Part A of FORM GST EWB-01** has been furnished by the recipient or the transporter; or
- (b) recipient, if registered, where the information in **Part A of FORM GST EWB-01** has been furnished by the supplier or the transporter,

On the common portal, and the supplier or the recipient, as the case may be, shall communicate his acceptance or rejection of the consignment covered by the E-way Bill. Whichever is earlier, it shall be deemed that he has accepted the said details.

As per sub-rule (11) of Rule 138, the details of e-way bill generated shall be made available to recipient, if the registered person does not communicate his acceptance or rejection of the consignment covered by the E-way Bill, within seventy two hours of available in the common portal, it shall be deemed that he has accepted [sub-rule (12)].

The e-way bill generated under sub-rule 13 of Rule 138 of the Goods and Services Tax Rules of any State or Union territory shall be valid in every State and Union territory

As per sub-rule 14 of Rule 13, no E-way Bill is required to be generated—

- (a) where the goods being transported are specified in Annexure;
- (b) where the goods are being transported by a non-motorised conveyance;
- (c) where the goods are being transported from the Customs port, airport, air cargo complex and land customs station to an inland container depot or a container freight station for clearance by Customs;
- (d) in respect of movement of goods within such areas as are notified under clause (d) of sub-rule (14) of Rule 138 of the State or Union territory Goods and Services Tax Rules in that particular State or Union territory;
- (e) where the goods, other than de-oiled cake, being transported, are specified in the Schedule appended to Notification No. 2/2017-C.T. (Rate), dated the 28th June, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 674(E), dated the 28th June, 2017 as amended from time to time;
- (f) where the goods being transported are alcoholic liquor for human consumption, petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas or aviation turbine fuel;

- (g) where the supply of goods being transported is treated as no supply under Schedule III of the Act;
- (h) where the goods are being transported -
 - (i) under customs bond from an inland container depot or a container freight station to a customs port, airport, air cargo complex and land customs station, or from one customs station or customs port to another customs station or customs port, or
 - (ii) under customs supervision or under customs seal;
- (i) where the goods being transported are transit cargo from or to Nepal or Bhutan;
- (j) where the goods being transported are exempt from tax under Notification No. 7/2017-C.T. (Rate), dated 28th June, 2017 and Notification No. 26/2017-C.T. (Rate), dated the 21st September, 2017 as amended from time to time;
- (k) any movement of goods caused by defence formation under Ministry of defence as a consignor or consignee;
- (l) where the consignor of goods is the Central Government, Government of any State or a local authority for transport of goods by rail;
- (m) where empty cargo containers are being transported; and
- (n) where the goods are being transported upto a distance of twenty kilometers from the place of the business of the consignor to a weighbridge for weighment or from the weighbridge back to the place of the business of the said consignor subject to the condition that the movement of goods is accompanied by a delivery challan issued in accordance with Rule 55; and
- (o) where empty cylinders for packing of liquefied petroleum gas are being moved for reasons other than supply.

21. Acceptance/Rejection of E-way Bill

The details of E-way Bill generated shall be made available to the registered recipient, if generated by consignor and *vice versa* on the E-way Bill portal. It is responsibility of recipient/consignor to communicate his acceptance or rejection of the consignment covered by the E-way Bill. However, where the recipient/consignor does not communicate his acceptance or rejection within 72 hours on common portal or the time of delivery of goods whichever is earlier, it shall be deemed that he has accepted the said details.

22. Jurisdictional validity of E-way Bill

The E-way Bill generated under the Goods and Services Tax Rules of any State/Union territory or Rule 138 of the Goods and Services Tax Rules shall be valid in every State and Union territory.

23. SMS Facilitation

The facility of generation and cancellation of E-way Bill may also made available through SMS by using mobile phone.

24. No requirement of E-way Bill on the following cases where

- (i) the goods being transported are specified in Annexure under Rule 138(14) of the Central Goods and Services Tax Rules, 2017;
- (ii) the goods are being transported by a non-motorized conveyance;
- (iii) the goods are being transported from the port, airport, air cargo complex and land Customs Station to Inland Container Depot or Container Freight Station (for clearance by Customs);
- (iv) the movement of goods within areas notified under clause (d) of sub-rule (14) Rule 138 of the Goods and Services Tax Rules of the Concerned State;
- (v) goods (other than de-oiled cake) specified in the Schedule appended to Notification No. 2/2017-C.T. (Rate), dated the 28th June, 2017, *i.e.* goods exempted from GST;
- (vi) alcoholic liquor for human consumption, petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas or aviation turbine fuel;
- (vii) goods which have been declared as ‘no supply’ in Schedule III of CGST Act, 2017;
- (viii) the goods are being transported under Customs bond from an inland container depot or a container freight station to a Customs port, airport, air cargo complex and land Customs station, or from one Customs station or Customs port to another Customs station or Customs port, or under Customs supervision or under Customs seal;
- (ix) the goods being transported are transit cargo from or to Nepal or Bhutan;
- (x) the goods being transported are exempt from tax under Notification No. 7/2017-C.T. (Rate), dated 28th June, 2017 as amended from time to time and Notification No. 26/2017-C.T. (Rate), dated the 21st September, 2017 as amended from time to time;
- (xi) any movement of goods caused by defence formation under Ministry of defence as a consignor or consignee;
- (xii) the consignor of goods is the Central Government, Government of any State or a local authority for transport of goods by rail;
- (xiii) empty cargo containers are being transported; and
- (xiv) the goods are being transported upto a distance of twenty kilometers from the place of business of the consignor to a weighbridge for weighment or from the weighbridge back to the place of business of the said consignor subject to condition that the movement of goods is accompanied by a delivery challan issued in accordance with Rule 55.
- (xv) empty cylinders for packing of liquefied petroleum gas are being moved for reasons other than supply.

25. Provisions relating to movement of goods**Rule 138A. Documents and devices to be carried by a person-in-charge of a conveyance:**

- (1) As per the CGST Rule 138A, the person in charge of a conveyance shall carry a set of documents in transit such as:
- (a) the invoice or bill of supply or bill of entry.
 - (b) a delivery challan where the goods are transported for reasons other than by way of supply.
 - (c) a copy of the E-way Bill or the E-way Bill number, either physically or the E-way Bill number in electronic form mapped to a Radio Frequency Identification Device (RFID) embedded on to the conveyance except in case of movement goods by rail or by air or vessel.
 - (d) The Commissioner may by issue of notification require certain class of transporters to obtain a unique Radio Frequency Identification Device and get the said device embedded on to the conveyance and map the E-way Bill to the said device embedded on to the conveyance and map the E-way Bill to the Radio Frequency Identification Device prior to the movement of goods.
 - (e) Dispensation of carrying E-way Bill: Under special circumstances Commissioner may by issue of notification, require the person-in-charge of the conveyance to carry the documents, *i.e.*, (a) tax invoice or bill of supply or bill of entry; or (b) a delivery challan, where the goods are transported for reasons other than by way of supply instead of the E-way Bill.
- (2) A registered person may obtain an Invoice Reference Number from the E-way Bill portal by uploading a tax invoice issued by him in **FORM GST INV-01** which would be valid for a period of 30 days. On furnishing of information in **FORM GST INV-01**, the information in **Part A of FORM GST EWB-01** shall be automatically updated.
- (3) Where the registered person uploads the invoice under sub-rule (2), the information in Part A of FORM GST EWB-01 shall be auto-populated by the common portal on the basis of the information furnished in FORM GST INV-1.
- (4) The Commissioner may, by notification, require a class of transporters to obtain a unique Radio Frequency Identification Device and get the said device embedded on to the conveyance and map the e-way bill to the Radio Frequency Identification Device prior to the movement of goods.
- (5) Notwithstanding anything contained in clause (b) of sub-rule (1), where circumstances so warrant, the Commissioner may, by notification, require the person-in-charge of the conveyance to carry the following documents instead of the e-way bill (a) tax invoice or bill of supply or bill of entry; or (b) a delivery challan, where the goods are transported for reasons other than by way of supply.
- Rule 138B. Verification of documents and conveyances:** As per Rule 138B of the CGST Rules specified the following action shall be taken by the authorised officer in transit checking of conveyance.

- (1) **Interception and verification of conveyance in transit:** As per provisions of CGST Rule 138A, the Commissioner or an officer empowered by him in his behalf can authorise the proper officer to intercept any conveyance to verify the E-way Bill or the E-way Bill number in physical form or for all inter-State and intra-State movement of goods. However, on receipt of specific information of evasion of tax, physical verification of a specific conveyance can also be carried out by any officer after obtaining necessary approval of the Commissioner or officer empowered by him.
- (2) **Radio Frequency Identification Device readers:** The Commissioner shall get RFID readers shall be installed at places where verification of movement of goods is required to be carried out and verification of movement of vehicles shall be done through such device readers where the E-way Bill has been mapped with the said device.
- (3) The physical verification of conveyances shall be carried out by the proper officer as authorised by the Commissioner or an officer empowered by him in this behalf:
Provided that on receipt of specific information on evasion of tax, physical verification of a specific conveyance can also be carried out by any other officer after obtaining necessary approval of the Commissioner or an officer authorised by him in this behalf.

Rule 138C. Inspection and verification Report of transit checking:

(1) A summary report of every inspection of goods in transit shall be recorded online by the proper officer in **Part A of FORM GST EWB-03** within 24 hours of inspection and the final report in **Part B of FORM GST EWB-03** shall be recorded online within 3 days of the inspection.

(2) Provides that where physical verification of goods being transported on my conveyance has been done during transit at one place no further physical verification has of the said conveyance is to be carried out again, unless specific information relating to evasion of tax is made available subsequently.

Re-inspection or verification: The physical verification of goods being transported on any conveyance has been done during transit at one place within the State or in any other State, no further physical verification of the said conveyance shall be carried out again in the State, unless specific information relating to evasion of tax is made available subsequently.

Rule 138D. Facility for uploading information regarding detention of vehicle: Where a vehicle has been intercepted and detained for a period exceeding thirty minutes, the transporter may upload the said information in **FORM GST EWB-04** on the common portal.

Rule 138E. E-Way Bill generation discontinued for non-filing of Returns: Rule 138E has been inserted *vide* Notification No. 74/2018 dated 13.12.2018, if the GST returns for the last 2 months have not been furnished by the regular Dealer or if the GST returns for the last 2 quarters have not been furnished by the Composition Dealer (u/s 10 of the CGST Act, 2017). Then, he

will not be allowed to generate e-way bill on the GST e-way bill portal. In such cases only the Commissioner would be able to allow such generation in select cases that subject to issuance of an order.

The date of implementation of this provision has been fixed on 21st August *vide* Notification No. 22/2019-Central Tax, dated the 23 April, 2019 and further implementation dated has been extended to 21st November, 2019 *vide* Notification No. 36/2019-Central Tax, dated 20-08-2019 and it would be effective from 11th January, 2020 *vide* Notification No. 75/2019-CT, dated 26.12.2019)

Rule 138F- Information to be furnished in case of intra-State movement of gold, precious stones, etc. and generation of e-way bills thereof—

(1) Where—

- (a) a Commissioner of State tax or Union territory tax mandates furnishing of information regarding intra-State movement of goods specified against serial numbers 4 and 5 in the Annexure appended to sub-rule (14) of rule 138, in accordance with sub-rule (1) of rule 138F of the State or Union territory Goods and Services Tax Rules, and
- (b) the consignment value of such goods exceeds such amount, not below rupees two lakhs, as may be notified by the Commissioner of State tax or Union territory tax, in consultation with the jurisdictional Principal Chief Commissioner or Chief Commissioner of Central Tax, or any Commissioner of Central Tax authorised by him,

notwithstanding anything contained in Rule 138, every registered person who causes intra-State movement of such goods,—

- (i) in relation to a supply; or
- (ii) for reasons other than supply; or
- (iii) due to inward supply from an un-registered person,

shall, before the commencement of such movement within that State or Union territory, furnish information relating to such goods electronically, as specified in Part A of FORM GST EWB-01, against which a unique number shall be generated:

Provided that where the goods to be transported are supplied through an e-commerce operator or a courier agency, the information in Part A of FORM GST EWB-01 may be furnished by such e-commerce operator or courier agency.

(2) The information as specified in PART B of FORM GST EWB-01 shall not be required to be furnished in respect of movement of goods referred to in the sub-rule (1) and after furnishing information in Part-A of FORM GST EWB-01 as specified in sub-rule (1), the e-way bill shall be generated in FORM GST EWB-01, electronically on the common portal.

(3) The information furnished in Part A of FORM GST EWB-01 shall be made available to the registered supplier on the common portal who may utilize the same for furnishing the details in FORM GSTR-1.

(4) Where an e-way bill has been generated under this rule, but goods are either not transported or are not transported as per the details furnished in the e-waybill, the e-way bill may be cancelled, electronically on the common portal, within twenty-four hours of generation of the e-way bill:

Provided that an e-way bill cannot be cancelled if it has been verified in transit in accordance with the provisions of rule 138B.

(5) Notwithstanding anything contained in this rule, no e-way bill is required to be generated—

- (a) where the goods are being transported from the customs port, airport, air cargo complex and land customs station to an inland container depot or a container freight station for clearance by Customs;
- (b) where the goods are being transported—
 - (i) under customs bond from an inland container depot or a container freight station to a customs port, airport, air cargo complex and land customs station, or from one customs station or customs port to another customs station or customs port, or
 - (ii) under customs supervision or under customs seal.

(6) The provisions of sub-rule (10), sub-rule (11) and sub-rule (12) of rule 138, rule 138A, rule 138B, rule 138C, rule 138D and rule 138E shall, mutatis mutandis, apply to an e-way bill generated under this rule.

Explanation.—For the purposes of this rule, the consignment value of goods shall be the value, determined in accordance with the provisions of section 15, declared in an invoice, a bill of supply or a delivery challan, as the case may be, issued in respect of the said consignment and also includes the central tax, State tax or Union territory tax charged in the document and shall exclude the value of exempt supply of goods where the invoice is issued in respect of both exempt and taxable supply of goods.”.

CBIC vide *Notification No. 38/2023-Central Tax, dated August 04, 2023* inserted rule 138F to the CGST Rules.

26. Notification

Restriction on furnishing of information in PART A of FORM GST EWB-01: (“CBIC”) vide *Notification No. 75/2019- Central Tax dated December 26, 2019.*

(4) Sub-clause (c) has been inserted in Rule 138E of the CGST Rules with effect from January 11, 2020, namely:

After clause (b), the following clause shall be inserted, namely:—“(c) A person other than a person paying tax U/s-10 of CGST Act , **has not furnished the statement of outward supplies for any two months or quarters**, as the case may be- “Shall not be allowed to furnish the information in **PART A of FORM GST EWB-01**”

27. CBIC Circular*C.B.I & C Circular No. 160/16/2021-GST dated, 20-9-2021***Physical copy of invoice**

It is clarified that there is no need to carry the physical copy of tax invoice in cases where invoice has been generated by the supplier in the manner prescribed under rule 48(4) of the CGST Rules and production of the Quick Response (QR) code having an embedded Invoice Reference Number (IRN) electronically, for verification by the proper officer, would suffice.

* * *

Penal Provisions:—For the transportation of GST paid goods, if the supplier or transporter are not generate the E-way Bills, the same will be considered as contravention of statutory provisions of GST law. As per Section 122(xiv) of the CGST Act, 2017, a taxable person who transports any taxable goods without the cover of specified documents/E-way Bill shall be liable to pay a penalty of ₹ 10,000/- or an amount equivalent to the tax evaded. As per Section 129 of CGST Act, 2017, where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the rules made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure to recover applicable tax and penalty from the person transporting goods and the owner of the goods.

* * *

National Informatics Centre E-way Bill Project

**Proposed improvements in E-way Bill generation, being released
on 16-11-2018**

1. Checking of duplicate generation of E-way Bills based on same invoice number

The E-way Bill system is enabled not to allow the consignor/supplier to generate the duplicate E-way Bills based on his one document. Here, the system checks for duplicate based on the consignor GSTIN, document type and document number. That is, if the consignor has generated one E-way Bill on the particular invoice, then he will not be allowed to generate one more E-way Bill on the same invoice number. Even the transporter or consignee is not allowed to generate the E-way Bill on the same invoice number of that consignor, if already one has been generated by the consignor.

Similarly, if the transporter or consignee has generated one E-way Bill on the consignor's invoice, then any other party (consignor, transporter or consignee) tries to generate the E-way Bill, the system will alert that there is already one E-way Bill for that invoice, and further it allows him to continue, if he wants.

2. CKD/SKD/Lots for movement of Export/Import consignment

CKD/SKD/Lots supply type can be used for movement of the big consignment in batches. When One ‘Tax Invoice’ or ‘Bill of Entry’ is there, but the goods are moved in batches from supplier to recipient with the ‘Delivery Challan’, then this option can be used. Here, the batch consignment will have ‘Delivery Challan’ along with copy of the ‘Tax Invoice’ or ‘Bill of Entry’ in movement. The last batch will have the ‘Delivery Challan’ along with original ‘Tax Invoice’ or ‘Bill of Entry’.

Some exports or imports will be in big consignment and may not be moved in one go from the supplier or to the recipient. Hence, CKD/SKD/Lots supply can be used for this.

For CKD/SKD/Lots of Export consignment, the ‘Bill To’ Party will be URP or GSTIN of SEZ Unit with state as ‘Other Country’ and shipping address and PIN code will be of the location (airport/shipping yard/border check post) from where the consignment is moving out from the country.

For CKD/SKD/Lots of Import consignment, the ‘Bill From’ Party will be URP or GSTIN of SEZ Unit with state as ‘Other Country’ and dispatching address and PIN code will be of the location (airport/shipping yard/border check post) from where the consignment is entered the country.

3. Shipping address in case of export supply type

For Export supply type, the ‘Bill To’ Party will be URP or GSTIN of SEZ Unit with state as ‘Other Country’ and shipping address and PIN code will be of the location (airport/shipping yard/border check post) from where the consignment is moving out from the country.

4. Dispatching address in case of import supply type

For Import supply, the ‘Bill From’ Party will be URP or GSTIN of SEZ Unit with state as ‘Other Country’ and dispatching address and PIN code will be of the location (airport/shipping yard/border check post) from where the consignment is entered the country.

5. ‘Bill To - Ship To’ transactions

There are four types of ‘Bill To - Ship To’ transactions. These types depend upon the number of parties involved in the billing and movement of the goods. The following paras explain the same.

- *Regular:* This is a regular or normal transaction, where Billing and goods movement are happening between two parties - consignor and consignee. That is, the Bill and goods movement from consignor to consignee takes place directly.
- *Bill To - Ship to:* In this type of transaction, three parties are involved. Billing takes places between consignor and consignee, but the goods move from consignor to the third party as per the request of the consignee.

- *Bill From - Dispatch from:* In this type of transaction also, three parties are involved. Billing takes places between consignor and consignee, but the goods are moved by the consignor from the third party to the consignee.
- *Combination of both:* This is the combination of above two transactions and involves four parties. Billing takes places between consignor and consignee, but the goods are moved by the consignor from the third party to the fourth party, as per the consignee's request.

6. Changes in Bulk Generation Tool

New columns have been added in the Bulk Generation Tool. The same will be released on 16th November, 2018.

Forthcoming changes in e-Way bill system

1. Auto calculation of route distance based on PIN code for generation of EWB Now, E-way bill system is being enabled to auto calculate the route distance for movement of goods, based on the Postal PIN codes of source and destination locations. That is, the e-waybill system will calculate and display the actual distance between the supplier and recipient addresses. User is allowed to enter the actual distance as per his movement of goods. However, it will be limited to 10% more than the displayed distance for entry. That is, if the system has displayed the distance between Place A and B, based on the PIN codes, as 655 KMs, then the user can enter the actual distance up to 720KMs (655KMs + 65KMs). In case, the source PIN and destination PIN are same, the user can enter up to a maximum of 100KMs only. If the PIN entered is incorrect, the system would alert the user as INVALID PIN CODE. However, he can continue entering the distance. Further, these e-way bills having INVALID PIN codes are flagged for review by the department.

Route distance calculation between source and destination uses the data from various electronic sources. This data employs various attributes, for example: road class, direction of travel, average speed, traffic data etc. These attributes are picked up from traffic that is on National highways, state highways, expressways, district highways as well as main roads inside the cities. A proprietary logic is then used for approximating the distance between two postal pin codes. The distance thus derived is then provided as the motorable distance at that point of time.

2. Blocking of generation of multiple E-Way Bills on one Invoice/document Based on the representation received by the transporters, the government has decided not to allow generation of multiple e-way bills based on one invoice, by any party – consignor, consignee and transporter. That is, once E-way Bill is generated with an invoice number, then none of the parties - consignor, consignee or transporter - can generate the E-Way Bill with the same invoice number. One Invoice,

One E-way Bill policy is followed. The change will come in the next version.

3. Extension of E-Way Bill in case consignment is in transit the transporters had represented to incorporate the provision to extend the E-way Bill, when the goods are in transit. The transit means the goods could be on Road or in Warehouse. This facility is being incorporated in the next version for the extension of E-way Bill. During the extension of the e-way bill, the user is prompted to answer whether the Consignment is in Transit or in Movement. On selection of in Transit, the address details of the transit place need to be provided. On selection of in Movement the system will prompt the user to enter the Place and Vehicle details from where the extension is required. In both these scenarios, the destination PIN will be considered from the PART A of the E-way Bill for calculation of distance for movement and validity date. Route distance will be calculated as explained above.
4. Blocking of Inter-State Transactions for Composition dealers As per the GST Act, the composition tax payers are not supposed to do Inter-State transactions. Hence next version will not allow generation of e-way bill for inter-State movement, if the supplier is composition tax payer. Also, the supplies of composition tax payers will not be allowed to enter any of the taxes under CGST or SGST for intrastate transactions. In case of Composition tax payer, document type of Tax Invoice will not be enabled.

[www.ewaybill.nic.in , dated 25-3-2019]

E-Way Bill – Update on Blocking of E-WAY Bill (EWB) generation facility, after 1 December, 2020

1. In terms of Rule 138E (a) and (b) of the CGST Rules, 2017, the E-Way Bill (EWB) generation facility of a taxpayer is liable to be restricted, in case the taxpayer fails to file their FORM GSTR-3B returns/Statement in FORM GST CMP-08, for tax periods of two or more.
2. From 1 December, 2020, onwards, the blocking of EWB generation facility would be made applicable to all the taxpayers (irrespective of their Aggregate Annual Turnover (AATO). In terms of Rule 138E (a) and (b) of the CGST Rules, 2017 on the EWB Portal.
3. Thus, on 1 December, 2020 the System will check the status of returns filed in Form GSTR-3B or the statements filed in Form GST CMP-08, for the class of taxpayers to whom it applies, and restrict the generation of EWB in case of:
 - Non filing of two or more returns in Form GSTR-3B for the months upto October2020 and
 - Non filing of 02 or more statements in Form GST CMP-08 for the quarters upto July to September, 2020.

4. This blocking will take place periodically from 1December, 2020 onwards.
5. To avail continuous WEB generation facility on WEB Portal, you are therefore advised to file your pending GSTR-3B returns /GST CMP-08 statements immediately.

* * *

2- Factor Authentication for e-Way Bill and e-invoice System

To enhance the security of e-Way Bill/e-Invoice System, NIC is introducing 2 Factor Authentication for logging in to e-Way Bill/e-Invoice system. In addition to username and password, OTP will also be authenticated for login.

There are 3 different ways of receiving the OTP. You may enter any of the OTP and login to system. The various modes of generating OTP are explained below:

1. SMS: OTP will be sent to your registered mobile number as SMS.
2. On ‘Sandes’ app: Sandes is a messaging app provided by government so that you can send and receive messages. You may download and install the Sandes app on your registered mobile number and receive the OTP in it.
3. Using ‘NIC-GST-Shield’ app: ‘NIC-GST-Shield’ is a mobile app provided by e-Way Bill /e-Invoice System, so that OTP can be generated by using the app. This app can be downloaded only from the e-Waybill / e-invoice portal from the link ‘Main Menu2-Factor Authentication Install NIC-GST-Shield’. Download, install and register this app on your registered mobile number. You should ensure the time displayed in the app should be in sync with e-Waybill/e-Invoice system. On opening the app, OTP is displayed. You may enter this OTP and continue the authentication. The OTP gets refreshed after every 30 seconds. You will not require internet or any dependency on mobile network for generating the OTP on this app.

Registration for 2-Factor Authentication:

On logging to e-Waybill System go to Main Menu2 Factor Authentication and confirm the registration. Once confirmed, the system will ask OTP along with username and password. The OTP authentication is based on individual user accounts. The sub users of GSTIN will have separate authentication depending on their registered mobile number in the e-Way Bill/ e- Invoice System. Once you have registered for 2 Factor authentication, then the same is applicable for both e-Way bill and e- Invoice system.

You may de-register this facility anytime using the link ‘2 Factor Authentication Registration/Deregistration’. This facility is presently being introduced on optional basis; however, in future it will be made mandatory.

* * *

Gold – Provisions for E-Way Bill generation made on GST Portal for movement of Gold for all intra-State and inter-State transactions:

As per the Government recommendation, E-Way Bill generation has been provisioned for movement of Gold (HSN Chapter 71) for all Intra-State and Inter-State transactions. The taxpayers of the State may generate the E-Way Bill for Gold as per notification issued by their respective States. The E-Way Bill for Gold for is available as a separate option in the main menu. The E-way Bill for Gold has all the same parameters as that of normal E-Way Bill except that such E-Way Bills will not be uploaded with Part-B details. The validity of such E-Way Bill is calculated based on the pin to pin distance of origin and destination.

For generating E-Way Bill for Gold it is mandatory that all the items must belong to the HSN Chapter 71 only. In case of items belonging to other HSN chapter along with HSN chapter 71 exist, then it may be treated as a normal E-Way Bill and may be generated along with Part-B details.

The changes in functionalities with respect to E-Way Bill for Gold are as follows:

- No Part-B details can be uploaded
- Transporter update is not allowed
- Consolidated EWB cannot be generated
- Extension of E-Way Bill is allowed without updating Part-B details
- Multivehicle facility is not allowed

However, there is no change in cancellation and rejection of W-Way Bill.

[www.ewaybill.nic.in, dated 12-09-2022]

* * *

Important GST E-Way Bill Update: New HSN Code requirements effective from October 1, 2023

The GST E-way bill system has issued an *Update dated September 05, 2023* stating that, As per the *Notification No. 78/2020 dated October 15, 2020*, the taxpayers, having Aggregate Annual Turn Over ("AATO") above Rs 5 Crore, shall use **at least 6 digit HSN code in the e-Invoices and e-Way bills and other taxpayers shall use at least 4 digit HSN code in E-Invoices and E-Way Bills.**

Most of the tax payers are already following this, other tax payers are requested to adapt to the change and comply by the due date. **This will be made Mandatory from October 01, 2023 in e-Waybill and e-Invoice Systems.**

* * *

28. Case Laws

Transportation of goods without valid **E-way Bill** being on account of minor oversight and clerical error demand of tax and penalty non-sustainable:—

The Hon'ble High Court of Tripura in the case of *Tirthamoyee Aluminium Products v State of Tripura* 2021 (50) G.S.T.L. 496 (Tripura) **E-way Bill** accompanying goods during transit already expired before delivery of such goods to consignee - Petitioner purchased certain aluminium products from

Government company Hindalco to be supplied from Kolkata to be transported to Agartala by road - Wrong mentioning of distance from place of transportation upto place of ultimate delivery as 470 kms. instead of actual distance of 1470 kms. which resulted automatic generation of **E-way Bill** with validity period of five days instead of 15 days - *HELD:* Transportation of goods without valid **E-way Bill** being on account of minor oversight and clerical error in mentioning actual distance which is undisputedly 1470 kms., order confirming tax demand and penalty not sustainable - Section 129(3) of Central Goods and Services Tax Act, 2017.

* * *

Merely on account of lapsing of validity period of E-Way Bill or non-extension of such period for one more day, it cannot be presumed that there was an intention to evade tax. Department, therefore, directed to refund tax and penalty collected from petitioner with interest @ 6% per annum from date of its deposit till date of repayment:—

The Hon'ble High Court of Telangana in the case of *Satyam Shivam Papers Pvt. Ltd. v Asstt. Commr. of S.T., Hyderabad*, reported in 2021 (50) G.S.T.L. 459 (Telangana) Detention of goods during transit - Transportation of goods under E-Way Bill which already expired - Petitioner distributor of paper contending that goods dispatched for delivery to consignee on 4-1-2020, on which date E-Way Bill itself was generated, but there was road jam on account of political rally which continued till 8.30 P.M. - As consignee's shop might have been closed, drive took trolley to his residence - Further, next day being Sunday, delivery of goods was attempted on Monday on which it was detained - Order passed by Senior Assistant of Deputy State Tax Officer under Section 129(3) of Central Goods and Services Tax Act, 2017 demanding tax and penalty by treating expiry of validity of E-way Bill as amounting to tax evasion, not sustainable in absence of any evidence of attempt to sell goods to somebody else on date of its detention, particularly when explanation tendered by petitioner in respect of non-delivery of goods during validity period of E-way Bill not considered while passing such order - Merely on account of lapsing of validity period of E-Way Bill or non-extension of such period for one more day, it cannot be presumed that there was an intention to evade tax - Further, aforesaid order demanding tax and penalty signed by Senior Assistant in office of Deputy State Tax Officer wrongly stating that petitioner admitted to pay such tax and penalty which is contrary to explanations offered by petitioner - Department, therefore, directed to refund tax and penalty collected from petitioner with interest @ 6% per annum from date of its deposit till date of repayment - Direction also issued to Deputy State Tax Officer to pay cost of ₹10,000 to petitioner - Section 129 of Central Goods and Services Tax Act, 2017.

* * *

E-Way bill was to be considered as a human error and will be covered under the circular Nos. 41/15/2028-GST, dated 13-4-2018 and 49/23/2018-GST dated 21-06-2018,

The Hon'ble High Court of Allahabad in the case of *Varun Beverages Ltd v State of U.P.* 2023(71) G.S.T.L.4 (All), held that wrong vehicle number mentioned in E-Way bill was to be considered as a human error and will be covered under the circular Nos. 41/15/2028-GST, dated 13-4-2018 and 49/23/2018-GST, dated 21-06-2018, it is not in dispute that goods were being transported by the dealer through stock transfer and there is no intention part of dealer to evade any tax, the minor discrepancy in description of vehicle in e-way bill was minor would not attract proceedings for penalty under section 129 of the Act. In view of the fact both orders are hereby set aside.

* * *

Statue provides extension of Validity of E-way Bill

The Hon'ble High Court of Calcutta in the case of *Karan Singh v State of West Bengal* 2023(71) G.S.T.L. 11 (Cal), held that where a statute provides extension of validity of E-way bill, the Adjudicating Authority before imposition of tax and penalty ought to have communicated to the transporter about his right to extend the period but the Adjudicating Authority failed to exercise its discretion thereby impugned orders are liable to be set aside.

* * *

Neither show cause notice nor order of demand clearly set out reason for imposing tax liability as well as penalty.

The Hon'ble High Court of Delhi in the case of *Ram Prakash Chauhan*, reported in 2023(72) G.S.T.L. 316 (Del), held that neither show cause notice nor order of demand clearly set out reason for imposing tax liability as well as penalty. We are of the view that it would be apposite to remand the matter to the concerned GST officer to decide afresh after giving the petitioner full opportunity to address the allegation against him.

* * *

The petitioner had generated e-way bill on online portal and there was no evasion of tax.

The Hon'ble High Court of Gujarat in the case of *Arafa Traders v State of Gujarat* 2023(72) G.S.T.L. 336 (Guj), held that petitioner had generated e-way bill on online portal and there was no evasion of tax. Since authority had not considered various grounds raised by the petitioner and therefore the same is required to be quashed and set aside by remanding the matter back to the Appellate Authority to pass a fresh *de novo* order after giving an opportunity of hearing to the petitioner.

* * *

Merely because goods were accompanied with E-way Bill that expired before reaching destination, there could not be said to be any tax evasion or revenue loss.

The Hon'ble High Court of Madras in the case of *TVL Thiruvannamalaiyar Transport v Deputy State Tax Officer* 2023(72) G.S.T.L. 355 (Mad) held that merely because goods were accompanied with E-way Bill that expired before

reaching destination, there could not be said to be any tax evasion or revenue loss to the respondent if the truck had reached the destination without being intercepted in transit. The expiry of E-way bill does not create any scope for evasion and assuming there was no breakdown and assuming the portal was active, the maximum penalty would be Rs. 5,000/- and impugned order of respondent is set aside.

* * *

The Act cannot and ought not to be interested in such a manner that the very essence of the same is lost.

The Hon'ble High Court of Calcutta in the case of *Abinash Kumar Singh v State of West Bengal* 2023(72) G.S.T.L. 504 (Cal), held that transportation of goods with a proper e-way bill is one of the salient features of the Act. There is no scope to dilute the said provision of law for granting relief to an errant transporter. The Act cannot and ought not to be interested in such a manner that the very essence of the same is lost. Section 129 of the Act opens with a non obstante clause which lends a mandatory character to the same. The petitioner is certainly at fault in transporting goods without a valid e-way bill. Thus, no relief can be granted to the petitioner in the instance case.

* * *

Detention and demand of penalty were not sustainable when same was not passed within seven days from date of issuance of notice.

The Hon'ble High Court of Madras in the case of *Deeparn Roadways v Dy. State Tax Officer* 2023 (70) G.S.T.L. 337 (Madras), held that orders on detention and demand of penalty were not sustainable when same was not passed within seven days from date of issuance of notice; goods and conveyance were to be released. Department had issued notice within seven days from date of detention of goods and conveyance but had failed to pass an order within seven days from date of issuing such notice. Department was to be directed to release both goods and conveyance-Impugned orders were to be quashed.

* * *

Authorities not required to establish intention to evade payment of tax for detaining goods under section 129 of CGST /SGST Act, 2017

The Hon'ble High Court of Punjab & Haryana, reported in [2023] 149 taxmann.com 5 (Punjab & Haryana), held that E-way bills along with tax invoices and delivery challans were produced by driver. However, Part-B of E-way bill was not entered. Authorities not required to establish intention to evade payment of tax for detaining goods under section 129 of CGST /SGST Act, 2017. Goods being intercepted during transit and documents accompanying goods being not in compliance with provisions of GST Act, authorities were within their power to detain goods and demand payment of tax and 100 % penalty thereunder- Payment under section 129(3) having been made, proceedings in respect to notice deemed to have been concluded.

* * *

Detention of such mis-declared goods by department was correct. Writ jurisdiction could not be invoked for quashing show cause.

The Hon'ble High Court of Rajasthan in the case of *Shrimali Industries (P) Ltd. v State of Rajasthan* 2023(69) G.S.T.L. 47 (Raj) held that Goods and vehicle were detained for misdeclaration of goods as description of goods given in document was different from goods transported. Goods were shown as Aluminium scrap in documents while goods transported were brand new Aluminium. Petitioner tried to evade payment of tax as tax rate of goods in transit was higher than tax rate of goods mentioned in documents. Detention of such mis-declared goods by department was correct. Writ jurisdiction could not be invoked for quashing show cause. Appeal could be preferred by petitioner under section 107 of the Act. Writ petition was not maintainable and same was to be dismissed.

* * *

Court is of the opinion that under-valuation of a goods in the invoice cannot be a ground for detention of the goods and vehicle for a proceeding to be drawn under section 129 of the Act, 2017 read with Rule 138 of the CGST Rules, 2017.

The Hon'ble Chhattisgarh High Court in the case of *K.P. Sugandh Ltd. v State of Chhattisgarh* 2020(38) G.S.T.L. 317 (Chhattisgarh) held that this Court is of the opinion that under-valuation of a goods in the invoice cannot be a ground for detention of the goods and vehicle for a proceeding to be drawn under section 129 of the Act, 2017 read with Rule 138 of the CGST Rules, 2017. In view of the aforesaid the impugned order passed under section 129 and order of demand of tax and penalty both being unsustainable deserves to be and is accordingly set aside/quashed. The respondents are forthwith directed to release the goods belonging to the petitioner based on the invoice bill as well as the e-way bill.

* * *

Imposition of penalty was not sustainable when E-Way Bill had been generated by seller in bill to ship to model.

The Hon'ble Supreme Court in the case of *Additional Commissioner v Sleevco Traders* [2023] 152 taxmann.com 418 (SC), held that Demand of GST and imposition of penalty was not sustainable when E-Way Bill had been generated by seller in bill to ship to model mentioning place of delivery of ultimate buyer and no discrepancy was found between goods mentioned in invoice and E-way Bill

* * *

Detention of goods cannot be faulted with and hence sustainable

The Hon'ble High Court of Karnataka in the case of *UP and UP Elevators v State of Kerala* 2021 (50) G.S.T.L. 391 (Ker) Transportation on expired **E-way Bill** - Sustainability - At time of interception of vehicle during intra-State transport, admittedly **E-Way Bill** had expired a day prior to interception and same had not been revalidated - Post-detention, further proceedings as

contemplated under Section 129 of Central Goods and Services Tax Act, 2017 have also been initiated - Considering fact that goods were being transported from one State, i.e. Karnataka to another State i.e., Kerala, petitioner's plea of applicability of Rule 138(5) of Central Goods and Services Tax Rules, 2017 not sustainable - Accordingly, detention of goods cannot be faulted with and hence sustainable - Rule 138 of Central Goods and Services Tax Rules, 2017 - Section 129 of Central Goods and Services Tax Act, 2017 - Article 226 of Constitution of India.

* * *

Failure to mention place of dispatch in **E-way bill** - Goods and vehicle not to be detained for indefinite period

The Hon'ble High Court of Gujarat in the case of *Shiv Shakti Textiles v State of Gujarat* 2021 (50) G.S.T.L. 165 (Guj.) Provisional release of goods and vehicle - Failure to mention place of dispatch in **E-way bill** - Goods and vehicle not to be detained for indefinite period - Adjudication already undertaken pursuant to notice in **Form GST MOV-10**; same not to be interfered with - Goods and vehicle to be released on deposit of tax plus penalty plus interest - Section 129 of Central Goods and Services Tax Act, 2017 - Article 226 of Constitution of India.

* * *

Seized goods are not liable to be released automatically on payment of pre-deposit amount: HC

TCI Freight v Assistant Commissioner (ST) (2022) 143 taxmann.com 115 (Madras)

The vehicle and goods transported in vehicle were detained by department. The owner of goods didn't respond to show cause notice and thereafter the order demanding tax and penalty was passed. The petitioner filed writ petition to quash the detention order. It submitted that the vehicle and goods shall be released as it had filed appeal and made pre-deposit.

The Honorable High Court noted that Section 107(6) of CGST Act, 2017 requires the appellant to make a pre-deposit and thereafter the recovery proceedings for the remaining amount shall be stayed. The question of release of goods will have to be decided by appellate authority upon the strength of case made out by assessee including prima facie case, financial stringency and balance of convenience. But, it can't be said that the seized goods would become liable to be released automatically after payment of pre-deposit.

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Chapter 27

Authorised Representatives

Synopsis

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1. Introduction

The authorised representative means a person duly appointed or empowered by another person or a business entity to act or to sign legal documents or to present before the various revenue or appellate authorities to participate in any activity of legal process on behalf of whom actual authority or powers have been originally vested by the statute or laws. The authorised representative plays an important role to dealing with revenue and quasi-judicial authorities to carry out day to day activities of another person or a business entity in legal ways in the absence of original person.

In the GST regime enforceable Acts are, namely CGST, SGST, IGST and UTGST. The Customs Act is also part of GST regime, which is inherently connected to IGST Act. Therefore, apart from the compliances of these Acts there is need of compliance of Customs Act, in order to execution of export and import clearances. Hence, the authorised representative plays pivotal role between department and assessee for compliances of the provisions of GST law and Customs law. For which the provision of authorised representative has been incorporated under the GST law. With regard to Customs also there is provisions of authorised representative have already been available under the Customs Act, the author whishes to highlight the provision of authorised representative under GST Law as well as Customs Act.

2. Meaning of Authorised Representative

Section 2(15) of CGST Act, 2017 has defined authorised representative means the representative as referred to in Section 116 of the Act.

Section 116 of CGST Act, 2017 has specified authorised representative under the following sub-sections:

(1) Any person who is entitled or required to appear before an officer appointed under this Act, or the Appellate Authority or the Appellate Tribunal in connection with any proceedings under this Act, may, otherwise than when

required under this Act to appear personally for examination on oath or affirmation, subject to the other provisions of this section, appear by an authorised representative.

3. Qualification & criteria for Authorised Representative

Sub-section (2) of Section 116 of CGST Act, 2017 has specified that for the purposes of this Act, the expression “authorised representative” shall mean a person authorised by the person referred to in sub-section (1) of Section 116 of CGST Act, to appear on his behalf, being—

- (a) his relative or regular employee; or
- (b) an advocate who is entitled to practice in any Court in India, and who has not been debarred from practicing before any Court in India; or
- (c) any chartered accountant, a cost accountant or a company secretary, who holds a certificate of practice and who has not been debarred from practice; or
- (d) a retired officer of the Commercial Tax Department of any State Government or Union territory or of the Board who, during his service under the Government, had worked in a post not below the rank than that of a Group-B Gazetted officer for a period of not less than two years:

Provided that such officer shall not be entitled to appear before any proceedings under this Act for a period of one year from the date of his retirement or resignation; or

- (e) any person who has been authorised to act as a Goods and Services Tax practitioner on behalf of the concerned registered person.

4. Disqualification for authorised representative

Sub-section (3) of Section 116 of CGST Act, 2017 has prescribed that no person:—

- (a) who has been dismissed or removed from Government service; or
- (b) who is convicted of an offence connected with any proceedings under this Act, the State Goods and Services Tax Act, the Integrated Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, or under the existing law or under any of the Acts passed by a State Legislature dealing with the imposition of taxes on sale of goods or supply of goods or services or both; or
- (c) who is found guilty of misconduct by the prescribed authority;
- (d) who has been adjudged as an insolvent, shall be qualified to represent any person under sub-section (1) of Section 116 of the CGST Act, 2017: -
 - (i) for all times in case of persons referred to in clauses (a), (b) and (c); and
 - (ii) for the period during which the insolvency continues in the case of a person referred to in clause (d) as cited above.

5. Applicability of SGST Act/UTGST Act

Sub-section (4) of Section 116 of the CGST Act, 2017 has specified that any person who has been disqualified under the provisions of the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act shall be deemed to be disqualified under this Act.

6. Action for misconduct of an authorised representative

Rule 116 of the CGST Rules, 2017 has specified that when authorised representative, other than those referred to in clause (b) or clause (c) of sub-section (2) of Section 116 of the CGST Act is found, upon an enquiry into the matter, guilty of misconduct in connection with any proceedings under the Act, the Commissioner may, after providing him an opportunity of being heard, disqualify him from appearing as an authorised representative.

7. Applicability of IGST Act, 2017

Section 20 of the IGST Act, 2017 has specified that Subject to the provisions of this Act and the rules made thereunder, the provisions of Central Goods and Services Tax Act, shall, *mutatis mutandis*, apply, so far as may be, in relation to Integrated Tax as they apply in relation to Central Tax as if they are enacted under this Act. So there is no separate provision of authorised representative under IGST Act, the provision available under CGST Act, is made applicable to IGST Act.

Chapter 28

GST Practitioners

Synopsis

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1. Introduction

The concept of GST practitioner incorporated under GST law is based on erstwhile provisions of Service Tax and Sales tax, where it was called as Service Tax preparer or Sales tax practitioner respectively. A similar provision also available under Income tax law, where it is called as Income Tax preparer. A GST practitioner will act as an authorised person between department and assessee to carry out day to day activities of a business entity in the GST regime. The earlier sales tax return preparer shall be eligible remain enrolled as a GST practitioner only for a period of eighteen months unless he passes the required examination conducted by the Commissioner.

Section 48 of the CGST Act, 2017 provides for the authorisation of an eligible person to act as approved GST practitioner. A registered person may authorise an approved GST practitioner to furnish information electronically on the Common portal, on his behalf, to the government.

2. Meaning of GST practitioner

Section 2(55) of the CGST Act, 2017 has defined that “goods and services tax practitioner” means any person who has been approved under Section 48 of the CGST Act, to act as such practitioners.

Section 48 of the CGST Act, 2017, which enforceable w.e.f. 1-7-2017 *vide* Notification No. 9/2017-CT, dated 28-6-2017 has incorporated the following provisions:

- (1) The manner of approval of goods and services tax practitioner, their eligibility conditions, duties and obligations, manner of removal and other conditions relevant for their functioning shall be such as may be prescribed.
- (2) A registered person may authorise an approved goods and services tax practitioner to furnish the details of outward supplies under Section 37, the details of inward supplies under Section 38 and the return under Section 39 or Section 44 or Section 45 in such manner as may be prescribed.
- (3) Notwithstanding anything contained in sub-section (2), the responsibility for correctness of any particulars furnished in the return or other details filed by the goods and services tax practitioners shall continue to rest with the registered person on whose behalf such return and details are furnished.

3. Basic eligibility criteria to be enrolled as GST Practitioner

Rule 83 of the CGST Rules, 2017 has specified that any person shall eligible to make application for enrolled as GST practitioner, who—

- (i) is a citizen of India;
- (ii) is a person of sound mind;
- (iii) is not adjudicated as insolvent;
- (iv) has not been convicted by a competent court for an offence with imprisonment not less than two years.

4. Academic qualification or departmental experience for enrolment as GST Practitioner

Any person who satisfies the following department experience and qualification shall apply for enrolment as GST practitioner;

- (a) Any person, who is a retired officer of the Commercial Tax Department of any State Government or of the Central Board of Excise and Customs, Department of Revenue, Government of India, who, during his service under the Government, had worked in a post not lower than the rank of a Group-B gazetted officer for a period of not less than 2 years; or
- (b) he has been enrolled as a sales tax practitioner or tax return preparer under the erstwhile tax law for a period of not less than 5 years;
- (c) he has passed,
 - (i) a graduate or postgraduate degree or its equivalent examination having a degree in Commerce, Law, Banking including Higher Auditing, or Business Administration or Business Management from any Indian University established by any law for the time being in force; or

- (ii) a degree examination of any Foreign University recognized by any Indian University as equivalent to the degree examination mentioned in sub-clause (i); or
- (iii) any other examination notified by the Government, on the recommendation of the Council, for this purpose; or
- (iv) any degree examination of an Indian University or of any Foreign University recognized by any Indian University as equivalent of the degree examination, or
- (v) has passed any of the following examinations, namely:—
 - (a) final examination of the Institute of Chartered Accountants of India; or
 - (b) final examination of the Institute of Cost Accountants of India; or
 - (c) final examination of the Institute of Company Secretaries of India.

The CBIC *vide* Notification No. 52/2023-CT, dated October 26, 2023, has issued Central Goods and Services Tax (Fourth Amendment) Rules, 2023 to *inter alia* amend FORM GST PCT-01.

In FORM GST PCT-01, in PART-B, for serial number 4, the following serial number 4 and entries shall be substituted, namely:

- (1) Chartered Accountant holding COP
- (2) Company Secretary holding COP
- (3) Cost and Management Accountant holding COP
- (4) Advocate
- (5) Graduate or Postgraduate degree in Commerce
- (6) Graduate or Postgraduate degree in Banking
- (7) Graduate or Postgraduate degree in Business Administration
- (8) Graduate or Postgraduate degree in Business Management
- (9) Degree examination of any recognized Foreign University
- (10) Retired Government Officials
- (11) Sales Tax practitioner under existing law for a period of not less than five years
- (12) Tax return preparer under existing law for a period of not less than five years
- (13) Any other examination notified by Government

Note: Sr. No. (4) to (8) of the table should be from an Indian University established by any law for the time being in force.

The changes will be made effective from October 26, 2023.

5. Procedure for enrolment as GST Practitioner

Rule 83 of the CGST Rules, 2017 has specified the procedures relating to a goods and services tax practitioner.

- (1) Any person having requisite experience and qualification as prescribed under GST law, can make an application in **FORM GST PCT-01** electronically through the common portal.
- (2) On receipt of the application, the officer authorised in this behalf shall, after making such enquiry as he considers necessary, either enroll the applicant as a goods and services tax practitioner and issue a certificate to that effect in **FORM GST PCT-02** or reject his application where it is found that the applicant is not qualified to be enrolled as a goods and services tax practitioner.
- (3) provided that no person enrolled as a goods and services tax practitioner shall be eligible to remain enrolled unless he passes such examination as may be notified by the Commissioner within a period of 30 months from the appropriate date.

6. Disciplinary action for misconduct of GST Practitioner

(1) If any goods and services tax practitioner is found guilty of misconduct in connection with any proceedings under the Act. A show cause notice will be issued by the authorised officer in **FORM GST PCT-03** for such misconduct and after giving him a reasonable opportunity of being heard, by order in **FORM GST PCT-04** direct that he shall henceforth be disqualified under Section 48 to function as a goods and services tax practitioner. His enrolment will be cancelled.

(2) As per Rule 83(5) any GST practitioner against whom an order issued in FORM GST PCT-04 he may, within 30 days from the date of issue of such order, appeal to the Commissioner against such order.

7. Withdrawal of option for GST Practitioner

Any registered person may, at his option, authorise a goods and services tax practitioner on the common portal in **FORM GST PCT-05** or, at any time, withdraw such authorisation in **FORM GST PCT-05** and the goods and services tax practitioner so authorised shall be allowed to undertake such tasks as indicated in the said authorisation during the period of authorisation. [Rule 83(6)]

8. Role and Responsibility of GST practitioner - Rule 83(8)

A goods and services tax practitioner can undertake any or all of the following activities on behalf of a registered person, if so authorised by him to-

- (a) furnish the details of outward and inward supplies;
- (b) furnish monthly, quarterly, annual or final return;
- (c) make deposit for credit into the electronic cash ledger;
- (d) file a claim for refund; and
- (e) file an application for amendment or cancellation of registration;
- (f) file an application for amendment or cancellation of registration;
- (g) furnish details of Challan in **FORM GST ITC-04**;

- (h) file an application for amendment or cancellation of enrollment under Rule 58; and
- (i) file an intimation to pay tax under the Composition Scheme or withdraw from the said scheme.

9. Other functions

- (a) filing refund claim,
- (b) filing various returns.

In addition to the cited roles, a GST practitioner shall also be allowed to appear as authorised representative before any officer of department, Appellate Authority or Appellate Tribunal, on behalf of such a registered person who has authorised him to be his GST practitioner.

Provided that where any application relating to a claim for refund or an application for amendment or cancellation of registration or where an intimation to pay tax under composition scheme or to withdraw from such scheme has been submitted by the goods and services tax practitioner authorised by the registered person, a confirmation shall be sought from the registered person and the application submitted by the said practitioner shall be made available to the registered person on the common portal and such application shall not be further proceeded with until the registered person gives his consent to the same.

10. Examination of Goods and Services Tax Practitioner

Rule 83A. Every person who is enrolled as a goods and services tax practitioner shall pass an examination, which shall be conducted by NACIN and examination shall be conducted twice in a year.

11. Surrender of enrolment of goods and services tax practitioner - Rule 83B

(1) A goods and services tax practitioner seeking to surrender his enrolment shall electronically submit an application in **FORM GST PCT-06**, at the common portal, either directly or through a facilitation centre notified by the Commissioner.

(2) The Commissioner, or an officer authorised by him, may after causing such enquiry as deemed fit and by order in **FORM GST PCT-07**, cancel the enrolment of such practitioner.

12. Conditions for GST Practitioners

Any registered person opting to furnish his return through a goods and services tax practitioner shall—

- (1) Give his consent and authorise a GST practitioner in the **FORM GST PCT-05** and listing the authorised activities in which he intends to authorise the GST practitioner including prepare and furnish his return. The registered person authorizing a GST practitioner shall have to authorise in the standard form Part A of **FORM GST PCT-5** and the GST practitioner will have to accept the authorisation in **Part B** of the **FORM GST PCT-5**. The practitioner shall be allowed to undertake only such tasks as indicated in the authorisation **FORM GST PCT-5**. The registered person may, at any time, withdraw such authorisation in the prescribed **FORM GST PCT-5**.

- (2) The GST practitioner has to ensure correctness of any particulars furnished in the return or other details submitted by him, GST practitioners shall continue to rest with the registered person on whose behalf such return and details furnished.
- (3) Any statement furnished by the GST practitioner shall be made available to the registered person on the GST Common Portal. For every statement furnished by the GST practitioner, a confirmation shall be sought from the registered person over email or SMS. The registered person before confirming should ensure that the facts mentioned in the return are true and correct before signature. However, failure to respond to request for confirmation shall be treated as deemed confirmation.
- (4) The goods and services tax practitioner shall prepare all statements with due diligence and affix his digital signature on the statements prepared by him or electronically verify using his credentials.
- (5) A goods and services tax practitioner enrolled in any other State or Union territory shall be treated as enrolled in the State or Union territory for the purposes specified in sub-rule (8).

13. Conditions for purposes of appearance

Rule 84 of CGST Rules, 2017 has specified two conditions for purpose of appearance before any GST authority and the conditions are as under:

- (1) No person shall be eligible to attend before any authority as a goods and services tax practitioner in connection with any proceedings under the Act on behalf of any registered or unregistered person unless he has been enrolled under Rule 83.
- (2) A goods and services tax practitioner attending on behalf of a registered or an unregistered person in any proceedings under the Act before any authority shall produce before such authority, if required, a copy of the authorisation given by such person in **FORM GST PCT-05**.

14. Expedite GST Practitioners registration

The Goods and Services Tax (GST) came into effect in the country 1st July 2017. But several indirect tax experts find that they still haven't been approved as GST practitioners, despite having applied for registration months ago via the GST portal.

In this backdrop, the chairperson of the Central Board of Indirect Taxes and Customs (C.B.I. & C earlier known as CBEC), Vanaja Sarna, recently wrote to officials to expedite the process. Her letter dated May 4 says, "I would urge the officials to expedite the process of approval of GST practitioners. A proactive approach in facilitating the enrolment and helping the applicants in case they have committed any *bona fide* mistakes while making the application will only further our cause of achieving a trade-friendly image for the department."

Government officials TOI spoke to admit that there are a few conditions for being a GST practitioner: He/she must be a citizen of India, must be of sound mind, should not have been adjudged as an insolvent and should not have been

convicted of an offence with imprisonment of two years or more. They agree that it is unclear who should be giving a certificate that an applicant is of sound mind (whether a recognized hospital or a professional institution, if the applicant is a member of one).

Officials add that the self-declaration in this regard was meant to speed up the application process. A Mumbai-based chartered accountant says, “The application had to be made online, the enrolling authority can be Centre or state. In my experience, several applications where the enrolling authority was at state level faced delays.”

On a CA discussion portal, the general advice being given to participants is: The best option is to apply again for registration as a GST practitioner, but with a different email and phone number, and also selecting the enrolling authority as Centre.

There are other professionals who have been lucky enough to have got registered within one-three weeks. In the backdrop of the CBIC chief’s letter, those waiting anxiously have revived their hopes.

Once registered as a GST practitioner, an individual can file various forms on behalf of clients, make deposits for credit into the electronic cash ledger and appear as an authorised representative. He or she can, after confirmation from clients, also file a refund claim or an application for amendment or cancellation of the registration. Registration does not require a chartered accountancy qualification. Even certain graduates — say, from the commerce field — or certain retired revenue officials can register to be GST practitioners.

Government of India Ministry of Finance Department of Revenue Central Board of Indirect Taxes and Customs Notification No. 24/2018-C.T., New Delhi, the 28th May, 2018.

In exercise of the powers conferred by Section 48 of the Central Goods and Services Tax Act, 2017 (12 of 2017) read with sub-rule (3) of Rule 83 of the Central Goods and Services Tax Rules, 2017, the Commissioner, on the recommendations of the Council, hereby notifies the National Academy of Customs, Indirect Taxes and Narcotics, Department of Revenue, Ministry of Finance, Government of India, as the authority to conduct the examination as per the said sub-rule.

15. Examination Conducted by NACIN

Examination for Confirmation of Enrolment of GST Practitioners

NACIN has been authorized to conduct an examination for confirmation of enrollment of Goods and Service Tax Practitioners (GSTP) in terms of sub-rule (3) of Rule 83 of the Central Goods and Service Tax Rules, 2017, *vide* Notification No. 24/2018-C.T., dated 28-5-2018. The GSTPs covered under Rule 83(1)(b) read with second proviso to Rule 83(3) of said rules, are required to pass the said examination before 31-12-2018. The schedule of examination, syllabus of examination and the website for registration for examination will be notified in due course.

(C. B. & C, Press Release 171/2018, dated 12-7-2018)

16. Press Release

EXAMINATION FOR CONFIRMATION OF ENROLMENT OF GST PRACTITIONERS

September 17th, 2018

The National Academy of Customs, Indirect Taxes and Narcotics (NACIN) has been authorized to conduct an examination for confirmation of enrolment of Goods and Services Tax Practitioners (GSTPs) in terms of the sub-rule (3) of rule 83 of the Central Goods and Services Tax Rules, 2017, vide Notification No. 24/2018-C.T., dated 28-5-2018.

The GSTPs enrolled on the GST Network under sub-rule (2) of Rule 83 and covered by clause of sub-rule (1) of Rule 83, i.e. those meeting the eligibility criteria of having enrolled as sales tax practitioners or tax return preparer under the existing law for a period not less than five years, are required to pass the said examination before 31-12-2018 in terms of second proviso to Rule 83(3). The examination for such GSTPs shall be conducted on 31-10-2018 from 1100 hrs to 1330 hrs at designated examination centres across India.

It will be a Computer Based Exam. The registration for this exam can be done by the eligible GSTPs on a registration portal, link of which (<https://nacin.onlineregistrationform.org/>) will also be provided on NACIN and CBIC websites. The registration portal will be activated on 25th September, 2018 and will remain open up to 10th Oct 2018. For convenience of candidates, a help desk will also be set up, details of which will be made available on the registration portal. The applicants are required to make online payment of examination fee of ` 500/- at the time of registration for this exam.

17. Notification

Notification No. 60/2018-Central Tax, dated 30-10-2018

In exercise of the powers conferred by Section 164 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely:—

(1) These rules may be called the **Central Goods and Services Tax (Thirteenth Amendment) Rules, 2018**.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the said rules), after Rule 83, the following rule shall be inserted, namely:—

“83A. Examination of Goods and Services Tax Practitioners.—(1)

Every person referred to in clause (b) of sub-rule (1) of Rule 83 and who is enrolled as a goods and services tax practitioner under sub-rule (2) of the said rule, shall pass an examination as per sub-rule (3) of the said rule.

(2) The National Academy of Customs, Indirect Taxes and Narcotics (hereinafter referred to as “NACIN”) shall conduct the examination.

(3) Frequency of examination.—The examination shall be conducted twice in a year as per the schedule of the examination published by NACIN every year on the official websites of the Board, NACIN, common portal, GST Council Secretariat and in the leading English and regional newspapers.

(4) Registration for the examination and payment of fee.—(i) A person who is required to pass the examination shall register online on a website specified by NACIN. (ii) A person who registers for the examination shall pay examination fee as specified by NACIN, and the amount for the same and the manner of its payment shall be specified by NACIN on the official websites of the Board, NACIN and common portal.

(5) Examination centers.—The examination shall be held across India at the designated centers. The candidate shall be given an option to choose from the list of centers as provided by NACIN at the time of registration.

(6) Period for passing the examination and number of attempts allowed.—(i) A person enrolled as a goods and services tax practitioner in terms of sub-rule (2) of Rule 83 is required to pass the examination within two years of enrolment:

Provided that if a person is enrolled as a goods and services tax practitioner before 1st of July 2018, he shall get one more year to pass the examination:

Provided further that for a goods and services tax practitioner to whom the provisions of clause (b) of sub-rule (1) of Rule 83 apply, the period to pass the examination will be as specified in the second proviso of sub-rule (3) of said rule. (ii) A person required to pass the examination may avail of any number of attempts but these attempts shall be within the period as specified in clause (i). (iii) A person shall register and pay the requisite fee every time he intends to appear at the examination. (iv) In case the goods and services tax practitioner having applied for appearing in the examination is prevented from availing one or more attempts due to unforeseen circumstances such as critical illness, accident or natural calamity, he may make a request in writing to the jurisdictional Commissioner for granting him one additional attempt to pass the examination, within thirty days of conduct of the said examination. NACIN may consider such requests on merits based on recommendations of the jurisdictional Commissioner.

(7) Nature of examination.—The examination shall be a Computer Based Test. It shall have one question paper consisting of Multiple Choice Questions. The pattern and syllabus are specified in Annexure-A.

(8) Qualifying marks.—A person shall be required to secure fifty per cent of the total marks.

(9) Guidelines for the candidates.—(i) NACIN shall issue examination guidelines covering issues such as procedure of registration, payment of fee, nature of identity documents, provision of admit card, manner of reporting at the examination center, prohibition on possession of certain items in the examination center, procedure of making representation and the manner of its

disposal. (ii) Any person who is or has been found to be indulging in unfair means or practices shall be dealt in accordance with the provisions of sub-rule (10) An illustrative list of use of unfair means or practices by a person is as under:—(a) obtaining support for his candidature by any means; (b) impersonating; (c) submitting fabricated documents; (d) resorting to any unfair means or practices in connection with the examination or in connection with the result of the examination; (e) found in possession of any paper, book, note or any other material, the use of which is not permitted in the examination center; (f) communicating with others or exchanging calculators, chits, papers etc. (on which something is written); (g) misbehaving in the examination center in any manner; (h) tampering with the hardware and/or software deployed; and (i) attempting to commit or, as the case may be, to abet in the commission of all or any of the acts specified in the foregoing clauses.

(10) Disqualification of person using unfair means or practice.—If any person is or has been found to be indulging in use of unfair means or practices, NACIN may, after considering his representation, if any, declare him disqualified for the examination.

(11) Declaration of result.—NACIN shall declare the results within one month of the conduct of examination on the official websites of the Board, NACIN, GST Council Secretariat, common portal and State Tax Department of the respective States or Union territories, if any. The results shall also be communicated to the applicants by e-mail and/or by post.

(12) Handling representations.—A person not satisfied with his result may represent in writing, clearly specifying the reasons therein to NACIN or the jurisdictional Commissioner as per the procedure established by NACIN on the official websites of the Board, NACIN and common portal.

(13) Power to relax.—Where the Board or State Tax Commissioner is of the opinion that it is necessary or expedient to do so, it may, on the recommendations of the Council, relax any of the provisions of this rule with respect to any class or category of persons.

Explanation:—For the purposes of this sub-rule, the expressions – (a) “jurisdictional Commissioner” means the Commissioner having jurisdiction over the place declared as address in the application for enrolment as the GST Practitioner in **FORM GST PCT-1**. It shall refer to the Commissioner of Central Tax if the enrolling authority in **FORM GST PCT-1** has been selected as Centre, or the Commissioner of State Tax if the enrolling authority in **FORM GST PCT-1** has been selected as State; (b) NACIN means as notified by Notification No. 24/2018-C.T., dated 28-5-2018. Annexure-A [See sub-rule 7]

18. Pattern and Syllabus of the Examination

Pattern and Syllabus of the Examination

PAPER: GST Law & Procedures:

Time allowed: 2 hours and 30 minutes

Number of Multiple Choice Questions: 100

Language of Questions: English and Hindi

Maximum marks: 200

Qualifying marks: 100

No negative marking

Syllabus:

1. The Central Goods and Services Tax Act, 2017
2. The Integrated Goods and Services Tax Act, 2017
3. All The State Goods and Services Tax Acts, 2017
4. The Union territory Goods and Services Tax Act, 2017
5. The Goods and Services Tax (Compensation to States) Act, 2017
6. The Central Goods and Services Tax Rules, 2017
7. The Integrated Goods and Services Tax Rules, 2017
8. All The State Goods and Services Tax Rules, 2017
9. Notifications, Circulars and orders issued from time to time under the said Acts and Rules.”.

Examination for confirmation of enrolment of GST Practitioners**19. Examination Guidelines for the Candidates**

(Please refer sub-rule (9) of rule 83A of the Central Goods and Services Tax Rules, 2017)

A. Guidelines for filling up application form:

1. All GST Practitioners who are eligible to appear in the examination are required to submit online application on the Examination registration portal. Link of the portal shall be provided on official websites of NACIN and CBIC.

2. Landing page of the portal will display guidelines for filling up the application and also important dates namely- (i) Date of commencement of online registration, (ii) Last date of submitting application form, (iii) Date from when admit card can be downloaded, (iv) Date of examination, and (v) Date of result declaration.

3. Candidates are required to login on the portal with the help of GST enrolment number (login id) and PAN no. (password).

4. The GST enrolment number has been provided to each eligible candidate by GSTN on his enrolment on the GST portal.

5. Application form will appear on the screen after a candidate successfully logs in.

6. Based on the GST enrolment number and PAN number provided by a candidate on the login page, the application form will auto-populate candidate's

data already available with the GST Network such as name, address, mobile number, email address etc. This data is the same which was provided by the candidate in **Form PCT-01** while applying for enrolment as GST Practitioner on the GST portal.

7. Hence, in the online application form on this Examination registration portal, a candidate is required to fill in/provide only the following information/documents: (i) Three choices of test centers (stations) from the drop-down menu, (ii) Softcopy of passport size photograph (File Type JPG, JPEG, PNG of Size 20 to 60 KB), (iii) Softcopy of signatures (File Type JPG, JPEG, PNG of Size 10 to 30 KB), and (iv) Whether the candidate falls under the category ‘person with disability’.

8. The candidates will be prompted to fill in three choices from a list of test centers (stations). To the extent possible, center will be allocated to a candidate according to the choices indicated by him.

9. Once a candidate submits the completed application form on the registration portal, he will be prompted to pay the examination fee online.

10. On completion of online fee payment, the candidate will be guided to access ‘Candidate’s Dashboard’ from where the submitted application as well as Admit Card can be downloaded. Score card will also be made available for download on the same Dashboard.

11. A mock test of 15-20 questions will also be available on Candidate’s Dashboard.

B. Guidelines for appearing in the Examination:

1. Candidates are advised to report at the Examination Centre One and a Half hour before the scheduled examination time. Gate will be closed fifteen minutes before commencement of examination after which no candidate shall be allowed to enter the examination venue.

2. Entry in the examination hall will be allowed on production of printout of Admit Card and a valid identity document in original {Aadhaar, PAN Card, Driving License, EPIC (Electoral Photo ID Card) or Passport}.

3. PROHIBITED ITEMS, such as watches, books, pens, pencil, paper, chits, magazines, electronic gadgets (mobile phones, Bluetooth devices, head phones, pen/buttonhole cameras, scanner, calculator, storage devices etc.) are STRICTLY NOT ALLOWED in the examination hall.

4. Each candidate shall be provided with complete examination infrastructure including hardware (a desktop computer) loaded with examination software.

5. Before the start of the test, a candidate will be required to enter the Enrollment No. (displayed in Admit Card) and password (PAN No.) to start the test.

6. On designated time, the question paper shall be made available on computer screen of the candidates.

7. The test will be in Computer Based mode in a secure environment such that while the test is taken, access to all possible web resources *i.e.* browsing,

chatting etc. will be blocked from the computer of the candidates as well as any other computer peripherals such as printers. Similarly, functions like "Copy-Paste" will be disabled in the question paper page appearing in the test.

8. For answering a question, candidate has to click on the correct/most appropriate option from the given answer choices.

9. Pen/pencil for rough work will be provided in the examination hall. Rough work needs to be done on the back side of Admit card. No separate rough sheet will be provided to the candidates.

10. Electronic watch (timer) will be available on the computer screen allotted to the candidates.

11. It is reiterated that Candidates should not bring Bags and prohibited/valuable items as mentioned above to the examination venue as arrangements for safe custody of such items cannot be assured.

12. Candidates must not indulge in use of unfair means or practices. An illustrative list of use of unfair means or practices by a person is as below:

- (a) Obtaining support for his candidature by any means;
- (b) Impersonating;
- (c) Submitting fabricated documents;
- (d) Resorting to any unfair means or practices in connection with the examination or in connection with the result of the examination;
- (e) Found in possession of any paper, book, note or any other material, the use of which is not permitted in the examination center;
- (f) Communicating with others or exchanging calculators, chits, papers etc. (on which something is written);
- (g) Misbehaving in the examination center in any manner;
- (h) Tampering with the hardware and/or software deployed; and
- (i) Attempting to commit or, as the case may be, to abet in the commission of all or any of the acts specified in the foregoing clauses. Resorting to unfair means or practices shall be considered as a serious offence. If any candidate is or has been found to be indulging use of unfair means or practices, his candidature will be cancelled and he will be disqualified for the examination.

13. Candidates shall maintain silence in the examination venue. Any conversation or gesticulating or disturbance or attempt to change seats/admit cards in the Examination Hall shall be deemed as use of unfair means.

14. Candidates are not allowed to leave the examination hall until completion of the test and handing over the Admit card to the Invigilator.

15. Candidates are not allowed under any circumstances to go out of the hall in the first thirty minutes even on completion/submission of the paper.

16. The question papers shall be in English and in Hindi. In case of any discrepancy, English version will prevail.

17. Smoking and eating are strictly prohibited in the examination hall.

C. Guidelines for post-examination representation and its disposal:

1. Any candidate, not satisfied with his result may send a representation, clearly specifying the reasons of representation, to Deputy Director (GSTP), National Academy of Customs, Indirect Taxes and Narcotics, NACIN Complex, Sector-29, Faridabad-121008, so as to reach NACIN within seven days of declaration of results on NACIN website.

2. If the representation requires re-evaluation of score, it shall be entertained only in cases where a candidate has failed in the examination. In such a case, the representation should be sent along with re-evaluation fee in the form of a Demand draft of `200/- in favour of PAO, CBEC, payable at New Delhi.

3. NACIN shall inform result of representation to the candidate, preferably within one month of receipt of the representation.

20. Miscellaneous Provisions

140. Transitional arrangements for input tax credit.—(1) A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, the amount of CENVAT credit ²[of eligible duties] carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law ³[within such time and] in such manner as may be prescribed:

Provided that the registered person shall not be allowed to take credit in the following circumstances, namely:—

- (i) where the said amount of credit is not admissible as input tax credit under this Act; or
- (ii) where he has not furnished all the returns required under the existing law ⁴[within such time and] for the period of six months immediately preceding the appointed date; or
- (iii) where the said amount of credit relates to goods manufactured and cleared under such exemption notifications as are notified by the Government.

(2) A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, credit of the unavailed CENVAT credit in respect of capital goods, not carried forward in a return, furnished under the existing law by him, for the period ending with the day immediately preceding the appointed day ⁵[within such time and] in such manner as may be prescribed:

Provided that the registered person shall not be allowed to take credit unless the said credit was admissible as CENVAT credit under the existing law and is also admissible as input tax credit under this Act.

Explanation.—For the purposes of this sub-section, the expression “unavailed CENVAT credit” means the amount that remains after subtracting the amount of CENVAT credit already availed in respect of capital goods by the taxable person under the existing law from the aggregate amount of CENVAT credit to which the said person was entitled in respect of the said capital goods under the existing law.

1 W.e.f. 1-7-2017 vide Notification No. 9/2017-Central Tax, dated 28-6-2017.

2 Inserted by the Central Goods and Services Tax (Amendment) Act, 2018, w.r.e.f. 1-7-2017.

3 Inserted by the Finance Act, 2020, w.r.e.f. 1-7-2017.

4 Inserted by the Finance Act, 2020, w.r.e.f. 1-7-2017.

5 Inserted by the Finance Act, 2020, w.r.e.f. 1-7-2017.

(3) A registered person, who was not liable to be registered under the existing law, or who was engaged in the manufacture of exempted goods or provision of exempted services, or who was providing works contract service and was availing of the benefit of Notification No. 26/2012-Service Tax, dated the 20th June, 2012 or a first stage dealer or a second stage dealer or a registered importer or a depot of a manufacturer, shall be entitled to take, in his electronic credit ledger, credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished¹[goods held in stock on the appointed day, within such time and in such manner as may be prescribed, subject to] the following conditions, namely:—

- (i) such inputs or goods are used or intended to be used for making taxable supplies under this Act;
- (ii) the said registered person is eligible for input tax credit on such inputs under this Act;
- (iii) the said registered person is in possession of invoice or other prescribed documents evidencing payment of duty under the existing law in respect of such inputs;
- (iv) such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day; and
- (v) the supplier of services is not eligible for any abatement under this Act:

Provided that where a registered person, other than a manufacturer or a supplier of services, is not in possession of an invoice or any other documents evidencing payment of duty in respect of inputs, then, such registered person shall, subject to such conditions, limitations and safeguards as may be prescribed, including that the said taxable person shall pass on the benefit of such credit by way of reduced prices to the recipient, be allowed to take credit at such rate and in such manner as may be prescribed.

(4) A registered person, who was engaged in the manufacture of taxable as well as exempted goods under the Central Excise Act, 1944 (1 of 1944) or provision of taxable as well as exempted services under Chapter V of the Finance Act, 1994 (32 of 1994), but which are liable to tax under this Act, shall be entitled to take, in his electronic credit ledger,—

- (a) the amount of CENVAT credit carried forward in a return furnished under the existing law by him in accordance with the provisions of sub-section (1); and
- (b) the amount of CENVAT credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day, relating to such exempted goods or services, in accordance with the provisions of sub-section (3).

(5) A registered person shall be entitled to take, in his electronic credit ledger, credit of eligible duties and taxes in respect of inputs or input services

1 Substituted for "goods held in stock on the appointed day subject to" by the Finance Act, 2020, w.r.e.f. 1-7-2017.

received on or after the appointed day but the duty or tax in respect of which has been paid by the supplier under the ¹[existing law, within such time and in such manner as may be prescribed], subject to the condition that the invoice or any other duty or tax paying document of the same was recorded in the books of account of such person within a period of thirty days from the appointed day:

Provided that the period of thirty days may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding thirty days:

Provided further that said registered person shall furnish a statement, in such manner as may be prescribed, in respect of credit that has been taken under this sub-section.

(6) A registered person, who was either paying tax at a fixed rate or paying a fixed amount in lieu of the tax payable under the existing law shall be entitled to take, in his electronic credit ledger, credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished ²[goods held in stock on the appointed day, within such time and in such manner as may be prescribed, subject to] the following conditions, namely:—

- (i) such inputs or goods are used or intended to be used for making taxable supplies under this Act;
- (ii) the said registered person is not paying tax under section 10;
- (iii) the said registered person is eligible for input tax credit on such inputs under this Act;
- (iv) the said registered person is in possession of invoice or other prescribed documents evidencing payment of duty under the existing law in respect of inputs; and
- (v) such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day.

(7) Notwithstanding anything to the contrary contained in this Act, the input tax credit on account of any services received prior to the appointed day by an Input Service Distributor shall be eligible for distribution as ³[credit under this Act, within such time and in such manner as may be prescribed, even if] the invoices relating to such services are received on or after the appointed day.

(8) Where a registered person having centralised registration under the existing law has obtained a registration under this Act, such person shall be allowed to take, in his electronic credit ledger, credit of the amount of CENVAT credit carried forward in a return, furnished under the existing law by him, in respect of the period ending with the day immediately preceding the appointed day ⁴[within such time and in such manner] as may be prescribed:

1 Substituted for "existing law" by the Finance Act, 2020, w.r.e.f. 1-7-2017.

2 Substituted for "goods held in stock on the appointed day subject to" by the Finance Act, 2020, w.r.e.f. 1-7-2017.

3 Substituted for "credit under this Act even if" by the Finance Act, 2020, w.r.e.f. 1-7-2017.

4 Substituted for "in such manner" by the Finance Act, 2020, w.r.e.f. 1-7-2017.

Provided that if the registered person furnishes his return for the period ending with the day immediately preceding the appointed day within three months of the appointed day, such credit shall be allowed subject to the condition that the said return is either an original return or a revised return where the credit has been reduced from that claimed earlier:

Provided further that the registered person shall not be allowed to take credit unless the said amount is admissible as input tax credit under this Act:

Provided also that such credit may be transferred to any of the registered persons having the same Permanent Account Number for which the centralised registration was obtained under the existing law.

(9) Where any CENVAT credit availed for the input services provided under the existing law has been reversed due to non-payment of the consideration within a period of three months, such ¹[credit can be reclaimed within such time and in such manner as may be prescribed, subject to] the condition that the registered person has made the payment of the consideration for that supply of services within a period of three months from the appointed day.

(10) The amount of credit under sub-sections (3), (4) and (6) shall be calculated in such manner as may be prescribed.

Explanation 1.—For the purposes of ²[sub-sections (1), (3), (4)] and (6), the expression “eligible duties” means—

- (i) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957);
- (ii) the additional duty leviable under sub-section (1) of section 3 of the Customs Tariff Act, 1975 (51 of 1975);
- (iii) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, 1975 (51 of 1975);
- ³[(iv) * * *]
- (v) the duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986);
- (vi) the duty of excise specified in the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986); and
- (vii) the National Calamity Contingent Duty leviable under section 136 of the Finance Act, 2001 (14 of 2001),

in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day.

1 Substituted for "credit can be reclaimed subject to" by the Finance Act, 2020, w.r.e.f. 1-7-2017.

2 Substituted for "sub-sections (3), (4)" by the Central Goods and Services Tax (Amendment) Act, 2018, w.r.e.f. 1-7-2017.

3 Omitted by the Central Goods and Services Tax (Amendment) Act, 2018, w.r.e.f. 1-7-2017. Prior to the omission, clause (iv) read as under:

"(iv) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978 (40 of 1978);"

Explanation 2.—For the purposes of ¹[sub-sections (1) and (5)], the expression “eligible duties and taxes” means—

- (i) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957);
- (ii) the additional duty leviable under sub-section (1) of section 3 of the Customs Tariff Act, 1975 (51 of 1975);
- (iii) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, 1975 (51 of 1975);
- ²[(iv) * * *]
- (v) the duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986);
- (vi) the duty of excise specified in the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986);
- (vii) the National Calamity Contingent Duty leviable under section 136 of the Finance Act, 2001 (14 of 2001); and
- (viii) the service tax leviable under section 66B of the Finance Act, 1994 (32 of 1994),

in respect of inputs and input services received on or after the appointed day.

³[*Explanation 3.*—For removal of doubts, it is hereby clarified that the expression “eligible duties and taxes” excludes any cess which has not been specified in *Explanation 1* or *Explanation 2* and any cess which is collected as additional duty of customs under sub-section (1) of section 3 of the Customs Tariff Act, 1975 (51 of 1975).]

⁴141. Transitional provisions relating to job work.—(1) Where any inputs received at a place of business had been removed as such or removed after being partially processed to a job worker for further processing, testing, repair, reconditioning or any other purpose in accordance with the provisions of existing law prior to the appointed day and such inputs are returned to the said place on or after the appointed day, no tax shall be payable if such inputs, after completion of the job work or otherwise, are returned to the said place within six months from the appointed day:

Provided that the period of six months may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding two months:

Provided further that if such inputs are not returned within the period specified in this sub-section, the input tax credit shall be liable to be recovered in accordance with the provisions of clause (a) of sub-section (8) of section 142.

1 Substituted for "sub-section (5)" by the Central Goods and Services Tax (Amendment) Act, 2018, w.r.e.f. 1-7-2017.

2 Omitted by the Central Goods and Services Tax (Amendment) Act, 2018, w.r.e.f. 1-7-2017. Prior to the omission, clause (iv) read as under:

"(iv) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978 (40 of 1978);"

3 Inserted by the Central Goods and Services Tax (Amendment) Act, 2018, w.r.e.f. 1-7-2017.

4 W.e.f. 1-7-2017 *vide* Notification No. 9/2017-Central Tax, dated 28-6-2017.

(2) Where any semi-finished goods had been removed from the place of business to any other premises for carrying out certain manufacturing processes in accordance with the provisions of existing law prior to the appointed day and such goods (hereafter in this section referred to as "the said goods") are returned to the said place on or after the appointed day, no tax shall be payable, if the said goods, after undergoing manufacturing processes or otherwise, are returned to the said place within six months from the appointed day:

Provided that the period of six months may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding two months:

Provided further that if the said goods are not returned within the period specified in this sub-section, the input tax credit shall be liable to be recovered in accordance with the provisions of clause (a) of sub-section (8) of section 142:

Provided also that the manufacturer may, in accordance with the provisions of the existing law, transfer the said goods to the premises of any registered person for the purpose of supplying therefrom on payment of tax in India or without payment of tax for exports within the period specified in this sub-section.

(3) Where any excisable goods manufactured at a place of business had been removed without payment of duty for carrying out tests or any other process not amounting to manufacture, to any other premises, whether registered or not, in accordance with the provisions of existing law prior to the appointed day and such goods, are returned to the said place on or after the appointed day, no tax shall be payable if the said goods, after undergoing tests or any other process, are returned to the said place within six months from the appointed day:

Provided that the period of six months may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding two months:

Provided further that if the said goods are not returned within the period specified in this sub-section, the input tax credit shall be liable to be recovered in accordance with the provisions of clause (a) of sub-section (8) of section 142:

Provided also that the manufacturer may, in accordance with the provisions of the existing law, transfer the said goods from the said other premises on payment of tax in India or without payment of tax for exports within the period specified in this sub-section.

(4) The tax under sub-sections (1), (2) and (3) shall not be payable, only if the manufacturer and the job-worker declare the details of the inputs or goods held in stock by the job-worker on behalf of the manufacturer on the appointed day in such form and manner and within such time as may be prescribed.

'142. Miscellaneous transitional provisions.—(1) Where any goods on which duty, if any, had been paid under the existing law at the time of removal thereof, not being earlier than six months prior to the appointed day, are returned to any place of business on or after the appointed day, the registered person shall be eligible for refund of the duty paid under the existing law where such goods are returned by a person, other than a registered person, to the said place of

business within a period of six months from the appointed day and such goods are identifiable to the satisfaction of the proper officer:

Provided that if the said goods are returned by a registered person, the return of such goods shall be deemed to be a supply.

(2) (a) where, in pursuance of a contract entered into prior to the appointed day, the price of any goods or services or both is revised upwards on or after the appointed day, the registered person who had removed or provided such goods or services or both shall issue to the recipient a supplementary invoice or debit note, containing such particulars as may be prescribed, within thirty days of such price revision and for the purposes of this Act such supplementary invoice or debit note shall be deemed to have been issued in respect of an outward supply made under this Act;

(b) where, in pursuance of a contract entered into prior to the appointed day, the price of any goods or services or both is revised downwards on or after the appointed day, the registered person who had removed or provided such goods or services or both may issue to the recipient a credit note, containing such particulars as may be prescribed, within thirty days of such price revision and for the purposes of this Act such credit note shall be deemed to have been issued in respect of an outward supply made under this Act:

Provided that the registered person shall be allowed to reduce his tax liability on account of issue of the credit note only if the recipient of the credit note has reduced his input tax credit corresponding to such reduction of tax liability.

(3) Every claim for refund filed by any person before, on or after the appointed day, for refund of any amount of CENVAT credit, duty, tax, interest or any other amount paid under the existing law, shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 (1 of 1944):

Provided that where any claim for refund of CENVAT credit is fully or partially rejected, the amount so rejected shall lapse:

Provided further that no refund shall be allowed of any amount of CENVAT credit where the balance of the said amount as on the appointed day has been carried forward under this Act.

(4) Every claim for refund filed after the appointed day for refund of any duty or tax paid under existing law in respect of the goods or services exported before or after the appointed day, shall be disposed of in accordance with the provisions of the existing law:

Provided that where any claim for refund of CENVAT credit is fully or partially rejected, the amount so rejected shall lapse:

Provided further that no refund shall be allowed of any amount of CENVAT credit where the balance of the said amount as on the appointed day has been carried forward under this Act.

(5) Every claim filed by a person after the appointed day for refund of tax paid under the existing law in respect of services not provided shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 (1 of 1944).

(6) (a) every proceeding of appeal, review or reference relating to a claim for CENVAT credit initiated whether before, on or after the appointed day under the existing law shall be disposed of in accordance with the provisions of existing law, and any amount of credit found to be admissible to the claimant shall be refunded to him in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 (1 of 1944) and the amount rejected, if any, shall not be admissible as input tax credit under this Act:

Provided that no refund shall be allowed of any amount of CENVAT credit where the balance of the said amount as on the appointed day has been carried forward under this Act;

(b) every proceeding of appeal, review or reference relating to recovery of CENVAT credit initiated whether before, on or after the appointed day under the existing law shall be disposed of in accordance with the provisions of existing law and if any amount of credit becomes recoverable as a result of such appeal, review or reference, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act.

(7) (a) every proceeding of appeal, review or reference relating to any output duty or tax liability initiated whether before, on or after the appointed day under the existing law, shall be disposed of in accordance with the provisions of the existing law, and if any amount becomes recoverable as a result of such appeal, review or reference, the same shall, unless recovered under the existing law, be recovered as an arrear of duty or tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act.

(b) every proceeding of appeal, review or reference relating to any output duty or tax liability initiated whether before, on or after the appointed day under the existing law, shall be disposed of in accordance with the provisions of the existing law, and any amount found to be admissible to the claimant shall be refunded to him in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 (1 of 1944) and the amount rejected, if any, shall not be admissible as input tax credit under this Act.

(8) (a) where in pursuance of an assessment or adjudication proceedings instituted, whether before, on or after the appointed day, under the existing law, any amount of tax, interest, fine or penalty becomes recoverable from the person, the same shall, unless recovered under the existing law, be recovered as an arrear

of tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act;

(b) where in pursuance of an assessment or adjudication proceedings instituted, whether before, on or after the appointed day, under the existing law, any amount of tax, interest, fine or penalty becomes refundable to the taxable person, the same shall be refunded to him in cash under the said law, notwithstanding anything to the contrary contained in the said law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 (1 of 1944) and the amount rejected, if any, shall not be admissible as input tax credit under this Act.

(9) (a) where any return, furnished under the existing law, is revised after the appointed day and if, pursuant to such revision, any amount is found to be recoverable or any amount of CENVAT credit is found to be inadmissible, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act;

(b) where any return, furnished under the existing law, is revised after the appointed day but within the time limit specified for such revision under the existing law and if, pursuant to such revision, any amount is found to be refundable or CENVAT credit is found to be admissible to any taxable person, the same shall be refunded to him in cash under the existing law, notwithstanding anything to the contrary contained in the said law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 (1 of 1944) and the amount rejected, if any, shall not be admissible as input tax credit under this Act.

(10) Save as otherwise provided in this Chapter, the goods or services or both supplied on or after the appointed day in pursuance of a contract entered into prior to the appointed day shall be liable to tax under the provisions of this Act.

(11) (a) notwithstanding anything contained in section 12, no tax shall be payable on goods under this Act to the extent the tax was leviable on the said goods under the Value Added Tax Act of the State;

(b) notwithstanding anything contained in section 13, no tax shall be payable on services under this Act to the extent the tax was leviable on the said services under Chapter V of the Finance Act, 1994 (32 of 1994);

(c) where tax was paid on any supply both under the Value Added Tax Act and under Chapter V of the Finance Act, 1994 (32 of 1994), tax shall be leviable under this Act and the taxable person shall be entitled to take credit of value added tax or service tax paid under the existing law to the extent of supplies made after the appointed day and such credit shall be calculated in such manner as may be prescribed.

(12) Where any goods sent on approval basis, not earlier than six months before the appointed day, are rejected or not approved by the buyer and returned to the seller on or after the appointed day, no tax shall be payable thereon if such goods are returned within six months from the appointed day:

Provided that the said period of six months may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding two months:

Provided further that the tax shall be payable by the person returning the goods if such goods are liable to tax under this Act, and are returned after a period specified in this sub-section:

Provided also that tax shall be payable by the person who has sent the goods on approval basis if such goods are liable to tax under this Act, and are not returned within a period specified in this sub-section.

(13) Where a supplier has made any sale of goods in respect of which tax was required to be deducted at source under any law of a State or Union territory relating to Value Added Tax and has also issued an invoice for the same before the appointed day, no deduction of tax at source under section 51 shall be made by the deductor under the said section where payment to the said supplier is made on or after the appointed day.

Explanation.—For the purposes of this Chapter, the expressions “capital goods”, “Central Value Added Tax (CENVAT) credit”, “first stage dealer”, “second stage dealer”, or “manufacture” shall have the same meaning as respectively assigned to them in the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder.

* * *

144. Presumption as to documents in certain cases.—Where any document—

- (i) is produced by any person under this Act or any other law for the time being in force; or
- (ii) has been seized from the custody or control of any person under this Act or any other law for the time being in force; or
- (iii) has been received from any place outside India in the course of any proceedings under this Act or any other law for the time being in force, and such document is tendered by the prosecution in evidence against him or any other person who is tried jointly with him, the court shall—
 - (a) unless the contrary is proved by such person, presume—
 - (i) the truth of the contents of such document;
 - (ii) that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the court may reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is in that person's handwriting, and in the case of a document executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;
 - (b) admit the document in evidence notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence.

¹145. Admissibility of micro films, facsimile copies of documents and computer printouts as documents and as evidence.—(1) Notwithstanding anything contained in any other law for the time being in force,—

- (a) a micro film of a document or the reproduction of the image or images embodied in such micro film (whether enlarged or not); or
- (b) a facsimile copy of a document; or
- (c) a statement contained in a document and included in a printed material produced by a computer, subject to such conditions as may be prescribed; or
- (d) any information stored electronically in any device or media, including any hard copies made of such information,

shall be deemed to be a document for the purposes of this Act and the rules made thereunder and shall be admissible in any proceedings thereunder, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) In any proceedings under this Act or the rules made thereunder, where it is desired to give a statement in evidence by virtue of this section, a certificate,—

- (a) identifying the document containing the statement and describing the manner in which it was produced;
- (b) giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer,

shall be evidence of any matter stated in the certificate and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

²146. Common Portal³.—The Government may, on the recommendations of the Council, notify the Common Goods and Services Tax Electronic Portal for facilitating registration, payment of tax, furnishing of returns, computation and settlement of integrated tax, electronic way bill and for carrying out such other functions and for such purposes as may be prescribed.

⁴147. Deemed Exports.—The Government may, on the recommendations of the Council, notify⁵ certain supplies of goods as deemed exports, where goods supplied do not leave India, and payment for such supplies is received either in Indian rupees or in convertible foreign exchange, if such goods are manufactured in India.

1 W.e.f. 1-7-2017 *vide* Notification No. 9/2017-Central Tax, dated 28-6-2017.

2 W.e.f. 22-6-2017 *vide* Notification No. 1/2017-Central Tax, dated 19-6-2017.

3 See Notification Nos. 69/2019-CT, dated 13-12-2018; 9/2018-Central Tax, dated 23-1-2018 superseding 4/2017-Central Tax, dated 19-6-2017, w.e.f. 22-6-2017.

4 W.e.f. 1-7-2017 *vide* Notification No. 9/2017-Central Tax, dated 28-6-2017.

5 See Notification No. 48/2017-Central Tax, dated 18-10-2017, read with Notification No. 49/2017-Central Tax, dated 18-10-2017.

¹148. Special procedure for certain processes.—The Government may, on the recommendations of the Council, and subject to such conditions and safeguards as may be prescribed, notify² certain classes of registered persons, and the special procedures to be followed by such persons including those with regard to registration, furnishing of return, payment of tax and administration of such persons.

³149. Goods and services tax compliance rating.—(1) Every registered person may be assigned a goods and services tax compliance rating score by the Government based on his record of compliance with the provisions of this Act.

(2) The goods and services tax compliance rating score may be determined on the basis of such parameters as may be prescribed.

(3) The goods and services tax compliance rating score may be updated at periodic intervals and intimated to the registered person and also placed in the public domain in such manner as may be prescribed.

⁴150. Obligation to furnish information return.—(1) Any person, being—

- (a) a taxable person; or
- (b) a local authority or other public body or association; or
- (c) any authority of the State Government responsible for the collection of value added tax or sales tax or State excise duty or an authority of the Central Government responsible for the collection of excise duty or customs duty; or
- (d) an income tax authority appointed under the provisions of the Income-tax Act, 1961 (43 of 1961); or
- (e) a banking company within the meaning of clause (a) of section 45A of the Reserve Bank of India Act, 1934 (2 of 1934); or
- (f) a State Electricity Board or an electricity distribution or transmission licensee under the Electricity Act, 2003 (36 of 2003), or any other entity entrusted with such functions by the Central Government or the State Government; or
- (g) the Registrar or Sub-Registrar appointed under section 6 of the Registration Act, 1908 (16 of 1908); or

1 W.e.f. 1-7-2017 vide Notification No. 9/2017-Central Tax, dated 28-6-2017.

2 See Notification Nos. 27/2020-CT, dated 23-3-2020; 11/2020-CT, dated 21-3-2020; 10/2020-CT, dated 21-3-2020; 9/2020-CT, dated 16-3-2020; 62/2019-CT, dated 26-11-2019; 47/2019-CT, dated 9-10-2019; 45/2019-CT, dated 9-10-2019; 38/2019-CT, dated 31-8-2019; 30/2019-CT, dated 28-6-2019; 27/2019-CT, dated 28-6-2019; 21/2019-CT, dated 23-4-2019; 11/2019-CT, dated 7-3-2019; 6/2019-CT(R), dated 29-3-2019; 76/2018-CT, dated 31-12-2018; 58/2018-CT, dated 26-10-2018; 33/2018-CT, dated 10-8-2018; 31/2018-CT, dated 6-8-2018; 17/2018-CT, dated 28-3-2018; 71/2017-CT, dated 29-12-2017 superseding 57/2017-CT, dated 15-11-2017; 66/2017-CT, dated 15-11-2017 superseding 40/2017-CT, dated 13-10-2017; 43/2018-CT, dated 10-9-2018 superseding 57/2017-CT, dated 15-11-2017.

3 W.e.f. 1-7-2017 vide Notification No. 9/2017-Central Tax, dated 28-6-2017.

4 W.e.f. 1-7-2017 vide Notification No. 9/2017-Central Tax, dated 28-6-2017.

- (h) a Registrar within the meaning of the Companies Act, 2013 (18 of 2013); or
- (i) the registering authority empowered to register motor vehicles under the Motor Vehicles Act, 1988 (59 of 1988); or
- (j) the Collector referred to in clause (c) of section 3 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013); or
- (k) the recognised stock exchange referred to in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956); or
- (l) a depository referred to in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996 (22 of 1996); or
- (m) an officer of the Reserve Bank of India as constituted under section 3 of the Reserve Bank of India Act, 1934 (2 of 1934); or
- (n) the Goods and Services Tax Network, a company registered under the Companies Act, 2013 (18 of 2013); or
- (o) a person to whom a Unique Identity Number has been granted under sub-section (9) of section 25; or
- (p) any other person as may be specified, on the recommendations of the Council, by the Government,

who is responsible for maintaining record of registration or statement of accounts or any periodic return or document containing details of payment of tax and other details of transaction of goods or services or both or transactions related to a bank account or consumption of electricity or transaction of purchase, sale or exchange of goods or property or right or interest in a property under any law for the time being in force, shall furnish an information return of the same in respect of such periods, within such time, in such form and manner and to such authority or agency as may be prescribed.

(2) Where the Commissioner, or an officer authorised by him in this behalf, considers that the information furnished in the information return is defective, he may intimate the defect to the person who has furnished such information return and give him an opportunity of rectifying the defect within a period of thirty days from the date of such intimation or within such further period which, on an application made in this behalf, the said authority may allow and if the defect is not rectified within the said period of thirty days or, the further period so allowed, then, notwithstanding anything contained in any other provisions of this Act, such information return shall be treated as not furnished and the provisions of this Act shall apply.

(3) Where a person who is required to furnish information return has not furnished the same within the time specified in sub-section (1) or sub-section (2), the said authority may serve upon him a notice requiring furnishing of such information return within a period not exceeding ninety days from the date of service of the notice and such person shall furnish the information return.

¹[**151. Power to call for information.**—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.]

²152. Bar on disclosure of information.—(1) No information ^{3[* * *]} 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 ^{4[without giving an opportunity of being heard to the person concerned].}

⁵[(2) * * *]

(3) Nothing in this section shall apply to the publication of any information relating to a class of taxable persons or class of transactions, if in the opinion of the Commissioner, it is desirable in the public interest to publish such information.

⁶153. Taking assistance from an expert.—Any officer not below the rank of Assistant Commissioner may, having regard to the nature and complexity of the case and the interest of revenue, take assistance of any expert at any stage of scrutiny, inquiry, investigation or any other proceedings before him.

⁷154. Power to take samples.—The Commissioner or an officer authorised by him may take samples of goods from the possession of any taxable person, where he considers it necessary, and provide a receipt for any samples so taken.

1 Substituted by the Finance Act, 2021, w.e.f. 1-1-2022. Prior to the substitution, section 151 read as under:

"¹151. *Power to collect statistics.*—(1) The Commissioner may, if he considers that it is necessary so to do, by notification, direct that statistics may be collected relating to any matter dealt with by or in connection with this Act.

(2) Upon such notification being issued, the Commissioner, or any person authorised by him in this behalf, may call upon the concerned persons to furnish such information or returns, in such form and manner as may be prescribed, relating to any matter in respect of which statistics is to be collected."

1 **W.e.f. 1-7-2017** *vide* Notification No. 9/2017-Central Tax, dated 28-6-2017.

2 **W.e.f. 1-7-2017** *vide* Notification No. 9/2017-Central Tax, dated 28-6-2017.

3 The words "of any individual return or part thereof" omitted by the Finance Act, 2021, w.e.f. 1-1-2022.

4 Inserted by the Finance Act, 2021, w.e.f. 1-1-2022.

5 Omitted by the Finance Act, 2021, w.e.f. 1-1-2022. Prior to the omission, sub-section (2) read as under:

"(2) Except for the purposes of prosecution under this Act or any other Act for the time being in force, no person who is not engaged in the collection of statistics under this Act or compilation or computerisation thereof for the purposes of this Act, shall be permitted to see or have access to any information or any individual return referred to in section 151."

6 **W.e.f. 1-7-2017** *vide* Notification No. 9/2017-Central Tax, dated 28-6-2017.

7 **W.e.f. 1-7-2017** *vide* Notification No. 9/2017-Central Tax, dated 28-6-2017.

¹155. **Burden of proof.**—Where any person claims that he is eligible for input tax credit under this Act, the burden of proving such claim shall lie on such person.

²156. **Persons deemed to be public servants.**—All persons discharging functions under this Act shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

³157. **Protection of action taken under this Act.**—(1) No suit, prosecution or other legal proceedings shall lie against the President, State President, Members, officers or other employees of the Appellate Tribunal or any other person authorised by the said Appellate Tribunal for anything which is in good faith done or intended to be done under this Act or the rules made thereunder.

(2) No suit, prosecution or other legal proceedings shall lie against any officer appointed or authorised under this Act for anything which is done or intended to be done in good faith under this Act or the rules made thereunder.

⁴158. **Disclosure of information by a public servant.**—(1) All particulars contained in any statement made, return furnished or accounts or documents produced in accordance with this Act, or in any record of evidence given in the course of any proceedings under this Act (other than proceedings before a criminal court), or in any record of any proceedings under this Act shall, save as provided in sub-section (3), not be disclosed.

(2) Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872), no court shall, save as otherwise provided in sub-section (3), require any officer appointed or authorised under this Act to produce before it or to give evidence before it in respect of particulars referred to in sub-section (1).

(3) Nothing contained in this section shall apply to the disclosure of,—

- (a) any particulars in respect of any statement, return, accounts, documents, evidence, affidavit or deposition, for the purpose of any prosecution under the Indian Penal Code (45 of 1860) or the Prevention of Corruption Act, 1988 (49 of 1988), or any other law for the time being in force; or
- (b) any particulars to the Central Government or the State Government or to any person acting in the implementation of this Act, for the purposes of carrying out the objects of this Act; or
- (c) any particulars when such disclosure is occasioned by the lawful exercise under this Act of any process for the service of any notice or recovery of any demand; or
- (d) any particulars to a civil court in any suit or proceedings, to which the Government or any authority under this Act is a party, which relates to any matter arising out of any proceedings under this Act or under any

1 W.e.f. 1-7-2017 *vide* Notification No. 9/2017-Central Tax, dated 28-6-2017.

2 W.e.f. 1-7-2017 *vide* Notification No. 9/2017-Central Tax, dated 28-6-2017.

3 W.e.f. 1-7-2017 *vide* Notification No. 9/2017-Central Tax, dated 28-6-2017.

4 W.e.f. 1-7-2017 *vide* Notification No. 9/2017-Central Tax, dated 28-6-2017.

other law for the time being in force authorising any such authority to exercise any powers thereunder; or

- (e) any particulars to any officer appointed for the purpose of audit of tax receipts or refunds of the tax imposed by this Act; or
- (f) any particulars where such particulars are relevant for the purposes of any inquiry into the conduct of any officer appointed or authorised under this Act, to any person or persons appointed as an inquiry officer under any law for the time being in force; or
- (g) any such particulars to an officer of the Central Government or of any State Government, as may be necessary for the purpose of enabling that Government to levy or realise any tax or duty; or
- (h) any particulars when such disclosure is occasioned by the lawful exercise by a public servant or any other statutory authority, of his or its powers under any law for the time being in force; or
- (i) any particulars relevant to any inquiry into a charge of misconduct in connection with any proceedings under this Act against a practising advocate, a tax practitioner, a practising cost accountant, a practising chartered accountant, a practicing company secretary to the authority empowered to take disciplinary action against the members practising the profession of a legal practitioner, a cost accountant, a chartered accountant or a company secretary, as the case may be; or
- (j) any particulars to any agency appointed for the purposes of data entry on any automated system or for the purpose of operating, upgrading or maintaining any automated system where such agency is contractually bound not to use or disclose such particulars except for the aforesaid purposes; or
- (k) any particulars to an officer of the Government as may be necessary for the purposes of any other law for the time being in force; or
- (l) any information relating to any class of taxable persons or class of transactions for publication, if, in the opinion of the Commissioner, it is desirable in the public interest, to publish such information.

¹[**158A. Consent based sharing of information furnished by taxable person.**—(1) Notwithstanding anything contained in sections 133, 152 and 158, the following details furnished by a registered person may, subject to the provisions of sub-section (2), and on the recommendations of the Council, be shared by the common portal with such other systems as may be notified by the Government, in such manner and subject to such conditions as may be prescribed, namely:—

- (a) particulars furnished in the application for registration under section 25 or in the return filed under section 39 or under section 44;
- (b) the particulars uploaded on the common portal for preparation of invoice, the details of outward supplies furnished under section 37 and

1 Inserted by the Finance Act, 2023, w.e.f. 1-10-2023.

the particulars uploaded on the common portal for generation of documents under section 68;

(c) *such other details as may be prescribed.*

(2) *For the purposes of sharing details under sub-section (1), the consent shall be obtained, of—*

(a) *the supplier, in respect of details furnished under clauses (a), (b) and (c) of sub-section (1); and*

(b) *the recipient, in respect of details furnished under clause (b) of sub-section (1), and under clause (c) of sub-section (1) only where such details include identity information of the recipient,*

in such form and manner as may be prescribed.

(3) *Notwithstanding anything contained in any law for the time being in force, no action shall lie against the Government or the common portal with respect to any liability arising consequent to information shared under this section and there shall be no impact on the liability to pay tax on the relevant supply or as per the relevant return.]*

¹159. Publication of information in respect of persons in certain cases.—

(1) If the Commissioner, or any other officer authorised by him in this behalf, is of the opinion that it is necessary or expedient in the public interest to publish the name of any person and any other particulars relating to any proceedings or prosecution under this Act in respect of such person, it may cause to be published such name and particulars in such manner as it thinks fit.

(2) No publication under this section shall be made in relation to any penalty imposed under this Act until the time for presenting an appeal to the Appellate Authority under section 107 has expired without an appeal having been presented or the appeal, if presented, has been disposed of.

Explanation.—In the case of firm, company or other association of persons, the names of the partners of the firm, directors, managing agents, secretaries and treasurers or managers of the company, or the members of the association, as the case may be, may also be published if, in the opinion of the Commissioner, or any other officer authorised by him in this behalf, circumstances of the case justify it.

²160. Assessment proceedings, etc., not to be invalid on certain grounds.—(1) No assessment, re-assessment, adjudication, review, revision, appeal, rectification, notice, summons or other proceedings done, accepted, made, issued, initiated, or purported to have been done, accepted, made, issued, initiated in pursuance of any of the provisions of this Act shall be invalid or deemed to be invalid merely by reason of any mistake, defect or omission therein, if such assessment, re-assessment, adjudication, review, revision, appeal, rectification, notice, summons or other proceedings are in substance and effect in

1 W.e.f. 1-7-2017 vide Notification No. 9/2017-Central Tax, dated 28-6-2017.

2 W.e.f. 1-7-2017 vide Notification No. 9/2017-Central Tax, dated 28-6-2017.

conformity with or according to the intents, purposes and requirements of this Act or any existing law.

(2) The service of any notice, order or communication shall not be called in question, if the notice, order or communication, as the case may be, has already been acted upon by the person to whom it is issued or where such service has not been called in question at or in the earlier proceedings commenced, continued or finalised pursuant to such notice, order or communication.

¹161. Rectification of errors apparent on the face of record.—Without prejudice to the provisions of section 160, and notwithstanding anything contained in any other provisions of this Act, any authority, who has passed or issued any decision or order or notice or certificate or any other document, may rectify any error which is apparent on the face of record in such decision or order or notice or certificate or any other document, either on its own motion or where such error is brought to its notice by any officer appointed under this Act or an officer appointed under the State Goods and Services Tax Act or an officer appointed under the Union Territory Goods and Services Tax Act or by the affected person within a period of three months from the date of issue of such decision or order or notice or certificate or any other document, as the case may be:

Provided that no such rectification shall be done after a period of six months from the date of issue of such decision or order or notice or certificate or any other document:

Provided further that the said period of six months shall not apply in such cases where the rectification is purely in the nature of correction of a clerical or arithmetical error, arising from any accidental slip or omission:

Provided also that where such rectification adversely affects any person, the principles of natural justice shall be followed by the authority carrying out such rectification.

²162. Bar on jurisdiction of civil courts.—Save as provided in sections 117 and 118, no civil court shall have jurisdiction to deal with or decide any question arising from or relating to anything done or purported to be done under this Act.

³163. Levy of fee.—Wherever a copy of any order or document is to be provided to any person on an application made by him for that purpose, there shall be paid such fee as may be prescribed.

⁴164. Power of Government to make rules⁵.—(1) The Government may, on the recommendations of the Council, by notification, make rules for carrying out the provisions of this Act.

(2) Without prejudice to the generality of the provisions of sub-section (1), the Government may make rules for all or any of the matters which by this Act

1 W.e.f. 1-7-2017 *vide* Notification No. 9/2017-Central Tax, dated 28-6-2017.

2 W.e.f. 1-7-2017 *vide* Notification No. 9/2017-Central Tax, dated 28-6-2017.

3 W.e.f. 1-7-2017 *vide* Notification No. 9/2017-Central Tax, dated 28-6-2017.

4 W.e.f. 22-6-2017 *vide* Notification No. 1/2017-Central Tax, dated 19-6-2017.

5 See Central Goods and Services Tax Rules, 2017.

are required to be, or may be, prescribed or in respect of which provisions are to be or may be made by rules.

(3) The power to make rules conferred by this section shall include the power to give retrospective effect to the rules or any of them from a date not earlier than the date on which the provisions of this Act come into force.

(4) Any rules made under sub-section (1) or sub-section (2) may provide that a contravention thereof shall be liable to a penalty not exceeding ten thousand rupees.

¹165. Power to make regulations.—The Board may, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the provisions of this Act.

²166. Laying of rules, regulations and notifications.—Every rule made by the Government, every regulation made by the Board and every notification issued by the Government under this Act, shall be laid, as soon as may be after it is made or issued, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or in the notification, as the case may be, or both Houses agree that the rule or regulation or the notification should not be made, the rule or regulation or notification, as the case may be, shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation or notification, as the case may be.

³167. Delegation of powers.—The Commissioner may, by notification, direct that subject to such conditions, if any, as may be specified in the notification, any power exercisable by any authority or officer under this Act may be exercisable also by another authority or officer as may be specified in such notification.

⁴168. Power to issue instructions or directions.—(1) The Board may, if it considers it necessary or expedient so to do for the purpose of uniformity in the implementation of this Act, issue such orders, instructions or directions to the central tax officers as it may deem fit, and thereupon all such officers and all other persons employed in the implementation of this Act shall observe and follow such orders, instructions or directions.

(2) 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, ⁵[* * *], sub-section (6) of section 39,

1 W.e.f. 1-7-2017 *vide* Notification No. 9/2017-Central Tax, dated 28-6-2017.

2 W.e.f. 1-7-2017 *vide* Notification No. 9/2017-Central Tax, dated 28-6-2017.

3 W.e.f. 1-7-2017 *vide* Notification No. 9/2017-Central Tax, dated 28-6-2017.

4 W.e.f. 1-7-2017 *vide* Notification No. 9/2017-Central Tax, dated 28-6-2017.

5 The words "sub-section (2) of section 38," omitted by the Finance Act, 2022, w.e.f. 1-10-2022.

¹[²[section 44], sub-sections (4) and (5) of section 52,] ³[sub-section (1) of section 143, except the second proviso thereof], ⁴[* * *] 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.

⁵[168A. Power of Government to extend time limit in special circumstances.]—(1) Notwithstanding anything contained in this Act, the Government may, on the recommendations of the Council, by notification, extend the time limit specified in, or prescribed or notified under, this Act in respect of actions which cannot be completed or complied with due to force majeure.

(2) The power to issue notification under sub-section (1) shall include the power to give retrospective effect to such notification from a date not earlier than the date of commencement of this Act.

Explanation.—For the purposes of this section, the expression "force majeure" means a case of war, epidemic, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature or otherwise affecting the implementation of any of the provisions of this Act.]

⁶169. Service of notice in certain circumstances.—(1) Any decision, order, summons, notice or other communication under this Act or the rules made thereunder shall be served by any one of the following methods, namely:—

- (a) by giving or tendering it directly or by a messenger including a courier to the addressee or the taxable person or to his manager or authorised representative or an advocate or a tax practitioner holding authority to appear in the proceedings on behalf of the taxable person or to a person regularly employed by him in connection with the business, or to any adult member of family residing with the taxable person; or
- (b) by registered post or speed post or courier with acknowledgement due, to the person for whom it is intended or his authorised representative, if any, at his last known place of business or residence; or
- (c) by sending a communication to his e-mail address provided at the time of registration or as amended from time to time; or
- (d) by making it available on the common portal; or
- (e) by publication in a newspaper circulating in the locality in which the taxable person or the person to whom it is issued is last known to have resided, carried on business or personally worked for gain; or

1 Inserted by the Finance (No. 2) Act, 2019, w.e.f. 1-1-2020.

2 Substituted for "sub-section (1) of section 44" by the Finance Act, 2021, w.e.f. 1-1-2022.

3 Substituted for "sub-section (5) of section 66, sub-section (1) of section 143" by the Finance Act, 2020, w.e.f. 30-6-2020.

4 The words "sub-section (1) of section 151," omitted by the Finance Act, 2021, w.e.f. 1-1-2022.

5 Inserted by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, w.r.e.f. 31-3-2020.

6 W.e.f. 1-7-2017 *vide* Notification No. 9/2017-Central Tax, dated 28-6-2017.

(f) if none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence and if such mode is not practicable for any reason, then by affixing a copy thereof on the notice board of the office of the concerned officer or authority who or which passed such decision or order or issued such summons or notice.

(2) Every decision, order, summons, notice or any communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed in the manner provided in sub-section (1).

(3) When such decision, order, summons, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved.

¹170. Rounding off of tax, etc.—The amount of tax, interest, penalty, fine or any other sum payable, and the amount of refund or any other sum due, under the provisions of this Act shall be rounded off to the nearest rupee and, for this purpose, where such amount contains a part of a rupee consisting of paise, then, if such part is fifty paise or more, it shall be increased to one rupee and if such part is less than fifty paise it shall be ignored.

* * *

²172. Removal of difficulties.—(1) If any difficulty arises in giving effect to any provisions of this Act, the Government may, on the recommendations of the Council, by a general or a special order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act or the rules or regulations made thereunder, as may be necessary or expedient for the purpose of removing the said difficulty:

Provided that no such order shall be made after the expiry of a period of ³[five years] from the date of commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be, after it is made, before each House of Parliament.

SCHEDULE I

[See Section 7]

ACTIVITIES TO BE TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION

1. Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.

2. Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business:

1 W.e.f. 1-7-2017 *vide* Notification No. 9/2017-Central Tax, dated 28-6-2017.

2 W.e.f. 1-7-2017 *vide* Notification No. 9/2017-Central Tax, dated 28-6-2017.

3 Substituted for "three years" by the Finance Act, 2020, w.e.f. 30-6-2020.

Provided that gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.

3. Supply of goods—

- (a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or
- (b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.

4. Import of services by a ¹[person] from a related person or from any of his other establishments outside India, in the course or furtherance of business.

SCHEDULE II

[See Section 7]

**ACTIVITIES ²[OR TRANSACTIONS] TO BE TREATED AS
SUPPLY OF GOODS OR SUPPLY OF SERVICES**

1. Transfer

- (a) any transfer of the title in goods is a supply of goods;
- (b) any transfer of right in goods or of undivided share in goods without the transfer of title thereof, is a supply of services;
- (c) any transfer of title in goods under an agreement which stipulates that property in goods shall pass at a future date upon payment of full consideration as agreed, is a supply of goods.

2. Land and Building

- (a) any lease, tenancy, easement, licence to occupy land is a supply of services;
- (b) any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of services.

3. Treatment or process

Any treatment or process which is applied to another person's goods is a supply of services.

4. Transfer of business assets

- (a) where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, ³[* * *] such transfer or disposal is a supply of goods by the person;
- (b) where, by or under the direction of a person carrying on a business, goods held or used for the purposes of the business are put to any private

1 Substituted for "taxable person" by the Central Goods and Services Tax (Amendment) Act, 2018, w.e.f. 1-2-2019.

2 Inserted by the Central Goods and Services Tax (Amendment) Act, 2018, w.r.e.f. 1-7-2017.

3 The words "whether or not for a consideration," omitted by the Finance Act, 2020, w.e.f. 1-1-2021.

use or are used, or made available to any person for use, for any purpose other than a purpose of the business, ^[* * *], the usage or making available of such goods is a supply of services;

- (c) where any person ceases to be a taxable person, any goods forming part of the assets of any business carried on by him shall be deemed to be supplied by him in the course or furtherance of his business immediately before he ceases to be a taxable person, unless—
 - (i) the business is transferred as a going concern to another person; or
 - (ii) the business is carried on by a personal representative who is deemed to be a taxable person.

²5. Supply of services

The following shall be treated as supply of service, namely:—

- (a) renting of immovable property;
- (b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.

Explanation.—For the purposes of this clause—

- (1) the expression "competent authority" means the Government or any authority authorised to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely:—
 - (i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972 (20 of 1972); or
 - (ii) a chartered engineer registered with the Institution of Engineers (India); or
 - (iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority;
- (2) the expression "construction" includes additions, alterations, replacements or remodelling of any existing civil structure;
- (c) temporary transfer or permitting the use or enjoyment of any intellectual property right;
- (d) development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software;
- (e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act; and

1 The words "whether or not for a consideration," omitted by the Finance Act, 2020, w.e.f. 1-1-2021.

2 See Central Goods and Services Tax (Fourth Removal of Difficulties) Order, 2019, w.e.f. 1-4-2019.

- (f) transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.

6. Composite supply

The following composite supplies shall be treated as a supply of services, namely:—

- (a) works contract as defined in clause (119) of section 2; and
- ¹(b) supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration.

²[7. Supply of Goods.—* * *]

SCHEDULE III

[See Section 7]

ACTIVITIES OR TRANSACTIONS WHICH SHALL BE TREATED NEITHER AS A SUPPLY OF GOODS NOR A SUPPLY OF SERVICES

1. Services by an employee to the employer in the course of or in relation to his employment.
2. Services by any court or Tribunal established under any law for the time being in force.
3. (a) the functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities;
- (b) the duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or
- (c) the duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.
4. Services of funeral, burial, crematorium or mortuary including transportation of the deceased.
5. Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.

1 See Central Goods and Services Tax (Removal of Difficulties) Order, 2017 superseded by Central Goods and Services Tax (Removal of Difficulties) Order, 2019.

2 Omitted by the Finance Act, 2021, w.r.e.f. 1-7-2017. Prior to the omission, paragraph 7 read as under:

"7. *Supply of Goods.*—The following shall be treated as supply of goods, namely:—

Supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration."

6. Actionable claims, other than ¹[*specified actionable claims*].

²[**7.** Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India.

8. (a) Supply of warehoused goods to any person before clearance for home consumption;

(b) Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.]

Explanation ³[*1*].—For the purposes of paragraph 2, the term "court" includes District Court, High Court and Supreme Court.

⁴[*Explanation* 2.—For the purposes of paragraph 8, the expression "warehoused goods" shall have the same meaning as assigned to it in the Customs Act, 1962 (52 of 1962).]

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- 1 Substituted for "lottery, betting and gambling" by the Central Goods and Services Tax (Amendment) Act, 2023, *w.e.f. 1-10-2023*.
 - 2 Inserted by the Central Goods and Services Tax (Amendment) Act, 2018, w.r.e.f. 1-7-2017 (date amended by the Finance Act, 2023). No refund shall be made of all the tax which has been collected, but which would not have been so collected, had sub-section (1) been in force at all material times: [Section 159(2), Finance Act, 2023].
 - 3 Renumbered by the Central Goods and Services Tax (Amendment) Act, 2018, w.e.f. 1-2-2019.
 - 4 Inserted by the Central Goods and Services Tax (Amendment) Act, 2018, w.r.e.f. 1-7-2017 (date amended by the Finance Act, 2023). No refund shall be made of all the tax which has been collected, but which would not have been so collected, had sub-section (1) been in force at all material times: [Section 159(2), Finance Act, 2023].

Chapter 29

Adjudication Proceeding

Synopsis

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1. Introduction

The manner of adjudication proceedings is laid down under the relevant statutory provisions with constitutional background both for judicial and quasi-judicial functions. During adjudication process any deviation from the statutory provisions leads to injustice and can be challenged before the higher judicial forums to get proper justice. The various principles of adjudication proceedings are summarized:

2. Show Cause Notice

The basic ingredient of adjudication proceedings is Show Cause Notice. The Show Cause Notice is based on the following features:

1. The Show Cause Notice should be issued only after proper inquiry/investigation with supported documentary evidence to justify allegations.
2. The Show Cause Notice should be in writing, charges should be specific, not deliberate, free from ambiguity and free from bias or no personal grudge.
3. The Show Cause Notice should be on clear facts, legal provisions and contains the violation provisions of law and allegations should not be contradictory.
4. The tax/duty demanded to be quantified and explained in a chart stating the method of calculation and amount of demand should be indicate in the notice itself.

5. The provisions for imposing penalty and interest should be clearly mentioned with reasons for recovery in show cause notice itself.
6. The allegation with regard to suppression of facts with wilful intent to evade payment of duty to be supported by the documents in order to invoke extended period of limitation.
7. The show cause notice should be served to the party as per statutory provisions within the time limit prescribed in the relevant statute.
8. The adequate time should be given to the party as per law to submit their reply.
9. The legible copies of the relied upon documents should be provided by the Department to the parties.

3. Principle of Natural Justice

The definition of "Natural Justice" has wide coverage, has no uniform & confined meaning. The principles of natural justice is a common law principle applicable in all cases of adjudicating process in judicial, quasi judicial as well as administrative proceedings. The principles of natural justice are based on the following essential elements:

1. Audi alteram partem which basically necessarily means that both sides shall be heard in person by the adjudicator before decision/order is passed in the matter.
2. The minimum adjournment of personal hearing should be allowed as per the statutory provisions of tax laws.
3. *Nemo judex in re sua* - the authority passing the orders should be free from bias and prejudice.
4. No man should judge his own case. This implies that affected party cannot be adjudicating authority for his own case.
5. The parties to a proceeding must have due notice of when the Court will be proceeded in the matter.
6. The adequate time should be given in the hearing notice and notice must contain time, place and nature of hearing.
7. The Court must act honestly and impartially and not under the dictation of other persons.
8. The affected parties should have right to scrutinize the documentary evidence collected.
9. The affected parties should be provided the relied upon documents in the matter.

4. Right to personal hearing and adjournment

The grant of adequate opportunity of personal hearing is the primary responsibility of any adjudicating authority or appellate authority before deciding a case as per the statutory provisions of tax laws. Both sides are also permitted to take adjournment on reasonable grounds for the maximum three occasions.

However, there is no fetter in further adjournment of the matter if the authority feels that the matter needs to be adjourned in the interest of justice.

5. Role of adjudicating authority

The adjudication proceeding is carried by the departmental officers depending upon monetary limits and they discharge functions in the capacity of quasi-judicial officers. The officers vested with power of adjudication are expected to use it with utmost care and caution, free from any prejudice or bias or unfairness. It is very important on the part of the adjudicating officers to know and understand the facts of the case, examine these facts properly and to apply correctly the statutory provisions of the relevant statute. The adjudicating officer should pass the final order after thorough verification of the relevant documents of the case, due study of the written submission filed by the parties and subsequent discussion in the personal hearing.

6. The basic principles of adjudication

1. The adjudication proceeding is based on the principle of natural justice and the said principle to be followed by the adjudicating officers to decide a case/pass order.
2. The adjudicating authorities to provide reasonable time for adjudication as per the statutory provisions and time limitation provided in the Act.
3. The adjudicating authority may, if sufficient cause is shown, at any stage of proceeding, grant time by adjournment of personal hearing for three occasions and no such adjournment is normally allowed thereafter.
4. The adjudicating authority should exercise their powers fairly, reasonably and impartially in a just manner and they should not decide a matter on the basis of any enquiry unknown to the party, but should on the basis of supported documentary evidence on record.
5. The decision of adjudicating authority should not be biased, arbitrary or based on mere conjectures, assumptions and presumption of the facts.
6. The adjudication order must be a speaking order giving clear findings on all the points raised in the show cause notice, after due consideration of submissions made by the party and final decision in clear terms.
7. The adjudication order should be in accordance with precedent judgment and not violation of judicial discipline.
8. The adjudicating authority should decide the case by proper application of mind and order should be self speaking order.
9. The adjudication order should quantify the duty demanded and order portion must contain the correct provisions of law under which duty is confirmed and penalty is imposed.
10. The adjudication order of decided case, if remanded by the appellate authority for *de novo* adjudication, it should be adjudicated in *de novo* proceedings by the same authority who had earlier adjudicated the case.

11. The adjudicating authority should take a decision on request of the party for cross-examination considering the facts and circumstances of the case.
12. The adjudicating officers should exercise powers of adjudication within the monetary limits available to them.
13. The adjudicating authority should not pass order in a routine manner as per precedent decision and he should give his own findings as per the change of circumstances, if any, and prevalent laws.
14. Adjudication order has to be dated and signed by the adjudicating authority.
15. The adjudicating authority cannot pass two orders on the same show cause notice but corrigendum can be issued on minor omission of facts without changing the main order.
16. The adjudicating authority should not pass order beyond the scope of show cause notice and no new points should not be discussed in the order which is not a part of show cause notice.
17. The adjudicating authority should communicate the order within a reasonable time after grant of personal hearing. He is also expected to keep 'Record of Personal Hearing' and to provide signed copy of the same to the parties.
18. Adjudication order must be dispatched by registered post acknowledgement due or speed post with POD option and the acknowledgment of delivery must be kept on record. The copy of POD must be provided to the parties on their request.

7. Judicial discipline

The adjudicating officers should follow the principles of judicial discipline or precedent judgments before passing of any judicial decision. The judicial discipline is a vital factor in adjudication proceedings. The adjudicating officers should be bound by the precedent judgments of the higher authorities in the identical cases. Then only the judicial decision would be just, fair, right, substantial and universally acceptable. The judicial discipline is self-discipline and it is an inbuilt mechanism in the system itself in adjudication proceedings. This is the minimum discipline and decorum to be maintained by quasi judicial/judicial fraternity. The principles of natural justice and judicial discipline are both sides of the same coin in adjudication proceedings.

8. Time limits for adjudication in cases of normal period of limitation

As per Section 73(10) of the CGST Act, 2017, the proper officer is required to issue the order within three years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to any reason other than fraud or any wilful misstatement or suppression of facts.

9. Time limit for Adjudication in cases of invocation extended Period

As per Section 74(10) of the CGST Act, 2017, the proper officer shall issue the order within five years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised by reason of fraud or any wilful misstatement or suppression of facts.

10. Deemed conclusion of proceedings

As per Section 75(10) of the CGST Act, 2017, the adjudication proceeding shall be deemed to be concluded, if the order is not issued within three years as provided for section 73(10) *ibid* or within five years as provided for in sub-section (10) of section 74 *ibid*.

11. Adjudicating authority under GST Law

1. The Superintendents of Central Tax shall be empowered to issue show cause notices and orders under sub-sections (1), (2), (3), (5), (6), (7), (9) and (10) of Section 74 of the CGST Act, 2017.
2. The Deputy or Assistant Commissioner of Central Tax Sub-sections (1), (2), (3), (5), (6), (7), (9) and (10) of Section 74 of the CGST Act, 2017.
3. The all officers up to the rank of Additional/Joint Commissioner of Central Tax are assigned as the proper officer for issuance of show cause notices and orders under sub- sections (1), (2), (3), (5), (6), (7), (9) and (10) of sections 73 and 74 of the CGST Act. Further, they are so assigned under the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as the “IGST Act”) as well, as per section 3 read with section 20 of the said Act.

[Circular No. 3/3/2017-GST, dated 5-7-2017]

12. Monetary Limits for adjudication

Whereas, for optimal distribution of work relating to the issuance of show cause notices and orders under sections 73 and 74 of the CGST Act and also under the IGST Act, monetary limits for different levels of officers of central tax need to be prescribed. Therefore, in pursuance of clause (91) of section 2 of the CGST Act read with section 20 of the IGST Act, the Board hereby assigns the officers mentioned in Column (2) of the Table below, the functions as the proper officers in relation to issue of show cause notices and orders under sections 73 and 74 of the CGST Act and section 20 of the IGST Act (read with sections 73 and 74 of the CGST Act), upto the monetary limits as mentioned in columns (3), (4) and (5) respectively of the Table below:—

| Sl. No. | Officer of Central Tax | Monetary limit of the amount of central tax (including cess) not paid or short paid or erroneously refunded or input tax credit of central tax wrongly availed or utilized for issuance of show cause notices and passing of orders under Sections 73 and 74 of CGST Act | Monetary limit of the amount of integrated tax (including cess) not paid or short paid or erroneously refunded or input tax credit of integrated tax wrongly availed or utilized for issuance of show cause notices and passing of orders under sections 73 and 74 of CGST Act made applicable to matters in relation to integrated tax vide section 20 of the IGST Act | Monetary limit of the amount of central tax and integrated tax (including cess) not paid or short paid or erroneously refunded or input tax credit of central tax and integrated tax wrongly availed or utilized for issuance of show cause notices and passing of orders under Sections 73 and 74 of CGST Act made applicable to integrated tax vide section 20 of the IGST Act |
|------------|--|---|---|--|
| (1) | (2) | (3) | (4) | (5) |
| 1 | Superintendent of Central Tax | Not exceeding Rupees 10 lakhs | Not exceeding Rupees 20 lakhs | Not exceeding Rupees 20 lakhs |
| 2 | Deputy or Assistant Commissioner of Central Tax | Above Rupees 10 lakhs and not exceeding Rupees 1 crore | Above Rupees 20 lakhs and not exceeding Rupees 2 crores | Above Rupees 20 lakhs and not exceeding Rupees 2 crores |
| 3 | Additional or Joint Commissioner of Central Tax | Above Rupees 1 crore without any limit | Above Rupees 2 crores without any limit | Above Rupees 2 crores without any limit |

The central tax officers of Audit Commissionerate and Directorate General of Goods and Services Tax Intelligence (hereinafter referred to as “DGGSTI”) shall exercise the powers only to issue show cause notices. A show cause notice issued by them shall be adjudicated by the competent central tax officer of the Executive Commissionerate in whose jurisdiction the noticee is registered. In case there are more than one noticees mentioned in the show cause notice having their principal places of business falling in multiple Commissionerate, the show cause notice shall be adjudicated by the competent Central Tax officer in whose jurisdiction, the principal place of business of the noticee from whom the highest demand of Central Tax and/or Integrated Tax (including cess) has been made falls.

It has been clarified by the Board that a show cause notice issued by DGGSTI in which the principal places of business of the noticees fall in multiple

Commissionerate and where the central tax and/or integrated tax (including cess) involved is more than ₹5 Crores shall be adjudicated by an officer of the rank of Additional Director/Additional Commissioner (as assigned by the Board), who shall not be on the strength of DGGSTI and working there at the time of adjudication. Cases of similar nature may also be assigned to such an officer.

It has been further clarified that in the case show cause notices have been issued on similar issues to a noticee(s) and made answerable to different levels of adjudicating authorities within a Commissionerate, such show cause notices should be adjudicated by the adjudicating authority competent to decide the case involving the highest amount of Central Tax and/or Integrated Tax (including cess).

[C.B.E. & C., Circular No. 31/05/2018-GST, dated 9-2-2018]

13. Instruction

Subject: Issuance of SCNs in time bound manner - Regarding.

A detailed analysis to pursue trends in cases of GST evasion & fraudulent ITC availment booked *viz-a-viz* number of SCNs issued against for the FY 2017-18 [w.e.f. July, 2017], 2018-19 & 2019-20, have been made and it is observed that in GST evasion cases booked and in the Fraudulent ITC cases booked, during the above mentioned period, SCNs have been issued only in few cases.

2.1 Apparently, cases of ITC frauds or GST evasion are covered under 2.1 the provisions of Section 74 of CGST Act, 2017 [*the extended period clause*]. However, there may be certain other situations where issuance of a notice under Section 73 of the CGST Act, 2017, is intended.

2.2 Kind attention is invited to sub-section (2) & sub-section (10) of the Section 73 of the CGST Act, 2017, which read as under:

The proper officer shall issue the notice under sub-section (1) at least three months prior to the time limit specified in sub-section (10) for issuance of order.

The proper officer shall issue the order under sub-section (9) within three years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within three years from the date of erroneous refund.

2.3 Attention is also invited to sub-section (2) & sub-section (10) of the Section 74 of the CGST Act, 2017, which read as under:

The proper officer shall issue the notice under sub-section (1) at least six months prior to the time limit specified in sub-section (10) for issuance of order.

The proper officer shall issue the order under sub-section (9) within a period of five years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within five years from the date of erroneous refund.

3. Further, the last dates of filing of the “Annual Return” under Section 44 of the CGST Act, 2017, for the Financial Years 2017-18, 2018-19 & 2019-20 are as below

| S.No. | Period | Last date to file Annual Return |
|-------|---------|--|
| 1 | 2017-18 | 05th & 7th February, 2020 (Notification No. 06/2020-Central Tax), dated 3-2-2020 |
| 2 | 2018-19 | 31st December, 2020 (Notification No. 80/2020-Central Tax), dated 28-10-2020 |
| 3 | 2019-20 | 31st March, 2021 (Notification No. 04/2021-Central Tax), dated 28-2-2021 |

4. Board has examined the matter in the background of issuance of SCNs in meager number of cases booked/detected as mentioned above. It may be seen that the last date for filing the Annual Returns for the FYs of 2017-18, 2018-19 & 2019-20 is already over. As a result, the time limit of three years/five years for issuance of orders under Section 73 & Section 74 of the CGST Act, 2017 has already kicked in. If the issuance of SCNs is pushed to close proximity of the end dates/last dates, it may leave very little time with the adjudicating authority to pass orders within stipulated period mentioned in sub-section (10) of Section 73/Section 74. This might result in a situation where either the adjudicating authority is not able to pass orders within prescribed time period or quality of adjudication suffers. It is felt that the present situation warrants for extra efforts on the part of field formations and strict monitoring at supervisory level.

5. Accordingly, Board desires that Principal Director General/Director General(s)/Principal Chief Commissioner(s)/Chief Commissioner(s) within their jurisdiction may take stock of the pending investigation cases/other cases which warrant issuance of show cause notices and take appropriate action to ensure timely completion of investigation(s) and *issuance of SCNs well before the last date*. The respective Pr. Chief Commissioners/Chief Commissioners may draw an action plan so that no case is pending investigation beyond one year. Needless to mention that once SCN is issued, timely adjudication must follow.

[Instruction No. 2/2021-22/GST-Investigation, dated 22-9-2021]

14. Time limit for adjudication

Adjudication proceeding should initiated u/s 73 and u/s 74 of the Act by issuance of show cause notice and pass of Order by the adjudicating Authority within time limit prescribed as under:

| Tax Period | Due date of furnishing Annual return- FORM GSTR-9 | Last date for issuance of the show cause notice as per S.73 | Last date for issuance of the show cause notice as per S.74 | Last date for issuance of pass of Order as per S.73 | Last date for issuance of pass of Order as per S.74 |
|------------|---|---|---|---|---|
| 2017-2018 | 05-02-2020 07-02-2020 | 30-09-2023 | 05-08-2024 07-08-2024 | 31-12-2023 | 05-02-2025 07-02-2025 |
| 2018-2019 | 31-12-2020 | 31-01-2024 | 30-06-2025 | 31-04-2024 | 31-12-2025 |
| 2019-2020 | 31-03-2021 | 31-05-2024 | 30-09-2025 | 31-08-2024 | 31-03-2026 |
| 2020-2021 | 28-02-2022 | 30-11-2024 | 31-08-2026 | 28-02-2025 | 28-02-2027 |
| 2021-2022 | 31-12-2022 | 30-09-2025 | 30-06-2027 | 30-12-2025 | 31-12-2027 |
| 2022-2023 | 31-12-2023 | 30-09-2026 | 30-06-2028 | 31-12-2026 | 31-12-2028 |

Last Time limits under section 73 extended *vide* Notification No. 9/2023-CT, dated 31.03.2023 and Notification No. 56/2023-CT, dated 28.12.2023.

15. Case Law

Judgment on parallel proceedings initiated by different authorities of the same department for same period:

Reported in - 2022-VIL-682-CAL M/s R. P. *Buildcon Private Limited & Anr. v The Superintendent, CGST & CX*, Date of Order – 30-09-2022 - M.A.T. No. 1595 of 2022 HIGH COURT OF CALCUTTA

The writ was filed to quash notices issued by the GST Anti Evasion wing as well as by the Range Office on the ground that the proceedings for the same period 2017-18, 2018-19 and 2019-20 have already commenced by Audit Commissionerate.

The learned Single Bench had dismissed the writ petition on the ground that the proceedings are in the nature of show cause notice. Aggrieved by such order, the appellants are before the larger bench.

The respondents submitted that the three wings of the department are proceeding against the appellants because the Range office was not aware about the proceedings initiated by the Audit Commissionerate and the Anti Evasion also was not aware of the same. It is not clear as to why in the present days of electronic communications available in the department, such parallel proceedings can be conducted by three wings of the same department for the very same period.

Therefore, we are of the view that since the audit proceedings under Section 65 of the Act has already commenced, it is but appropriate that the proceedings should be taken to the logical end. The proceedings initiated by the Anti Evasion and Range Office for the very same period shall not be proceeded with any further.

The order passed by the learned Single Bench is set aside. The second and third respondents are restrained from proceeding further against the appellants in respect of the very same period for which already action has been initiated by the first and fourth respondents, i.e. for the financial years 2017-2018, 2018-2019 and 2019-2020.

* * *

GST: Show cause notice issued in a format without striking off irrelevant particulars was to be quashed.

The Hon'ble High Court of Jharkhand in the case of *BLA Projects Pvt. Ltd, v State of Jharkhand*, reported in 2022 (62) G.S.T.L.160 (Jhar.), held that A perusal of the impugned show cause notice (Annexure-5) issued under Section 73 of the Act shows that it completely lacks in fulfilling the ingredients of proper show cause notice under Section 73 of the Act. It does not indicate as to the contravention committed by the petitioner. For the same reasons, we are inclined to quash the impugned show cause notice issued under Section 73 of the JGST Act and summary of the show cause notice issued in Form GST DRC-01. Since the breach relates to violation of principles of natural justice and mandatory procedure prescribed in law, as per the principles laid by the Apex Court in the case of *Magadh Sugar & Energy Ltd. v State of Bihar & Others* reported in [2021 SCC OnLine SC 801, we are of the view that the writ petition is maintainable. Accordingly, the impugned notices at Annexure-4 and Annexure-5, dated 20-10-2020 are quashed.”

Chapter 30

Remedy under Writ Petition to High Court

Synopsis

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1. Meaning of Writ Petition

A writ is a formal written order or direction that the Court issues which is to be obeyed by the authority or person to whom it is issued. A person appealing before the Hon'ble Supreme Court and High Courts for issuance of a direction for grant of immediate relief is called Writ petition. A Writ Petition can be filed before the Supreme Court under Article 32(1) of the Constitution of India and the Supreme Court shall have power to issue directions or orders or writs for enforcement of the rights under Article 32(2) of the Constitution of India. A writ can be filed before the High Court under Article 226/Article 227 of the Constitution of India. A writ petition is a final resort in the hands of the affected party to get remedy for his injury from the Supreme Court or High Courts.

Article 226 and 227 are the two important provisions of the Constitution of India, which confers the special powers to every High Court to provide immediate remedy or relief to the affected parties. Article 226 of constitution empowers the High Courts to issue, to any person or authority, including the government, directions, orders or writs. Article 227 of constitution confers that every High Court shall have power of superintendence over "all courts and tribunals" in their territorial jurisdiction.

Article 226 of the Constitution of India refers to power of High Court's to issue certain writs throughout the territory in relation to which it exercises jurisdiction. A writ is a written order or direction may be issued by the High Court, which an immediate relief to the affected parties.

2. Scope of filing Writ petition

Generally, the writ petition are filed in contravention of principles of natural justice and an allegation of infringement of fundamental rights of an individual get immediate remedy. The Court may admit writ petition and exercise "writ jurisdiction" wherein it feels that the action or order was passed under the following situations:

1. A writ petition can be filed against Central and State Government authorities when their field officials denied the legitimate benefits available in the provisions of Rules or laws.
2. A writ petition can be filed against authority that acting under a statute does not have power to issue the order beyond his scope of jurisdiction.
3. A writ petition can be filed against authority where the authority exercised his power dishonestly.
4. A writ petition can be filed against private authorities when they were discharging public functions.
5. A writ can be filed against Lower Court Orders passed in defiance of the fundamental principles of judicial procedure and non-application of his mind.

3. Types of Writ

There are 5 types of writs namely, habeas corpus, mandamus, quo warranto, prohibition and certiorari.

1. **A writ of Habeas Corpus:** Habeas Corpus means ‘Let us have the body’ (let us see physically the person who has been illegally detained). A writ of habeas corpus is issued by the Courts to an authority or person to produce in court a person who is either missing or kept in illegal custody where the detention is found to be without authority of law or order for his release with compensation to the person illegally detained.
2. **A writ of Mandamus:** Mandamus means ‘We command’ (we command you do this). A writ of mandamus is a direction to an authority to do or refrain from doing a particular act, which is injustice to the general public. A writ of mandamus is issued by a Higher Court to a Lower Court, Tribunal, or a Public Authority to perform an Act which such a Lower Court etc., is bound to perform. If a public official or a babu is not performing his duty the Court can order him to do that.
3. **A writ of prohibition:** Prohibition is also known as a ‘stay order’. A writ of prohibition is issued to a Lower Court or a body of public authority to stop acting beyond its powers. This could be issued on the ground that the authority lacks jurisdiction and further that prejudice would be caused if the authority proceeds to decide the matter. Where the authority is found to be biased, refuses to rescue and acting contrary to the rules of natural justice.
4. **A writ of Certiorari:** A writ of certiorari is a direction to Lower Courts or an authority to produce before the Court the records on the basis of which a decision under challenge in the writ petition has been taken. By looking into those records, the Court will examine whether the authority applied its mind to the relevant materials before it took the decision.

5. ***A writ of quo warranto:*** A writ of quo warranto is issued to prevent a person from acting in a government office when he is not entitled or not qualified to hold the post and appointment can be nullified if found to be illegal. This writ is applicable to the public offices only and not to private offices.

4. Writ petition in respect of Tax laws

There is availability of statutory provision under Section 117 of the CGST Act, 2017, by virtue of the said provisions the affected party may file appeal before the High Court aggrieved by the order passed in appeal by the Appellate Tribunal or order passed by the quasi-judiciary authorities in the matter of tax laws. The High Court will admit appeal, if the High Court is satisfied that the case involves a substantial question of law or facts.

Even though the remedies are available in tax laws for adverse statutory provisions, there is constitutional provision to represent to tax litigations before the High Court by way of writ petition under Article 226 and Article 227 of the Constitution of India. The tax litigations mainly relating to the following may be filed writ petition before the High Court in the following situations:

1. When the GST officer visited a place of business or any other place for the purpose of inspection, search and seizure of goods, documents, books or things liable to confiscation under Section 139 of the CGST Act, 2017 without obtaining authorisation from the proper officer not below the rank of a joint Commissioner.
2. When there is illegal arrest under Section 69 of the CGST Act, 2017.
3. When there is issuance of illegal summon to give evidence or produce documents for investigation under Section 70 of the CGST Act, 2017.
4. When frivolous show cause notices issued for recovery of illegal demand under Section 73 and Section 74 of the CGST Act, 2017.
5. Where the benefits available under statutory provisions are denied to the taxpayers or assessee by the authority in statutory power.
6. When the provisions of an Act and Rules is challengeable for constitutional validity.
7. When the provisions prescribed through Notifications, Instruction, Order and Circular has been misinterpreted and held illegal or ultra vires.
8. When the registered person fails to avail input tax credits benefit under Transitional provision under Section 140 of the CGST Act, 2017.
9. The tax authority may file writ petition to seek stay on payment of erroneous refund claim sanctioned by the sanctioning authority.

5. Maintainability of writ petition

Article 226 & Article 227 of the Constitution of India, grants wide powers to the High Courts, and taxpayers can avail this opportunity for management of tax litigations. Normally, High Courts are reluctant to interfere if there is adequate efficacious alternative statutory remedies are available under tax laws. If

somebody approaches the High Court without availing alternative remedy provided, the High Court should ensure that he has made out strong case or that there exist good grounds to invoke the extraordinary jurisdiction.

However, there catena of decisions support that filing of writ petition before the High Court exigency tax issue to immediate interim relief to the injury being suffered by the general public.

6. Case Laws

The Apex Court decision in the case of *D.R. Enterprises v Assistant Collector of Customs*, reported in 2015 (322) E.L.T. 795 (SC), held that the powers of the High Court under Article 226 of the Constitution, while issuing appropriate writs, are very wide. Even if there is an alternate remedy that may not preclude the High Court from exercising the jurisdiction in a particular case. In the face of alternate statutory remedies, when the High Court declines to exercise the jurisdiction under Article 226 of the Constitution, it is a self-imposed restriction only. [para 21]

In the case of *Asst. Collector, Central Excise v Dunlop India Ltd. and Ors* [1985 (19) E.L.T. 22 (SC)], it was held that Article 226 is not meant to short circuit or circumvent statutory provisions and the High Court must entertain the writ petition only when statutory remedies are entirely ill-suited to meet the demands of extraordinary situations and where interference is necessary to prevent public injury and vindication of public justice.

The Apex Court decision in the case of *Kuntesh Gupta v Management of Hindu Kanya Mahavidyalaya*, reported in 1987 (32) E.L.T. 8 (SC), held that it is well established that an alternative remedy is not an absolute bar to the maintainability of a writ petition. When an authority has acted wholly without jurisdiction the High Court should not refuse to exercise its jurisdiction on the existence of alternative remedy under Article 226 of the Constitution. [Para 12].

The Apex Court decision in the case of *Collector of Customs v Ramchand Sobhraj Wadhwani* AIR 1961 SC 1506, it was held that the remedy under Article 226 by way of judicial review is purely discretion. Where the petitioner fails to avail of the effective statutory alternative remedy within the prescribed time due to his own fault, he cannot be permitted to seek remedy under Article 226 of the Constitution of India.

In the case of *Titagarh Paper Mills Co Ltd. v State of Orissa* (2 SCC 433), a Bench of three judges of the Apex Court held that where efficacious statutory alternative remedy is available in the statute by way of an appeal and second appeal under the Sales Tax Act and the petitioner failed to avail of relief in the appeals, the writ petition is not maintainable in law.

The powers of the High Court under Articles 226 and 227 form a part and parcel of the basic structure of the Constitution and cannot be overwritten and nullified as held by the Constitutional Bench in *L. Chandra Kumar v UOI - 1997* (92) E.L.T. 318 (SC).

Therefore, when there is grave injustice to the taxpayers, statutory remedies are entirely ill-suited and the petitioner questions the vires of Notification/circulars does the High Court allow the writ petition for consideration. There is need of writ remedy to get immediate relief from the High Court under Article 226 and 227 of the Constitution of India.

* * *

The Hon'ble Apex Court in the Case of the *Assistant Commissioner of State Tax and Others v M/s Commercial Steel Limited*, reported in 2021 -TIOL-234-SC-GST-LB, held that the existence of an alternative remedy is not an absolute bar to the maintainability of writ petition under Article 226 of the Constitution. But a writ petition can be entertained in exceptional circumstances where is:

- (i) a breach of fundamental rights;
- (ii) a violation of the principle of natural justice;
- (iii) an excess of jurisdiction; or
- (iv) a challenge to the vires of the statute or delegated legislation.

GST: Despite availability of alternative remedy against adjudication order, Writ Petition still can be entertained when it has been passed ex parte in violation of principles of natural justice and without assigning any reason

The Hon'ble High Court of Patna in the case of *M/s OM Shanti Construction v State of Bihar* reported in 2022 (57) G.S.T.L. 374 (Pat.), held that “we are of the considered view that this Court, notwithstanding the statutory remedy, is not precluded from interfering where, *ex facie*, we form an opinion that the order is bad in law. This we say so, for two reasons - (a) violation of principles of natural justice, *i.e.* Fair opportunity of hearing. No sufficient time was afforded to the petitioner to represent his case; (b) order passed *ex parte* in nature, does not assign any sufficient reasons even decipherable from the record, as to how the officer could determine the amount due and payable by the assessee. The order, *ex parte* in nature, passed in violation of the principles of natural justice, entails civil consequences.”

The existence of alternate remedy does not bar exercise of writ jurisdiction if order is challenged for want of jurisdiction.

The High Court has the authority to decide whether to accept or reject a writ petition under Article 226 of the Constitution of India. However, the Hon'ble Supreme Court in the case of *Magadh Sugar & Energy Ltd. v State of Bihar LL 2021 SC 495* held that existence of alternate remedy does not bar exercise of writ jurisdiction if order is challenged for want of jurisdiction. The bench also noted that there are exceptions to the rule of alternate remedy arise, the court which are: (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation Is challenged.

Supreme Court disallows SLP, where alternative remedy not exercised by assessee

The Hon'ble Supreme Court in *M/s. Vishwanath Traders v Union of India & Ors. [Special Leave to Appeal (C) No(s). 15594 of 2023, dated August 04, 2023]* upheld the order of the Hon'ble Patna High Court wherein the high court held that extraordinary jurisdiction under Article 226 of the Constitution of India cannot be invoked where assessee has alternate remedies available and he was not diligent in availing such alternate remedies within the stipulated time.

Chapter 31

Export Promotion Schemes under DGFT

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1. Objective

Export promotion schemes under Foreign Trade Policy provide promotional measures to boost India's exports with the objective to offset infrastructural inefficiencies and associated costs involved to provide exporters a level playing field. The Ministry of Commerce & Industry, Government of India is the overall in-charge of Foreign Trade in India. The office of the Director General of Foreign Trade (DGFT) is situated in New Delhi; the said authority is responsible for the execution of the Foreign Trade policy of the Government of India.

2. Role of DGFT

The Director General of Foreign Trade is a part of the Department of Commerce under the Ministry of Commerce & industry, Government of India. DGFT having its regional offices at all over India and these regional offices are primarily responsible for implementation of various export promotion schemes, issuance of Import-Export Code numbers, grant of various Export promotion licences and issuance of scheme certificates under Foreign Trade Policy. The Ministry of Commerce & Industry is the controlling authority of Foreign Trade, who issue Foreign Trade Policy books, Public Notices, Notifications, Policy Circulars, Clarifications, amended policies & instructions from time to time for successful implementation of Export Promotion Schemes.

3. Role of C.B.I. & C.

The Central Board of Indirect Taxes & Customs (CBIC) is a part of the Department of Revenue under the Ministry of Finance, Government of India, is a nodal agency to implement the various Export Promotion schemes as announced by the Central Government from time to time as per Foreign Trade Policy. The Customs wing of CBIC plays a much more vital role to implement the various export promotion schemes as provided under Foreign Trade Policy.

4. Midterm Export Promotion Schemes

The midterm review of the Foreign Trade Policy 2015-20 has been announced on 5th December 2017 to make corrective changes as per the evolving global trade scenario and to align with the changes in the indirect taxes regime with the introduction of GST from 1st July 2017. The revised and updated Export Promotion Schemes was made effective from 5th December'2017 declared by the Ministry of Commerce and industry of the Government of India. The brief of the Export promotion schemes are as under:

5. Exports from India Schemes

The objective of schemes to provide rewards in form of Duty Credit Scrips to exporters for the growth of export sectors with low cost. There are two schemes for exports of Merchandise and Services respectively:

- (i) Merchandise Exports from India Scheme (MEIS).
- (ii) Service Exports from India Scheme (SEIS)

(i) Merchandise Exports from India Scheme (MEIS)

Under this scheme, exports of notified goods/products with ITC [HS] code, to notified markets as listed in Appendix-3B of Handbook of Procedures, shall be rewarded under MEIS with Duty Credit Scrips, are granted freely transferable duty credit scrips on realized FOB value of exports in free foreign exchange at specified reward rate (2,3-5%). Such duty credit scrips can be used for payment of Customs duties for import of inputs or goods, payment of tax on domestic procurement and payment of Customs duties in case of EO default. Scrips and inputs imported under the scrips are fully transferable. This has provided much flexibility to exporters. Incentives under MEIS are available to units located in SEZs also.

Exports of notified goods of FOB value upto ₹25,000 per consignment, through courier or foreign post office using e-commerce shall be entitled for MEIS benefit and value of exports using e-commerce platform is more than ₹25,000 per consignment then MEIS reward would be limited to FOB value of ₹25000 only. The reward/incentives provided by the Government makes the exporters competitive in the international market including Europe, The United States of America and Africa. These three markets are covered under the scheme for all notified 5012 tariff lines.

(ii) Service Exports from India Scheme (SEIS)

The objective of Service Exports from India Scheme (SEIS) is to encourage export of notified Services from India. Service providers of notified services as per Appendix 3E are eligible for freely transferable duty credit scrip @ 5% of foreign exchange earned. The notified services and rates of rewards are listed in Appendix 3D.

6. Duty Exemption & Remission Schemes

These schemes enable duty free import of inputs for export production with export obligation, including replenishment of inputs or duty remission. These schemes consist of:-

(i) Advance Authorization Scheme

Under this scheme, duty free import of inputs are allowed, that are physically incorporated in the export product (after making normal allowance for wastage) with minimum 15% value addition. Advance Authorization (AA) is issued for inputs in relation to resultant products as per SION or on the basis of self declaration, as per procedures of FTP. AA normally has a validity period of 12 months for the purpose of making imports and a period of 18 months for fulfillment of Export Obligation (EO) from the date of issue. AA is issued either to a manufacturer exporter or merchant exporter tied to a supporting manufacturer(s).

(ii) Advance Authorization for annual requirement

Exporters having past export performance (in at least preceding two financial years) shall be entitled for Advance Authorization for Annual requirement.

Advance Authorisation for Annual Requirement shall only be issued for items notified in Standard Input Output Norms (SION), and it shall not be available in case of adhoc norms under paragraph 4.03 (b)(ii) of FTP.

Advance Authorisation for Annual Requirement shall also not be available in respect of SION where any item of input appears in Appendix 4-J.

Entitlement in terms of CIF value of imports shall be upto 300% of the FOB value of physical export and/or FOR value of deemed export in preceding financial year or ₹1 crore, whichever is higher.

(iii) Import of Mandatory Spares

Import of mandatory spares which are required to be exported/supplied with the resultant product shall be permitted duty free to the extent of 10% of CIF value of Authorisation.

(iv) Actual User Condition for Advance Authorisation

Advance Authorisation and/or material imported under Advance Authorisation shall be subject to 'Actual User' condition. The same shall not be transferable even after completion of export obligation. However, Authorisation holder will have option to dispose of product manufactured out of duty free input once export obligation is completed.

(v) Re-import of exported goods under Duty Exemption/Remission scheme

Goods exported under Advance Authorisation/Duty Free Import Authorisation may be re-imported in same or substantially same form subject to such conditions as may be specified by Department of Revenue. Authorisation holder shall also inform about such re-importation to the Regional Authority which had issued the Authorisation within one month from date of re-import.

7. Duty Free Import Authorization (DFIA) Scheme

Duty Free Import Authorisation is issued to allow duty free import of inputs. In addition, import of oil and catalyst which is consumed/utilised in the process of production of export product, may also be allowed.

Provisions of paragraphs 4.12, 4.18, 4.20, 4.21 and 4.24 of FTP shall be applicable to DFIA also.

Duty Free Import Authorisation Scheme shall not be available for import of raw sugar.

DFIA is issued to allow duty free import of inputs, with a minimum value addition requirement of 20%. DFIA shall be exempted only from the payment of basic customs duty. DFIA shall be issued on post export basis for products for which SION has been notified.

Regional Authority shall issue transferable DFIA with a validity of 12 months from the date of issue. No further revalidation shall be granted by Regional Authority.

While issuing Duty Free Import Authorisation, Regional Authority shall mention technical characteristics, quality and specification in respect of permitted inputs for imports in the Authorisation.

8. Schemes for exports of Gems and Jewelry

Exporters of Gems and Jewellery can import/procure duty free (excluding Integrated Tax and Compensation Cess leviable under Section 3(7) and 3(9) of customs Tariff Act) input for manufacture of export product.

Gems and Jewellery exporters shall be allowed to export cut and polished precious and semi-precious stones for the treatment and re-import as per customs rules and regulations. In case of re-export, the exporter shall be entitled for duty drawback as per rules.

Re-import of rejected Jewellery Gems & Jewellery exporters shall be allowed to re-import rejected precious metal jewellery as per paragraph 4.91 of Handbook of Procedures.

Export and import on consignment basis Gems & Jewellery exporters shall be allowed to export and import diamond, gemstones & jewellery on consignment basis as per Handbook of Procedures and Customs Rules and Regulations.

9. Export Promotion of Capital Goods (EPCG) SCHEME

The objective of the EPCG Scheme is to facilitate import of capital goods for producing quality goods and services and enhance India's manufacturing competitiveness.

(i) Zero duty EPCG scheme

Under this scheme import of capital goods at zero Customs duty is allowed for producing quality goods and services to enhance India's export competitiveness. Import under EPCG shall be subject to export obligation equivalent to six times of duty saved in six years. Alternatively, the Authorisation holder may also procure Capital Goods from indigenous sources in accordance with provisions of paragraph 5.07 of FTP. Scheme also allows indigenous sourcing of capital goods with 25% less export obligation.

Import of capital goods for Project Imports notified by Central Board of Indirect Taxes and Customs is also permitted under EPCG Scheme.

Authorisation shall be valid for import for 18 months from the date of issue of Authorisation. Revalidation of EPCG Authorisation shall not be permitted.

In case Integrated Tax and Compensation Cess are paid in cash on imports under EPCG, incidence of the said Integrated Tax and Compensation Cess would not be taken for computation of net duty saved provided Input Tax Credit is not availed.

Import of items which are restricted for import shall be permitted under EPCG Scheme only after approval from Exim Facilitation Committee (EFC) at DGFT Headquarters.

If the goods proposed to be exported under EPCG authorisation are restricted for export, the EPCG authorisation shall be issued only after approval for issuance of export authorisation from Exim Facilitation Committee at DGFT Headquarters.

(ii) Post Export EPCG Duty Credit Scrip Scheme

A Post Export EPCG Duty Credit Scrip Scheme shall be available for exporters who intend to import capital goods on full payment of applicable duties, taxes and Cess in cash and choose to opt for this scheme.

Basic Customs duty paid on Capital Goods shall be remitted in the form of freely transferable duty credit scrip(s), similar to those issued under Chapter 3 of FTP.

Specific EO shall be 85% of the applicable specific EO under the EPCG Scheme. However, average EO shall remain unchanged.

Duty remission shall be in proportion to the EO fulfilled.

All provisions for utilization of scrips issued under Chapter 3 of FTP shall also be applicable to Post Export EPCG Duty Credit Scrip (s).

All provisions of the existing EPCG Scheme shall apply insofar as they are not inconsistent with this scheme.

10. EOU/EHTP/STP & BTP Schemes

Units undertaking to export their entire production of goods and services (except permissible sales in DTA), may be set up under the Export Oriented Unit (EOU) Scheme, Electronics Hardware Technology Park (EHTP) Scheme, Software Technology Park (STP) Scheme or Bio-Technology Park (BTP) Scheme for manufacture of goods, including repair, re-making, reconditioning, re-engineering, rendering of services, development of software, agriculture including agro-processing, aquaculture, animal husbandry, bio-technology, floriculture, horticulture, pisciculture, viticulture, poultry and sericulture. Trading units are not covered under these schemes.

Objectives of these schemes are to promote exports, enhance foreign exchange earnings, attract investment for export production and employment generation.

An EOU/EHTP/STP/BTP unit may export all kinds of goods and services except items that are prohibited in ITC (HS). However export of gold jewellery, including partly processed jewellery, whether plain or studded, and articles, containing gold of 8 carats and above upto a maximum limit of 22 carats only shall be permitted.

An EOU/EHTP/STP/BTP unit may import and/or procure, from DTA or bonded warehouses in DTA/international exhibition held in India, all types of goods, including capital goods, required for its activities, provided they are not prohibited items of import in the ITC (HS).

The procurement of goods covered under GST from DTA would be on payment of applicable GST and compensation cess. The refund of GST paid on such supply from DTA to EOU would be available to the supplier subject to such conditions and documentations as specified under GST rules and notifications issued there under. EOUs can also procure excisable goods falling under the Fourth Schedule of Central Excise Act, 1944 from DTA without payment of applicable duty of excise.

Second hand capital goods, without any age limit, may also be imported with or without payment of duty/taxes as provided under Para 6.01(d)(ii).

EOU/EHTP/STP/BTP unit shall be a positive net foreign exchange earner. In addition sector specific provision of Appendix 6 B of Appendices & ANFs, where a higher value addition and other conditions are given, shall be required to be followed. NFE Earnings shall be calculated cumulatively in blocks of five years, starting from commencement of production. Whenever a unit is unable to achieve NFE due to prohibition/restriction imposed on export of any product mentioned in LoP, the five year block period for calculation of NFE earnings may be suitably extended by BoA.

Further, wherever a unit is unable to achieve NFE due to adverse market condition or any grounds of genuine hardship having adverse impact on functioning of the unit, the five year block period for calculation of NFE earnings may be extended by BOA for a period of upto one year, on a case to case basis.

Application for setting up an EOU shall be considered by Unit Approval Committee (UAC)/Board of Approval (BoA)

10.1 Deemed Exports

“Deemed Exports” for the purpose of this FTP refer to those transactions in which goods supplied do not leave country, and payment for such supplies is received either in Indian rupees or in free foreign exchange. Supply of goods as specified in Paragraph 7.02 below shall be regarded as “Deemed Exports” provided goods are manufactured in India.

“Deemed Exports” for the purpose of GST would include only the supplies notified under Section 147 of the CGST/SGST Act, on the recommendations of the GST Council. The benefits of GST and conditions applicable for such benefits would be as specified by the GST Council and as per relevant rules and notification.

Deemed exports shall be eligible for any/all of following benefits in respect of manufacture and supply of goods, qualifying as deemed exports, subject to terms and conditions as given in HBP and ANF-7A:

- (a) Advance Authorisation/Advance Authorisation for annual requirement/ DFIA.
- (b) Deemed Export Drawback for BCD.

- (c) Refund of terminal excise duty for excisable goods mentioned in Schedule 4 of Central Excise Act 1944 provided the supply is eligible under that category of deemed exports and there is no exemption.

Supply of goods will be eligible for refund of terminal excise duty as per Para 7.03 (c) of FTP, provided recipient of goods does not avail not avail ITC/rebate on such goods.

Supplies will be eligible for deemed export drawback as per para 7.03 (b) of FTP, as under:

The refund of drawback in the form of Basic Customs duty of the inputs used in manufacture and supply under the said category shall be given on brand rate basis upon submission of documents evidencing actual payment of basic Custom duties.

10.2 Penal Action

In case, claim is filed by submitting mis-declaration/mis-representation of facts, then in addition to effecting recovery under Para 7.10(b) above, the applicant shall be liable for penal action under the provisions of F.T. (D & R) Act, Rules and orders made thereunder.

10.3 Transitional Provision

Deemed exports benefits contained in FTP 2015-20 shall be available for supplies effected till 30-6-2017 in terms of FTP 2015-20 provisions as it stood till 30-6-2017. In respect of supply made after 30-6-2017, new provision shall apply.

Foreign Exchange earnings are the main ingredient to accelerate the growth of economy. In order to enhance inflow of foreign exchange earnings into the country, the Government is giving much priority for the boost of export of goods and services by way relaxation of export procedures and boost of export production of goods by implementing of export promotion schemes under Foreign Trade Policy. However, there is need of further review of Foreign Trade policy 2015-20 by the Government to bring improvement on the policy at par with the Goods and Services Tax so that export promotion schemes would be more beneficial for the manufacturer exporters as well as merchant exporters, consequently resulted in the growth of export sectors and enhancement inflow of foreign exchange earnings into the country.

11. Export Promotions Schemes

11.1 Details of Duties exempted

The Para 4.14 of FTP 2015-20 has been amended vide D.G.F.T., Notification No. 53/2015, dated 10th January, 2019, wherein replaced the earlier Para 4.14 of FTP 2015-20 as under:

“Imports under Advance Authorisation are exempted from payment of Basic Customs Duty, Additional Customs Duty, Education Cess, Anti-dumping Duty, Countervailing Duty, Safeguard Duty, Transition Product Specific Safeguard Duty, wherever applicable. Import against supplies

covered under paragraph 7.02(c) and (g) of FTP will not be exempted from payment of applicable Anti-dumping Duty, Countervailing Duty, Safeguard Duty and Transition Product Specific Safeguard Duty, if any. However, imports under Advance Authorisation are also exempt from whole of the Integrated Tax and Compensation Cess leviable under sub-section (7) and sub-section (9) respectively, of Section 3 of the Customs Tariff Act, 1975 (51 of 1975), as may be provided in the notification issued by Department of Revenue, for making physical exports or domestic supplies notified at Sr. Nos. 1, 2 and 3 of the table contained in Notification No. 48/2017-C.T., dated 18-10-2017 issued by Department of Revenue. Imports against Advance Authorizations are exempted from Integrated Tax and Compensation Cess upto 31-3-2019 only.

By Effect of this Notification: Para 4.14 of FTP 2015-20 is amended to remove pre-import condition to avail exemption from Integrated Tax and Compensation Cess and exemption from Integrated Tax and Compensation Cess is also extended to deemed supplies.

Further, the Para 4.14 of FTP 2015-20 has been amended vide D.G.F.T., Notification No. 57/2015-20, dated 20th March, 2019, wherein replaced the earlier Para 4.14 of FTP 2015-20 with following amendments in Foreign Trade Policy 2015-20.

1. Exemption from Integrated Tax and Compensation Cess under Advance Authorisation under Para 4.14 FTP 2015-20 is extended upto 31.03.2020.
2. Exemption from Integrated Tax and compensation Cess under EPCG Scheme under Para 5.01 (a) of FTP 2015-20 is extended up to 31.03.2020.
3. Exemption from Integrated Tax and Compensation Cess under EOU Scheme under Para 6.01 (d) (ii) of FTP 2015-20 is extended upto 31.03.2020.

Effect of the Notification: Para 4.14, Para 5.01(a) and Para 6.01 (d) (ii) of FTP are amended as above.

* * *

EPCG Scheme- Onetime condonation under EPCG Scheme- Time period extended till 30-9-2019.

The following public Notices have been issued by the Directorate General of Foreign Trade:

- (a) Public Notice No. 35/2015-20, dated 25-10-2017- Onetime condonation of time in respect of obtaining block-wise extension in Export Obligation period under EPCG Scheme.
- (b) Public Notice No. 36/2015-20, dated 25-10-2017- Onetime condonation of time period in respect of obtaining extension in Export Obligation period under EPCG Scheme.

- (c) Public Notice No.37/2015-20, dated 25-10-2017- Onetime relaxation for condonation of delay in submission of installation certificate under EPCG Scheme.

The validity of the above mentioned Public Notices was extended till 30-9-2018 vide Public Notice No.1/2015-20, dated 26-4-2018.

2. Later, Public Notice No. 37/2015-20, dated 25-10-2017 was modified vide following public Notice:—

Public Notice No. 30/2015-20, dated 14-8-2018-RAs have been delegated power till 31st March, 2019 of one time relaxation and condonation of delay in submission of installation certificate for EPCG authorizations issued upto 31-3-2015, without payment of any penalty.

3. In exercise of powers conferred under Paragraph 2.04 of FTP (2015-20) read with Paragraph 2.58 of FTP (2015-20), the Director General of Foreign Trade in Public interest hereby further extends the time of receipt of requests till 30-9-2019 in respect of the above mentioned Public Notices.

4. The other contents of the above mentioned Public Notices shall remain the same.

Effect of this Public Notice: Extension in time period for receipt of requests is being provided as mentioned above.

[D. G. F.T. Public Notice No. 78/2015-20, dated 11-3-2019]

* * *

DGFT further extends the one time Condonation under EPCG Scheme till March 31,2020 vide Public Notice No. 55/2015-20 dated January 03, 2020, further extends the time period to receive requests in RAs for a block-wise extension, extension in Export Obligation Period and submission of installation certificate to March 31, 2020

* * *

12. Remission of Duties and Taxes on Exported Products (RoDTEP) Scheme

Export Promotion Schemes under Foreign Trade Policy 2015-20 having provision of several schemes to boost exports of the Country by giving incentives to the domestic manufacturers to boost export production & distribution to various countries. In order to give relief to the exporters by reimbursement of all State and local levies which are part of the prices of the goods exported, a new scheme has been introduced as Remission of Duties and Taxes on exported products (RoDTEP).

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12.1 Scheme Objective and Operational principles

- (i) The very fundamental principles of FTP, ‘Let the goods are exported’, not the taxes therein’ and the objective behind introduction of RoDTEP scheme, under which a mechanism would be created for reimbursement of taxes/duties/levies, at the Central, State and local level, which are currently not being refunded under any other mechanism, but which are incurred in the process of manufacturing and distribution of exported products.
- (ii) To boost exports scheme for enhancing Exports to International Markets.
- (iii) To make Indian exports cost competitive and create a level playing field for Indian exporters in international market,
- (iv) To boost employment generation in various sectors,
- (v) It aims to boost dwindling outward shipments.

12.2 Salient features of RoDTEP Scheme

1. RoDTEP scheme is going to give a boost to the domestic industry and Indian exports providing a level playing field for Indian producers in the International market so that domestic taxes/duties are not exported.
2. Taxes such as VAT on fuel, excise duty on fuel, Mandi Tax, which were used in the production goods and used in the distribution services of export goods will be reimbursed through the RoDTEP scheme.
3. Thereby, the objective of Zero-rating of export products can be achieved through the RoDTEP scheme.
4. Under the scheme an inter-ministerial Committee will determine the rates and items for which the reimbursement of taxes and duties would be provided.
5. The refund would be claimed by the exporters as a percentage of the freight on board (FOB) value of export goods of each consignment once it is exported.
6. Refund under the scheme, in the form of transferable duty credit electronic scrip will be issued to the exporters, which will be maintained in an electronic ledger. The scheme will be implemented end to end digitization.
7. An exporter desirous of availing the benefit of the RoDTEP scheme shall be required to declare his willingness for each export items in the shipping bill or bill of export.
8. Once the rates are notified, System would automatically calculate the RoDTEP amounts for all the items where RoDTEP was claimed. No changes in the claim will be allowed after filing of export general manifest with Customs authority.

9. A monitoring and audit mechanism, with an information technology based risk management system (RMS), would be put in place to physically verify the records of the exporters.
10. Increase in loan availability for exporters introduced through ECG acting as guarantee for loans availed.
11. Decrease in credit interest rates to MSMEs.
12. A budget to provide higher insurance cover through Export Credit Guarantee Corporation (ECGC), to increase the lending opportunities from banks.
13. Reduction in turnaround time on airports and ports to decrease delays in exports. A real time monitoring of clearance status via digital platform will be made available.

12.3 Eligibility to avail benefits of the RoDTEP scheme

- (i) The Scheme will cover all sectors (including textiles), with priority given to labour-intensive sectors which are enjoying benefits under MEIS Scheme at 2%, 3% or 5% of the export value.
- (ii) Both merchant exporters and manufacturer exporters are eligible.
- (iii) There are no minimum turnover criteria or threshold limit to claim the RoDTEP.
- (iv) Goods exported through e-commerce platform via courier are also eligible.
- (v) The exported products need to have country of origin as India.
- (vi) Re-exported products are not eligible under this Scheme.
- (vii) Special Economic Zone Units are also eligible to claim the benefits under this Scheme.

Remarks: As per clarification dated 15'th January'2021 by SEZ Division, Department of Commerce provided that if an SEZ unit files shipping bill under RoDTEP scheme, the same would be allowed after mentioning the following in the remarks column:

“Shipping Bill filed under RoDTEP scheme if applicable to SEZ unit & subject to such conditions as prescribed including the product coverage”

In case exports from SEZ are covered under the RoDTEP scheme, such exports may be taken into account under RoDTEP.

12.4 Ineligible exporters for the RoDTEP scheme

The following categories of exporters shall not be eligible for rebate under RoDTEP Scheme:

- This scheme does not cover to the export of services only exporters of goods are eligible to avail this scheme.
- Exports by EOU's, Advance Authorisation Holders are not covered under this scheme.

12.5 Process for claiming scrips/benefits under RoDTEP Scheme

The ICEGATE portal (Indian Customs Electronic Gateway) having the details of credits available to the exports from the various scheme benefits under export products. The process for the generation and claiming of scrips under the RoDTEP scheme are listed as under:

1. The process starts with filing of the Export General Manifest (EGM) at ICEGATE.
2. The exporters' desires of availing the benefit of the scheme should make a declaration of the claim for RoDTEP in the shipping bill.
3. The exporter should log in to the ICEGATE portal and create a RoDTEP credit ledger.
4. After the RoDTEP credit ledger account is created, the exporters can log in to their account by using class-3 DSC.
5. The exporter can generate scrips by selecting the relevant shipping bills.
6. After processing the claim, a scroll with all individual shipping bills for the admissible amount will be generated and available in the users account at ICEGATE portal.
7. The exporters will be able to club the credits allowed for any number of shipping bills at a port and generate credit scrips for the same.
8. Once the scrips are generated the refund will be credited and reflected in the exporter's ledger account.
9. The credit amounts are available in the ledger may be utilize for payment of the eligible duties during imports or for transfer to any other importers having IEC and a valid ICEGATE registration.

12.6 Major benefits of the RoDTEP Scheme

- (i) The RoDTEP scheme will now be refunded the embedded central excise duty, madi tax, VAT, Coal cess on fuel or generation of electricity, which are used in the manufacture of export goods and services for the distribution of export goods.
- (ii) The refund would be credited in an exporter's ledger account with Customs and used to pay Basic Customs duty on imported goods.
- (iii) The refund will be issued in the form of transferable electronic scrips. These duty credits will be maintained and tracked through an electronic ledger.
- (iv) The credits can also be transferred to other importers just like MEIS/ SEIS scrips.

The RoDTEP scheme is the export subsidy scheme has been launched by the Government as a WTO (World Trade Organisation) compliant scheme. The new scheme of exports benefit has been announced by the Government through press release on 31st December, 2020, w.e.f. 1st January, 2021 for all export goods. The rate of duty of remission for the export products under RoDTEP scheme

have been notified by the Government and the is available in Appendix 4R at the DGFT portal. Further, it is observed that benefit under RoDTEP Scheme would not be available to three sectors namely; iron & steel, chemicals and pharmaceuticals as export of these items are not covered under Appendix 4R. A monitoring and audit mechanism with an IT based Risk Management System (RMS) would be put in the international market by giving incentives of refund of taxes on export products at the manufacturing stages place by the CBIC. For a board level monitoring, an output framework will be maintained and monitored at regular intervals. It is hoped that implementation of RoDTEP scheme replacing MEIS scheme would make India a compliant exporter and export products will be competitive price in the international market by giving incentives of refund of taxes on export products at the manufacturing stages.

12.7 Amendments to Scheme for Remission of Duties and Taxes on Exported Products (RoDTEP)

The undersigned is directed to say that the RoDTEP scheme notification No. 76/2021-Customs (N.T.), dated 23.09.2021 has been amended vide notification No. 75/2022-Customs (N.T.), dated 14.09.2022 whereby the para 4(2), para 5(5) and the words “or the transferee” in para 6 of the principal notification have been deleted. The effect of these amendments is the deletion of certain conditions related to transferee-holder of the scrip.

2. Further, the Electronic Duty Credit Ledger Regulations, 2021 issued vide notification No. 75/2021-Customs (N.T.) dated 23.09.2021 have been amended vide notification No. 79/2022-Customs (N.T.) dated 15.09.2022. In Regulations 6(2) and 7(3) of the principal regulations, the words “two years” have been substituted for the words “one year”. The effect of these amendments is that the validity period of scrips is increased from one year to two years from the date of their generation.

C.B.I & C, Circular No. 21/2022-Customs, dated 26-9-2022

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13. Rebate of State and Central Levis and Taxes (RoSCTL) Scheme

The Scheme of for Rebate of State and Central Levis and Taxes on exported products has been notified vide Notification No.77/2021-Customs (N.T) dated 24.09.2021 issued by the C.B.I & C. RoSCTL stands for Rebate of State and Central and Taxes Levis Scheme. It is one of the export promotion schemes to boost exports of the Country by way of giving incentives to the domestic manufacturers to enhance their export production. This scheme provides an export incentive in the form of transferable and sellable duty credit scrips offered on the basis of the FOB value of export.

13.1 Back ground of the Scheme

The Ministry of Commerce has been introduced the RoSCTL scheme on 7th March 2019 for better compliance with WTO guidelines, and the old RoSL (Rebate of State Levies) scheme was discontinued. The RoSCTL Scheme is currently applicable only for exporters of apparel and made-ups where the

exporters will be reimbursed the State Taxes and Levies, Central Taxes and Levies in the form of duty credit scrips issued by the DGFT, for all exports made on or after 1st April 2019. This scheme has been replaced the MEIS scheme for exports of goods from India. The Scheme for Rebate of State and Central Levies and Taxes on exported products has been notified vide Notifications. No.75/2021-Customs (N.T) dated 23.09.2021 and 77/2021-Customs (N.T) dated 24.09.2021 issued by the C.B.I & Consequence of Ministry of Textiles' RoSCTL scheme Notification No. 12015/11/2020-TTP dated 13.8.2021 and rates along with caps for eligible products notified vide Notification No.14/26/2016-IT(Vol. II) dated 08.03.2019. This scheme has been declared as independent RoSCTL scheme w.e.f. 01.01.2021 to 31.03.2024.

13.2 Scheme Objective

The benefits of RoSCTL are available to exporters of apparel/readymade garments and made-ups. The scheme aims to offset high freight cost and other externalities to international markets with a view to enhance export competitiveness globally. An exporter can benefit from this scheme for all exports done after 1st April, 2019.

13.3 Process for claiming scrips benefits

Escrip module is developed by ICEGATE. The ICEGATE portal (Indian Customs Electronic Gateway) having the details of credits available to the exports from the various scheme benefits under export products. RoSCTL Scheme provides for rebate of Central, State and Local duties/taxes/levies which are not refundable under any other duty remission schemes. The process for the generation and claiming of scrips under the RoSCTL scheme are listed as under:

1. The process starts with filing of the Export General Manifest (EGM) at ICEGATE.
2. The exporters' desires of availing the benefit of the scheme should make a declaration of the claim for RoSCTL in the shipping bill.
3. The exporter should log in to the ICEGATE portal and create a RoSCTL credit ledger.
4. After the RoSCTL credit ledger account is created, the exporters can log in to their account by using class-3 DSC.
5. The exporter can generate scrips by selecting the relevant shipping bills.
6. After processing the claim, a scroll with all individual shipping bills for the admissible amount would be generated and made available in the users account at ICEGATE portal.
7. Once the scrips are generated the refund will be credited and reflected in the exporter's ledger account.
8. The RoSCTL benefit would be calculated in System as per the calculation logic as notified in the Board notification i.e. value equal to declared export FOB value of the said goods or up to 1.5 times the market price of the goods, whichever is less.

9. It has been decided that for the Chapters 61, 62 and 63, RoSCTL would continue to be given beyond 31.12.2020 and till 31.12.2024. Implementing of RoSCTL scheme in Customs Automated System has been developed.

13.4 Procedure to obtain scrip licenses

- The exporters have to submit application in ANF-4R Form (Aayat Niryat Form) to the DGFT of their jurisdiction for availing the benefit of RoSCTL scheme.
- The DGFT shall issue duty credit scrip (licenses) based on corresponding rate for item of exports.
- Exports from multiple EDI (electronic) ports can be clubbed into a single application and the port of registration can be selected from one of the shipping bills considered for the application.
- Application needs to be filed with DGFT authority within one year from the date of uploading of shipping Bills from ICEGATE to DGFT server. There is no provision for late cut deductions under this scheme.
- The licence shall be valid for 24 months for utilisation for payment of Customs duty against imports. Revalidation of the RoSCTL licence is not possible.

13.5 Responsibility of the exporters:

- The exporters have to retain shipping bills and other documents related to the export for three years from the date of issue of the scrips.
- The DGFT authorities may verify the all exports related documents and non-submission of exports documents may be penalised under the provision of the Foreign Trade (Development and Regulation) Act.
- Every exporter has to ensure realization of foreign currency and retain the proof of receipt of sale proceeds by obtaining BRIC from the Bank.
- The jurisdiction DGFT regional authority may carry scrutiny of value of scrips through an electronic examination of records. If an excessive rebate is found to be claimed then exporter has to payback excess claim of rebate with interest from the date of receipt of scrip to the repayment date.
- The legal action may also be initiated under FTDR Act in case of non-payment of

13.6 Utilisation of Duty Scrips in Imports:

The e-scrips would be used only for payment of duty of Customs leviable under the First Schedule to the Customs Tariff Act, 1975 viz. Basic Customs Duty (BCD) on imports made through customs automated system only by giving the details of the scrips in the license table of the Bill of entry. The scheme code to be used in Bill of Entry for these scrips would be “RS” along with Notification No as “RoSCTL”. The credit amounts are available in the ledger may be utilize

for payment of the eligible duties during imports or for transfer to any other importers having IEC and a valid IECGATE registration.

13.7 C.B.I & C, Conditions and restrictions

C.B.I & C, vide its Notification No. 75/2021-Cus. (N.T.), dated 23-09-2021 notifies the regulation for use, transfer, maintenance and cancellation of scrips as specified hereunder:

13.8 Issuance of duty credit in the scroll

(1) A shipping bill or a bill of export, presented under section 50 of the Act on or after the 01st day of January, 2021 and having a claim of duty credit under the Scheme, shall be processed in the customs automated system, including on the basis of risk evaluation through appropriate selection criteria.

(2) The claim shall be allowed by Customs as per the conditions and restrictions notified for the Scheme, after the filing of export manifest or export report.

(3) Once the claim is allowed, a scroll for duty credit will be generated by the proper officer in the customs automated system. Separate scrolls will be generated for each Scheme.

(4) The scroll details, including the details of shipping bill or bill of export, duty credit allowed and date of generation of scroll, shall be visible in the customs automated system to the exporter who is the recipient of such duty credit.

13.9 Creation of e-scrip in the ledger

(1) The exporter shall have the option to combine the duty credits under a particular Scheme, allowed to him in one or more shipping bills or bills of export, and to carry forward the said duty credits to create an e-scrip for that Scheme in the ledger, customs station-wise according to the customs station of export, within a period of one year from the date of generation of the scroll in the customs automated system:

Provided that if the exporter does not exercise the said option of creating the e-scrip within the said period of one year, duty credit in each scroll will be combined customs station-wise for each Scheme and will be automatically created by the customs automated system as a single e-scrip for duty credit for that Scheme, for each customs station, in the ledger of the said exporter.

(2) Each e-scrip shall have a unique identification number and date of its creation and all transactions in the ledger shall be carried out using the said number and date.

13.10 Registration of e-scrip

(1) The customs station of export shall be the customs station of registration for an e-scrip.

(2) The registration of e-scrip shall be automatic and separate application for the same shall not be required to be filed.

13.11 Use and validity of e-scrip

(1) The duty credit available in the e-scrip in the ledger shall be used for payment of duties of Customs specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).

(2) The e-scrip shall be valid for a period of two years from the date of its creation in the ledger and any duty credit in the said e-scrip remaining unutilized at the end of this period shall lapse.

(3) Such duty credit in the e-scrip that has lapsed shall not be re-generated.

(4) The ledger, including e-scrip and the transactions made therein, shall be visible in the customs automated system to the recipient of such duty credit and the Customs.

13.12 Transfer of duty credit in e-scrip

(1) Transfer of duty credit in e-scrip shall be allowed within the customs automated system from the ledger of a person to the ledger of another person who is a holder of an Importer-exporter Code Number issued in terms of the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992).

(2) The duty credit available in an e-scrip shall be transferred at a time for the entire amount in the said e-scrip to another person and transfer of the duty credit in part shall not be permitted.

(3) The period of validity of the e-scrip, of two years from its creation, shall not change on account of transfer of the e-scrip.

(4) The ledger of the transferee, including e-scrip and the transactions made therein, shall be visible in the customs automated system to the transferee and the Customs.

13.13 Suspension or cancellation of duty credit

Where a person contravenes any of the provisions of the Act or any other law for the time being in force or the rules or regulations made thereunder in relation to the exports to which the duty credit relates, or in relation to the e-scrip, the said duty credit or e-scrip may be suspended or cancelled in the ledger in the manner as notified by the Central Government under section 51B of the Act.

Further, C.B.I & C, vide its Notification No. 77/2021-Cus. (N.T.), dated 24-09-2021 notifies the conditions, situations and manner of suspensions or cancellation of duty scrips or recovery of duty credit allowed was in excess or where exports proceeds are not realised as specified hereunder.

2. Such duty credit shall be subject to the following conditions, namely:—(1) that the duty credit is issued—

- (a) against exports of garments and made-ups (hereinafter referred to as the said goods) and their respective rate and cap as listed in Schedules 1, 2, 3 and 4 to the notification of Government of India, Ministry of Textiles' notification No. 14/26/2016-IT (Vol. II), dated the 8th March, 2019 for the Scheme:

Provided that the value of the said goods for calculation of duty credit to be allowed under the Scheme shall be the declared export Free on Board (FOB) value of the said goods or up to 1.5 times the market price of the said goods, whichever is less;

- (b) against claim of duty credit under the Scheme made by an exporter by providing the appropriate declaration at the item level in the shipping bill or bill of export in the customs automated system;
- (c) against the shipping bill or bill of export, presented under section 50 of the said Act on or after the 1st day of January, 2021, and where the order permitting clearance and loading of goods for exportation under section 51 of the said Act has been made;
- (d) after the claim is allowed by Customs upon necessary checks, including on the basis of risk evaluation through appropriate selection criteria, and after filing of export manifest or export report;
- (e) in accordance with any rules or regulations issued in relation to duty credit, e-scrip or electronic duty credit ledger;

(2) that such duty credit shall be used for payment of the duty of customs leviable under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) on goods when imported into India;

(3) that the export categories or sectors listed in Table-1 annexed hereto shall not be eligible for duty credit under the Scheme;

(4) that the duty credit allowed under the Scheme, against export of goods notified vide notification No. 14/26/2016-IT (Vol. II), dated the 8th March, 2019 for the Scheme, shall be subject to realisation of sale proceeds in respect of such goods in India within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), failing which such duty credit shall be deemed to be ineligible;

(5) that the imports and exports are undertaken through the seaports, airports or through the inland container depots or through the land customs stations which allow the bill of entry and shipping bill or bill of export to be presented and processed electronically on the customs automated system;

(6) that the exporter has realised the sale proceeds against export of goods made earlier by the said exporter where the period allowed for realisation, including any extension of the said period by the Reserve Bank of India, has expired:

Provided that duty credit shall be issued by Customs in excess of the ineligible amount of duty credit pertaining to the unrealised portion of sale proceeds against export of goods made earlier:

Provided further that if the Principal Commissioner of Customs or Commissioner of Customs has reason to believe, on the basis of risk evaluation or on the basis of enquiry, that the claim of duty credit made by an exporter on

export goods may not be *bona fide*, he may direct, for reasons to be recorded in writing, to allow duty credit after realisation of sale proceeds of such exports;

(7) that duty credit under the Scheme for exports made to Nepal, Bhutan and Myanmar shall be allowed only upon realisation of sale proceeds against irrevocable letters of credit in freely convertible currency established by importers in Nepal, Bhutan and Myanmar in favour of Indian exporters for the value of such goods.

13.14 Cancellation of duty credit

(1) Where a person contravenes any of the provisions of the said Act or any other law for the time being in force or the rules or regulations made thereunder in relation to exports to which the duty credit relates, or in relation to the e-scrip, the Principal Commissioner of Customs or Commissioner of Customs having jurisdiction over the customs station of registration of the e-scrip may, after enquiry, pass an order to cancel the said duty credit or e-scrip.

(2) Where the e-scrip is so cancelled, the duty credit amount in the said e-scrip shall be deemed never to have been allowed and the proper officer of Customs shall proceed to recover the duty credit amount used in such e-scrip or transferred from such e-scrip.

(3) The proper officer of Customs may, without prejudice to any other action that may be taken under the said Act or any other law for the time being in force, suspend the operation of the said e-scrip or the electronic duty credit ledger of such exporter or any duty credit transferred from such e-scrip, during pendency of the enquiry under sub-clause (1).

13.15 Recovery of amount of duty credit

(1) Where an amount of duty credit has, for any reason, been allowed in excess of what the exporter is entitled to, the exporter shall repay the amount so allowed in excess, himself or on demand by the proper officer, along with interest, at the rate as fixed under section 28AA of the said Act for the purposes of that section, on that portion of duty credit allowed in excess, which has been used or transferred, and where the exporter fails to repay the amount along with interest, as applicable, it shall be recovered in the manner provided in section 142 of the said Act.

(2) *Omitted.*

13.16 Recovery of amount of duty credit where export proceeds are not realised

(1) Where an amount of duty credit has been allowed to an exporter but the sale proceeds in respect of such export goods have not been realised by the exporter in India within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), the exporter shall, himself or on demand by the proper officer, repay the amount of duty credit, along with interest, at the rate as fixed under section 28AA of the said Act for the purposes of that section, within fifteen days of expiry of the said period.

(2) In case any extension of the said period for realisation of sale proceeds has been given by the Reserve Bank of India and the exporter produces evidence of such extension to the proper officer, and if the said sale proceeds are not realised in such extended period, the exporter shall repay the said amount of duty credit along with the said interest, within fifteen days of expiry of the said period.

(3) If a part of the sale proceeds has been realised, the amount of duty credit to be recovered shall be the amount equal to that portion of the amount of duty credit allowed which bears the same proportion as the portion of the sale proceeds not realised bears to the total amount of sale proceeds.

(4) Where the exporter fails to repay the duty credit amount within the said period of fifteen days, the said duty credit shall be deemed never to have been allowed and it shall be recovered, along with the said interest, in the manner as provided in section 142 of the said Act.

(5) Omitted.

6. During the pendency of any recovery, as provided in clauses 4 and 5, no further duty credit, on any subsequent exports, shall be allowed to such exporter till the time such recovery is made and any unutilised duty credit with the exporter shall be suspended pending such recovery.

14. Amendments to Rebate of State and Central Taxes and Levis (RoSCTL)

The undersigned is directed to say that the RoSCTL scheme notification No. 77/2021-Customs (N.T.) dated 24.09.2021 has been amended vide notification No. 76/2022-Customs (N.T.) dated 14.09.2022 whereby the para 4(2), para 5(5) and the words “or the transferee” in para 4(2) para 5(5) and the words “or the transferee” in para 6 of the principal notification have been deleted. The effect of these amendments is the deletion of certain conditions related to transferee-holder of the scrip.

2. Further, the Electronic Duty Credit Ledger Regulations, 2021 issued vide notification No. 75/2021-Customs (N.T.) dated 23.09.2021 have been amended vide notification No. 79/2022-Customs (N.T.) dated 15.09.2022. In Regulations 6(2) and 7(3) of the principal regulations, the words “two years” have been substituted for the words “one year”. The effect of these amendments is that the validity period of scrips is increased from one year to two years from the date of their generation.

C.B.I & C, Circular No. 21/2022-Customs, dated 26-9-2022

Chapter 32

Import of Goods and Services

Synopsis

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1. Introduction

The supply of goods or services or both in the course of import into the territory of India shall be deemed to be supply of goods, or services or both in the course of inter-State trade or commerce.

The import of goods or services are to be treated as deemed inter-State supplies and subject to Integrated Tax.

Thus, the IGST on import of services would be leviable under the IGST Act, 2017 and the IGST on import of goods would be levied under the Customs Act, 1962 read with Customs Tariff Act, 1975.

2. Meaning of Imported goods

Section 2(10) of the IGST Act, 2017 defines “Import of goods” with its grammatical variations and cognate expressions, means bringing goods into India from a place outside India.

The term ‘brining goods’ in to India means ‘physically’ goods should be brought into India and “import of goods “commences when the goods cross the Customs frontiers of India, it may be land, air and territorial waters of India. Thus “import of goods” necessarily implies goods to be brought physically in India.

3. Important Definition

Section 2(4) of the IGST Act, 2017 defines “Customs frontiers of India” means the limits of a customs area as defined in Section 2 of the Customs Act, 1962 (52 of 1962).

Section 2(25) of the Customs Act, 1962 defines “imported goods” means any goods bought into India from a place outside India but does not include goods which have been cleared for home consumption.

Section 2(27) of the Customs Act, defines “India “includes the territorial waters of India.

Section 2(28) of the Customs Act, defines Indian Customs Waters” means the waters extending into the sea upto the limit of contiguous zone of India under Section 5 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act,1976 and includes any bay, gulf, harbour, creek or tidal river.

Section 2(56) of the CGST Act, 2017 defines “India” means the territory of India as referred to in article 1 of the Constitution, its territorial waters, seabed and sub-soil underlying such waters, continental shelf, exclusive economic zone or any other maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, and the air space above its territory and territorial waters.

Section 2(11) “Customs area”, means the area of a customs station and includes any area in which import goods or export goods are ordinarily kept before clearance by Customs Authorities.

The term “importer” has not been defined in IGST Act but as per Section 2(26) of the Customs Act, “importer”, in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes any owner, beneficial owner or any person holding himself out to be the importer.

4. Levy of duty on imported goods

Any goods imported into India are chargeable to duties of Customs under Section 12 of the Customs Act, 1962 at rates specified in the Customs Tariff Act, 1975.

As per Section 12 of the Customs Act, levy of duties of customs is on the goods imported into India. Import commences when the goods cross the territorial waters and is completed when bill of entry for home consumption is filed. Taxable event occurs when bill of entry for home consumption is filed; same is also applicable for warehouse goods.

As per Section 7(2) of the IGST Act, 2017, Supply of goods imported into the territory of India, till they cross Customs frontier of India, shall be treated to be supply of goods in the course of inter-State trade or commerce. Further as per Section 8(1)(ii) of the IGST Act, 2017, goods imported into the territory of India till they cross the Customs frontiers of India shall not be treated as intra-State supply of goods.

In view of the above interpretation IGST shall be levied on imported goods once the same cross the Customs frontiers of India i.e. on inter-State supply of goods.

As per Section 5(1) of the IGST Act, 2017, Integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of Section 3 of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of Customs are levied on the said goods under Section 12 of the Customs Act, 1962.

Though, the levy of IGST is under IGST Act, its valuation is as per Customs Tariff Act and levied and collected when duties of Customs are “levied and collected”.

As per Section 8 of Compensation Cess Act, compensation cess shall be levied on such intra-State supplies of goods or services or both, as provided for in Section 9 of the Central Goods and Services Tax Act, and such inter-State supplies of goods or services or both as provided for in Section 5 of the Integrated Goods and Services Tax Act.

Levy of Social Welfare Surcharge @ 10% as a duty of Customs on imported goods in to India, in addition to any other duties of Customs or tax or cess chargeable on such goods, under Section 25(1) of the Customs Act, 1962 read with Clause 108 of the Finance Bill, 2018.

The integrated tax on imported goods shall be in addition to the applicable Basic Customs Duty (BCD) which is levied as per the Customs Tariff Act. In addition, GST compensation cess, may also be leviable on certain luxury and demerit goods under the Goods and Services Tax (Compensation to States) Cess Act, 2017 and also recently levy of Social Welfare Surcharge.

The Customs Tariff Act, 1975 has accordingly been amended to provide for levy of Integrated Tax, the Compensation Cess, Social welfare Surcharge on imported goods. Accordingly, goods which are imported into India shall, in addition to the Basic Customs duty, be liable to Integrated Tax at such rate as is leviable under the IGST Act, 2017 on similar article on its supply in India.

5. Duty Calculation

IGST rate: IGST rates have been notified through Notification No. 1/2017-I.T. (Rate), dated 28-06-2017. IGST rate on any product can be ascertained by selecting the correct Sl. No. as per description of goods and tariff headings in the relevant schedules of the notification. Importers have to familiarize themselves with IGST and GST compensation cess rates, schedule and exemptions which are available on C.B.E. & C. website. The Customs duty calculator would be made available on C.B.E. & C and ICEGATE website. There are seven rates prescribed for IGST- Nil, 0.25%, 3%, 5%, 12%, 18% and 28%. The actual rate applicable to an item would depend on its classification and would be specified in Schedules notified under Section 5 of the IGST Act, 2017.

The different rates of tax have been notified for goods attracting Compensation Cess which is leviable on 55 item descriptions (of supply). These rates are mostly *ad valorem*. But some also attract either specific rates (e.g. coal) or mixed rates (*ad valorem* + specific) as for cigarettes. The coverage of the goods under GST compensation cess is available on C.B.E. & C website along with their HSN codes and applicable cess rates. The IGST Rates of Goods, Chapter wise IGST rate, GST Compensation Cess rates, IGST Exemption/ Concession are available on C.B.E. & C. website for trade and departmental officers as well.

6. Import of Services

- (1) Supply of services from the exporter of services located in India to the recipient of services located outside India for the full contract value
- (2) Import of services by the exporter of services located in India from the supplier of services located outside India with respect to the outsourced.

The GST applicability on the above two transactions will be:

- (a) Supplier of services located in India would be liable to pay integrated tax on reverse charge basis on the import of services on that portion of services which has been provided by the supplier located outside India to the recipient of services located outside India & the said supplier of services located in India would be eligible for taking input tax credit of the integrated tax so paid.
- (b) The total value of consideration will be the value of services as per the contract of exporter of services located in India & Recipient of services located outside India, Thus, even if the full consideration for the services as per the contract value is not received in convertible foreign exchange in India due to the fact that the recipient of services located outside India has directly paid to the supplier of services located outside India (for the outsourced part of the services), that portion of the consideration shall also be treated as receipt of consideration for export of services in terms of Section 2(6)(iv) of the IGST Act, 2017.

If IGST has been paid by the supplier located in India for import of services on that portion of services which has directly provided by the supplier located outside India to the recipient of services located outside India.

RBI by general instruction or by specific approval has allowed that a part of the consideration for such exports can be retained outside India.

Circular No. 78/2018, dated 31-12-2018

7. Valuation of the imported goods

The value of imported goods, for levy of duties of Customs shall be transaction value of such goods as determined under Section 14(1) and 14(2) of the Customs Tariff Act, 1975. As per Amendment by Finance Bill, 2018, IGST shall be charged on last transaction value [sub-section 8A of Section 3 of the Customs Tariff Act, 1975], Compensation Cess shall be charged on last transaction value [sub-section (10A) of Section 3 of the Customs Tariff Act, 1975] and Social welfare Surcharge shall be collected as a duty of Customs @ 10% calculated on the aggregate of duties or taxes or Cesses.

The value of the imported article for the purpose of levying GST Compensation cess shall be, assessable value plus Basic Customs Duty levied under the Act, and any sum chargeable on the goods under any law for the time being in force, as an addition to, and in the same manner as, a duty of customs. These would include Social welfare surcharges, anti-dumping and safeguard duties. The inclusion of anti-dumping duties and safeguard duty in the value for

levy of IGST and Compensation Cess, social welfare surcharge is an important change. These were not hitherto included in the value for the levy of Additional Duty of Customs (CVD) or Special Additional Duty (SAD). The IGST paid shall not be added to the value for the purpose of calculating Compensation Cess. Although BCD, Social Welfare Surcharge and IGST would be applicable in majority of cases, however, for some products CVD, SAD or GST Compensation cess may also be applicable. For different scenarios the duty calculation process are different.

However, for this topic the applicable duties on clearance of imported goods into India as well as goods imported under export promotion schemes are summariesd in the following Table.

| Sl. No. | Types of Transaction or Customs Clearances. | Documents for Customs Clearances & filing | Basic Customs Duty. (BCD) | Integrated Tax (IGST) | Social Welfare Surcharge |
|---------|--|---|---|--|---|
| 1. | Imported goods Clearance from the port of Import either from sea, air or land Customs stations) | Bill of Entry, Commercial Invoice, Packing List. (Bill of entry for Home Consumption shall be filed by the importer and duties payable by the importer). (In case of clearances of imported goods from a port of import to warehouse, importer has to file an into-bond bill of entry for warehousing) | (BCD) % rates as applicable in terms of Customs Tariff. NIL (For movement of imported goods From port to customs bonded warehouse) | Integrated Tax (IGST) % applicable as per Tariff Only IGST will be charged on Commercial Invoice in accordance with Board Circular No. 46/2017-Cus., dated 24-11-2017 | Social Welfare Surcharge @10% |
| 2. | Clearances from the Public Warehouse appointed under Section 57 of the Customs Act, or from the Private warehouse lice censed under Section 58 of the Customs Act. | Commercial Invoice, Buyer shall file the Bill of entry for Home Consumption. (Buyer shall pay Customs duty, IGST and SWC as applicable and Seller shall pay IGST only) | Basic Customs Duty (BCD) % as applicable And also seller will charge IGST on removal from warehouse over & above | Integrated Tax (IGST) % as applicable | Social Welfare Surcharge @10%. |
| 3. | High Sea Sales (Goods before crossing the Customs frontiers of India). | Commercial Invoice, High Sea Sale-Agreement. Buyer will file the Bill of entry (pay the duties) | Basic Customs Duty (BCD) % as applicable to in terms of customs Tariff. | Integrated Tax (IGST) % as applicable (IGST shall be levied only on the last transaction value at the time of clearances vide C.B.E. & C., Circular No. 33/2017-Cus., dated 1-8-2017) | Social Welfare Surcharge @10%. |
| 4. | Export Oriented Units/STPI (imported goods clearances from the port of | Bill of Entry, Commercial Invoice, Packing List, Bill of Entry shall be | Basic Customs Duty (BCD) % as applicable as per Customs Tariff | Integrated Tax (IGST) % as applicable * IGST- Nil | Social Welfare Surcharge @10%.* Social Welfare |

| Sl. No. | Types of Transaction or Customs Clearances. | Documents for Customs Clearances & filing | Basic Customs Duty. (BCD) | Integrated Tax (IGST) | Social Welfare Surcharge |
|---------|---|--|---|--|--|
| | import) *Remarks: IGST/Compensation Cess is exempted till 1-10-2018 vide Notification No. 78/2017-Cus., dated 13-10-2017 as amended by Notification No. 33/2018-Cus., dated 23-3-2018 | filed by the EOU/STPI. *M.C. & I. (D.C) Notification No. 55/2015-20, dated 23-3-2018, BCD -Nil- Notification No. 59/2017-Cus., dated 30-6-2017, Unit have to follow Customs duty (imports of goods concessional Rate of duty) Rules, 2017 | (in case of EOU's has domestic clearance in place of export) Otherwise BCD - Nil vide Notification No.19/2021- Customs dated 31.03.2021 | Compensation Cess- NIL Till exempted vide DGFT Notification No.16/2015-2020 dated 01.07.2022 read with Notification No.37/2022-Cus., dated 30.06.2022. | Surcharge is exempt vide Notification No. 13/2018-Cus., dated 2-2-2018 |
| 5. | Special Economic Zone/FTWZ. (Clearance from Port of importation to the said units) | Bill of Entry, Commercial Invoice, Packing List. Bill of Entry shall be filed through SEZ/FTWZ online and presented to the Customs port of importation for clearance/transshipment of goods to Unit for examination and assessment shall be carried by the authorised officer of SEZ. | Basic Customs Duty (BCD) % - NIL. | Integrated Tax (IGST)- NIL Notification No. 64/2017-Cus., dated 5-7-2017 | Social Welfare Surcharge - NIL |
| 6. | Special Economic Zone/FTWZ. (Clearance from SEZ/ FTWZ to Domestic Tariff Area i.e. within India) | Bill of Entry, Commercial Invoice, Packing List. Bill of Entry shall be filed by the SEZ/FTWZ Unit on behalf of the Buyer and pay duties. | Basic Customs Duty (BCD) % as applicable in terms of Customs Tariff. | Integrated Tax (IGST) % as applicable rate. | Social Welfare Surcharge @10% |
| 7. | Import of Goods against Advance Authorisation/EPCG scheme. ** M.C. & I. (D.C) Notification No. 54/2015-20, dated 23-3-2018 | Bill of Entry, Commercial Invoice, Packing List, Copy of Authorisation/License issued by the DGFT, | Basic Customs Duty- NIL (subject to fulfillment of export obligation by physical exports) BCD is exempted vide Notification No. 79/2017-Cus., dated 13th October'2017 as amended. | Integrated Tax (IGST) NIL ** **IGST and Compensation Cess is exempted vide DGFT Notification No.16/2015-2020 dated 01.07.2022 read with Notification No.37/2022-Cus., dated 30.06.2022. | Social Welfare Surcharge – NIL** |

8. Note on duty structure of imported goods

(1) GST Compensation Cess shall be charge in certain luxurious imported goods *vide* Notification No. 1/2017-Compensation Cess, dated 28-6-2017.

(2) Compensation Cess ₹400 P.T on Coal, lignite, briquettes & peat *vide* Notification No. 1/2017-Compensation Cess (Rate), dated 28-6-2017.

(3) Exemption from the whole of Social Welfare Surcharge leviable on Integrated tax under sub-section (7), and Goods and Services Tax compensation cess under sub-section (9), of section 3 of the said Customs Tariff Act read with the said clause108 of the Finance Bill, when goods imported into India *vide* Notification No. 13/2018-Cus., dated 2-2-2018.

(4) Exemption from Social Welfare Surcharge to specified goods *vide* Notification No.11/2018-Cus., dated 2-2-2018.

(5) Exemption of import duty: Customs duty is free for second hand capital goods imported for re-pair and reconditioning re-exported after repair.

(6) Apart from the BCD, IGST, Compensation Cess in certain items anti-dumping and safeguard duties shall be collected as per Customs Tariff and specific Notification.

(7) CBIC *vide* **Notification No. 16/2020-Customs, dated March 24, 2020** amended **Notification No. 52/2003-Customs, dated March 31, 2003** to extend the exemption from IGST and compensation cess to EOU's on imports till March 31, 2021 by substituting "1st day of April, 2020" in proviso to the opening para of Notification No. 52/2003- Customs dated March 31, 2003 with "1st day of April, 2021" and further exemption extended up to 1'st day of April'2022 *vide* Notification No.19/2021-Cus., dated 30-03-2021 and further exempted *vide* DGFT Notification No.16/2015-2020 dated 01.07.2022 read with Notification No. 37/2022-Cus., dated 30.06.2022.

9. Input tax credit paid on imported goods

Input Tax Credit of the Integrated Tax (IGST) paid at the time of import of goods shall be available to the importer and the same can be utilized by him as Input Tax credit for payment of taxes on his outward supplies. The Basic Customs Duty (BCD), shall however, not be available as input tax credit.

10. IGST on Import of goods by 100% EOU's

The Central Government *vide* Notification No. 65/2018-Cus., dated September 24, 2018 has extended the exemption provided to goods imported by EOU's for specified purposes as per Notification No. 52/2003-Cus., dated March 31, 2003 as amended *vide* Notification No. 78/2017-Cus., dated October 13, 2017 from levy of IGST and Compensation Cess leviable thereon under sub-sections (7) and (9), respectively of Section 3 of the Customs Tariff Act, 1975 till March 31, 2019 and extended further upto 31'st March'2020 *vide* Notification No. 9/2019-Cus., dated 25-3-2019.

Extended till 30-06-2022 *vide* Notification No. 18/2022-Cus., dated 31.03.2022.

CBIC *vide* **Notification No. 16/2020-Customs, dated March 24, 2020** amended **Notification No. 52/2003-Customs, dated March 31, 2003** to extend the exemption from IGST and compensation cess to EOU's on imports till March 31, 2021 by substituting "1day of April, 2020" in proviso to the opening para of Notification No. 52/2003-Customs dated March 31, 2003 with "1 day of April, 2021" and further exemption extended up to 1st day of April'2022 *vide*

Notification No.19/2021-Cus., dated 30-03-2021. Extended till 30-06-2022 vide Notification No.19/2022-Cus., dated 31.03.2022 and further exempted vide DGFT Notification No.16/2015-2020 dated 01.07.2022 read with Notification No.37/2022-Cus., dated 30.06.2022.

Further, Amendments in Foreign Trade Policy, 2015-2020.

1. Exemption from Integrated Tax and Compensation Cess under Advance Authorisation under Para 4.14 of FTP 2015-20 is extended up to 31-3-2020.
2. Exemption from Integrated Tax and Compensation Cess under EPCG Scheme under Para 5.01 (a) of FTP 2015-2020 is extended upto 31-3-2020.
3. Exemption from Integrated Tax and Compensation Cess under EOU Scheme under Para 6.01(d) (ii) of Foreign Trade Policy 2015-2020.

[M.C. & I.(D.C.) Notification No. 57/2015-20, dated 20.03.2019]

[Further, the above exemptions further extended vide DGFT Notification No. 16/2015-2020 dated 01.07.2022 read with Notification No.37/2022-Cus., dated 30.06.2022.]

11. Meaning of Import of Services

Section 2(11) of the IGST Act, 2017 defines “import of services” means the supply of any service, where,—

- (i) the supplier of service is located outside India;
- (ii) the recipient of service is located in India; and
- (iii) the place of supply of service is in India;

Section 7(4) of the IGST Act, 2017 prescribed that where the supply of services imported into the territory of India shall be treated to be a supply of services in the course of inter-State trade or commerce.

Section 7(1)(b) of the CGST Act, 2017, import of services for a consideration whether or not in the course or furtherance of business shall be considered as supply.

Thus, import of services without consideration shall not be considered as supply and not liable to GST.

Further, the provision contained in Schedule 1 (clause 4) of the CGST Act, 2017, import of services by a taxable person from a related person or from any of his other establishments outside India, in the course or furtherance of business, even if made without consideration shall be treated as supply and clause (2) of schedule 1 of the CGST Act, specified supply of goods or services or both between related persons or between distinct persons as per Section 25 of the CGST Act, 2017, when made in the course of or furtherance of business shall be treated as supply and liable to GST.

12. IGST on Goods Sold through Customs Warehouse

IGST shall be levied and collected at the time of final clearance of the warehoused goods for home consumption i.e. at the time of filing the ex-bond bill of entry and the value addition accruing at each stage of supply form part of the value on which the integrated tax would be payable at the time of clearance of the warehoused goods for home consumption. The supply of good before their clearance from the warehouse would not be subject to IGST and the same would be levied and collected from the Customs bonded warehouse. C.B.E. & C. Circular No. 3/1/2018-IGST, dated 25-5-2018.

The Circular No. 3/1/2018-IGST, dated 25.5.2018 has been rescinded by CBIC, Circular No. 04/01/2019-GST dated 1'st February, 2019 as the provision of the CGST (Amendment) Act, 2018 and SGST Amendment Acts of the respective States have been brought into force w.e.f.1.2.2019. Schedule III of the CGST Act, 2017 has been amended vide section 32 of the CGST (Amendment) Act, 2018 so as to provide that the “supply of warehoused goods to any person before clearance for home consumption” shall be neither a supply of goods nor a supply of services.

13. Levy of IGST on High Sea Sale Transactions

High Seas Sale is sale of goods by the original importer to another party when the imported goods are yet on high seas. High seas sale happened prior to importation and filing of bill of entry for customs clearance. In such situations, the bill of entry for Customs clearance shall be filed by the person who purchase these imported goods on high seas basis from the original importer.

In terms of sub-section (1) of Section 5 of the IGST Act, 2017, provides that the Integrated Tax on goods imported shall be levied and collected in accordance with the provisions of Section 3 of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962.

In terms of Section 7(2) of the IGST Act, 2017, which has specified that supply of goods imported into the territory of India, till they cross the customs frontiers of India, shall be treated to be a supply of goods in the course of inter-State trade or commerce. As such High Seas Sale is also covered under IGST Act, 2017.

In view of confusion for the levy and collection of Integrated Tax and Customs Duty on High Seas Sale of imported goods under GST regime, the C.B.E. & C., has issued clarification *vide* Circular No. 33/2017-Cus., dated 1-8-2017 [2017 (352) E.L.T. (T43)]. The extract of the relevant paras are reproduced as under:

The issue has been examined in the Board. ‘High Sea Sales’ is a common trade practice whereby the original importer sells the goods to a third person before the goods are entered for customs clearance. After the High sea sale of the goods, the Customs declarations i.e. Bill of Entry etc. is filed by the person who buys the goods from the original importer during the said sale. In the past, CBEC

has issued various instructions regarding high sea sales appropriating the contract price paid by the last high sea sales buyer into the Customs valuation. [*Circular No. 32/2004-Cus., dated 11-5-2004 refers*].

As mentioned earlier, all inter-state transactions are subject to IGST. High sea sales of imported goods are akin to inter-State transactions. Owing to this, it was presented to the Board as to whether the high sea sales of imported goods would be chargeable to IGST twice i.e. at the time of Customs clearance under sub-section (7) of section 3 of Customs Tariff Act, 1975 and also separately under Section 5 of The Integrated Goods and Services Tax Act, 2017.

GST council has deliberated the levy of Integrated Goods and Services Tax on high sea sales in the case of imported goods. The council has decided that IGST on high sea sale (s) transactions of imported goods, whether one or multiple, shall be levied and collected only at the time of importation i.e. when the import declarations are filed before the Customs authorities for the customs clearance purposes for the first time. Further, value addition accruing in each such high sea sale shall form part of the value on which IGST is collected at the time of clearance.

The above decision of the GST council is already envisioned in the provisions of sub-section (12) of Section 3 of Customs Tariff Act, 1975 inasmuch as in respect of imported goods, all duties, taxes, Cesses etc. shall be collected at the time of importation i.e. when the import declarations are filed before the customs authorities for the customs clearance purposes. The importer (last buyer in the chain) would be required to furnish the entire chain of documents, such as original Invoice, high-seas-sales-contract, details of service charges/commission paid etc, to establish a link between the first contracted price of the goods and the last transaction. In case of a doubt regarding the truth or accuracy of the declared value, the department may reject the declared transaction value and determination the price of the imported goods as provided in the Customs Valuation rules.

14. Mandatory uploading of specified supporting documents and mention of document code

C.B.I & C Circular No. 42/2019-Customs, dated 29.11.2019

Mandatory uploading of specified supporting documents and mention of document code and IRN in Bills of Entry (BoE) – reg.

Reference is invited to Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018 [notified *vide* Notification No. 36/2018-Cus (NT), dated 11.05.2018]. In the said regulations, “Supporting documents” have been defined under Regulation 2(g) as documents in the electronic form or otherwise, which are relevant to the assessment of the imported goods under Section 17 and 46 of the Customs Act, 1962.

2. Reference is also invited to various Board’s Circulars issued in relation to eSANCHIT on imports.

3. Currently, on the import side, uploading of at least one document on e-Sanchit is mandatory for every Bill of Entry. This is now being modified to mandatorily uploading on eSANCHIT, for every Bill of Entry, Invoice/Invoice cum packing list and Transport Contract i.e. Bill of Lading/Airway bill etc., as the case may be. Directorate of Systems have issued Advisory No. 25/2019 dated (web link) laying down requirement of mandatory uploading on e-SANCHIT, the Invoice/Invoice cum packing list and Bill of Lading/Airway bill etc. for every Bill of Entry and subsequent declaration of document code and IRNs in the Bill of Entry.

With effect from 02.12.2019, for every Invoice and Bill of Lading/Airway Bill declared in the Bill of Entry, the reference of IRN generated from eSANCHIT with the relevant document code as given above must be provided. The reference of the above document codes from e-SANCHIT in the Bills of Entry has been made mandatory in System.

4. As regards all the other supporting documents (such as Country of Origin Certificate (COO), licence/permission from any Government Agency (PGA) in relation to the eligibility for import/clearances or claim of duty exemption), it is emphasised that to make Customs duty truly paperless, uploading of these documents through e-SANCHIT either by beneficiary or by PGAs, should be ensured administratively. Therefore, the field offices must ensure that no physical copy of any supporting document is submitted and every relevant document is submitted only electronically via e-SANCHIT either by the beneficiary or by the Participating Government Agency. DG (Systems) would also enforce the same in due course.

5. The above changes have been separately communicated to the various CHA associations and RES software providers. However, the same may further be given publicity by way of Trade notices. The above two changes may kindly be given wide publicity and the Trade may be guided suitably to ensure that there is minimum disruption after their implementation.

15. Auto Out of Charge under Express Cargo Clearance System (ECCS)

C.B.I & C, Circular No. 40/2019-Customs, dated 29.12.2019

Auto Out of Charge under Express Cargo Clearance System (ECCS) – reg.

Briefly, courier Bills of Entry (CBE) filed for clearance of imported cargo under ECCS are subjected to Risk Management System. The Risk Management Server either facilitates or interdicts a Courier Bill of Entry (CBE). The facilitated CBEs after payment of duty, if any are diverted for X-ray screening before final out of charge.

2. The X-ray screening of goods may either 'clear' the goods or mark them as 'suspicious'. The goods marked 'suspicious' have to undergo examination by the proper officer. However, CBEs in respect of X-ray cleared goods are sent to the Shed Superintendent or Appraiser for Out Of Charge (OOC) order.

3. Express Industry Council of India (EICI) has stated that all Customs procedures including assessment, compulsory compliance requirements, duty payment etc., for a shipment are electronically complete before the facilitated shipment is subjected to Customs X-ray screening; once the shipment is 'cleared' on X-ray screening, there may not be a requirement for a Customs officer to issue an Out of Charge order. Express Industry Council of India (EICI) has requested to introduce 'Auto Out of Charge' for such imported shipments as this will help in mitigating delays in clearance of Express Cargo at the international courier terminals.

4. Directorate General of Systems and Data Management is in technical agreement with the proposal of EICI to implement 'Auto Out of Charge' under ECCS.

5. Over the years, cross-border movement of express cargo has increased significantly which mandates simplification of procedure. It is also observed that sending a CBE after X-ray screening to the Shed Superintendent/Appraiser, merely for giving out of charge order, adds an avoidable step in the automated clearance process. Board is of the view that ECCS should automatically give out of charge to goods covered under facilitated CBE which has been 'cleared' on Customs X-ray screening.

6. In view of the foregoing, Directorate of System & Data Management shall take necessary steps to implement Auto OOC. All Chief Commissioners are requested to issue suitable Public Notice and Standing order, for guidance of the stakeholders and the concerned officers.

16. Procedures of customs clearance of imported goods and export goods

Import and Export are the two pillars of country's economic growth. The procedures of import and export are governed by the Customs Act, 1962. The procedures of clearances of imported goods and export goods are prescribed under Section 44 to Section 51 of the Customs Act, 1962. No imported goods entered into India or would be crossed to the Customs frontier of India without Customs clearances and no export goods also leave Customs port without Customs clearances.

17. Appointment of places for imported goods and export goods

Section 7 of the Customs Act, 1962 prescribed that the Board by official gazette may appoint the following places for clearances of import & export goods.

- (a) the ports and airports which alone shall be customs ports or customs airports for the unloading of imported goods and the loading of export goods or any class of such goods;
- (aa) the places which alone shall be inland container depots or air freight stations for the unloading of imported goods and the loading of export goods or any class of such goods;

- (b) the places which alone shall be land customs stations for the clearance of goods imported or to be exported by land or inland water or any class of such goods;
- (c) the routes by which alone goods or any class of goods specified in the notification may pass by land or inland water into or out of India, or to or from any land customs station from or to any land frontier;
- (d) the ports which alone shall be coastal ports for the carrying on of trade in coastal goods or any class of such goods with all or any specified ports in India;
- (e) the post offices which alone shall be foreign post offices for the clearances of imported goods or export goods or any class of such goods;
- (f) the places which alone shall be international courier terminals for the clearance of imported goods or export goods or any class of such goods.

Further, Section 8 of the Customs Act, 1962 empowers the principal Commissioner or Commissioner of Customs to approve landing places in any customs port or customs airport or coastal port for the unloading and loading of goods or for any class of goods.

18. Cargo arrival Notice/Filing of Manifesto (IGM/EGM)

The person-in-charge of a vessel or aircraft carrying imported goods before entering into India, shall issue cargo arrival notice to the importer. The importer or his customs house agent shall submit to the proper officer an import manifest through electronically prior to the arrival of the vessel or the aircraft. The import manifest popularly known as Import General Manifest (IGM). If the import report not delivered to the proper officer within twelve hours after its arrival in the customs stations and the proper officer is satisfied that there was no sufficient cause for such delay, shall be liable to a penalty of not exceeding ₹50,000/- If the proper is satisfied that the imports manifest or import report is in any way incorrect or incomplete and that there was no fraudulent intention, he may permit it to be amended or supplemented.

With regard to vehicle carrying export goods for loading into outgoing vessel is granted entry outwards and load export goods thereafter. Before departure of vessel/aircraft, an export manifest called as Export General Manifest (EGM) shall be filed by exporter or his customs house agent through electronically and now a penalty not exceeding ₹50,000/- is also imposable on late filing of Export Manifest. (Section 29 & 30 of the Customs Act, 1962).

19. Unloading/loading of Goods

The master of vessel shall not permit the unloading of any imported goods until an order has been given by the proper officer granting entry inwards to such vessel. The same is not applicable to, passengers, crew members, mail bags, animals, perishable goods and hazardous goods.

No imported goods shall be unloaded and no export goods shall be loaded at any place other than place approved under Section 8 of the Customs Act, 1962. Imported goods shall not be unloaded from and export goods shall not be loaded on, any conveyance except under the supervision of the proper officer.

20. Mandatory documents

- (a) Documents required for import of goods into India:
 - (i) Bill of Lading/Airway Bill/Lorry Receipt/Postal Receipt;
 - (ii) Commercial Invoice issued by the shipper or supplier;
 - (iii) Packing List issued by the shipper or supplier;
 - (iv) Copy of Purchase Order raised by the importer;
 - (v) The copy of LC documents if any;
 - (vi) Authorisation letter in the favour of CHA for clearing import shipment;
 - (vii) Copy of IEC;
 - (viii) Copy of Scheme certificates for getting exemptions if any;
 - (ix) Bill of Entry (now also called as Integrated Declaration Form to be electronically filed at ICEGATE portal at all EDI ports.
- (b) Documents required for export of goods from India:
 - (i) Bill of Lading/Airway Bill/Lorry Receipt/Postal Receipt;
 - (ii) Commercial Invoice issued by the exporter;
 - (iii) Packing List issued by the exporter;
 - (iv) Copy of Purchase Order receipt from overseas customer;
 - (v) The copy of LC documents if any;
 - (vi) Authorisation letter in the favour of CHA for clearing export shipment;
 - (vii) Copy of IEC;
 - (viii) Shipping Bill/Bill of Export;
 - (ix) Samples/test certificates of the export goods.

21. Submission of bill of entry and shipping bill

An importer or exporter entering the imported or export goods self-assesses duty liability, if leviable on the same. The work of examination of goods, verification of self assessments, classification, valuation, checking from import licence point of view etc. is attended to in the Customs House by appraisers and examiners of Customs.

For clearance of goods through the EDI system, it is generated in the computer system, but in case of import the importer or the authorised person is required to enter the electronic integrated declaration and the supporting documents himself by affixing his digital signature and enter the Customs Automated System and he may also get the electronic integrated declaration

made on the customs automated system along with the supporting documents by availing the services at the service centre. E-payment of Customs duty is mandatory for specified class of importers. Manual processing and clearance of import/export goods is allowed only in exceptional and genuine cases by Commissioner of Customs, when processing through EDI is not feasible. The bill of entry has to be filed/presented before the end of the next day following the day (excluding holidays) on which the aircraft or vessel carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or warehousing failing which late charges are required to be paid @ ₹5000/- per day for the initial three days of default and at the rate of ₹10,000/- per day for each day of default thereafter.

22. Entry of goods on importation

Where the proper officer is satisfied that any goods entered for home consumption are not prohibited goods and importer has paid the import duty assessed thereon and the proper officer may make an order permitting clearance of the goods for home consumption. If any goods are not cleared for home consumption or warehoused or transshipped within 30 days from the date of the unloading thereof at customs station, the proper officer may issue notice to the importer and with permission of the proper officer be sold by the person having the custody thereof. In case any imported goods entered for home consumption but cannot be cleared within a reasonable time, then Deputy Commissioner/ Assistant Commissioner of Customs is satisfied on the application of importer may permitted to be stored in a public warehouse for a period not exceeding 30 days and further may be extended not exceeding 30 days by the Commissioner or principal Commissioner of Customs.

23. Entry of goods for exportation

The exporter by presenting a shipping bill through electronically on the customs automated system to the proper officer in the case of goods to be exported in a vessel or aircraft and in the case of goods to be exported by land, a bill of exports may be presented to the Customs officer. In the event of it is not feasible to make entry by presenting electronically through Customs automated system, thereby the Principal Commissioner or Commissioner of Customs may allow to be presented in any other manner.

The exporter who presents a shipping bill or bill of export shall ensure the following:

- (a) the accuracy and completeness of the information given therein;
- (b) the authenticity and validity of any document supporting it; and
- (c) compliance with the restriction or prohibition, if any, relating to the goods under this Act.

24. Clearance of goods for exportation

Where the proper officer is satisfied that any goods entered for export are not prohibited goods and the exporter has paid duty, if any, assessed thereon and proper officer may make an order permitting clearance and loading of the goods

for exportation. Where the exporter fails to pay the export duty, either in full or in part, he shall pay interest on said duty not paid or short paid till the date of its payment not below 5% and exceeding 36% per annum.

There is relaxation on examination of export cargo and no examination for factory/warehouse stuffed and sealed goods unless seal are found tampered; examination of shipping bills (where there is no export incentive) and a low percentage of examination (less than 10%). The outgoing ship/aircraft has to obtain a ‘port clearance’ before leaving and the ship or its steamer agents have to submit an Export General Manifest of goods being carried before departure of ship.

If export cargo is shut-out by the vessel originally indicated in the shipping bill, exporters may amend the same of the vessel by taking approval of the Deputy Commission/Assistant Commissioner of Customs (Export) in the Customs House or of the preventive Superintendent of Customs.

25. Treatment of Exports under GST

In the GST regime, as per Section 16 of the IGST Act, 2017 prescribes supply of goods and services for exports are to be treated as “Zero rated supplies” implying that registered person exporting goods and services shall follow the procedure of export under bond or letter of undertaking without payment of IGST and claim refund of unutilized input tax credit or on payment of IGST and claim refund of the IGST so paid on goods and services exported. Export procedure and sealing of containers has been prescribed vide C.B.I & C, Circular No. 26/2017-Cus., dated 1st July, 2017 as amended from time to time.

26. Faceless assessment under customs

Assessment is the processes used to carry out by the Customs Officer at the port of import for the determination of Customs duty on the basis of physical documents such as Bill of Entry for Customs clearance of imported goods through EDI system and goods examination report. The physical documents verification and examination of goods for Customs clearances has been replaced by the Faceless assessment.

Faceless Assessment, a component of the Turant Customs programme, is a path breaking initiative aimed at introducing anonymity and uniformity in Customs assessments pan India. Faceless Assessment is a paperless process where a Bill of Entry that is identified for scrutiny is assigned to an assessing officer who is physically located at a Customs station, which is not the Port of Import in the Customs Automated System. It separates the assessment process from the physical location of Port of Import, using a technology platform. The assessment part of the Customs clearance procedure would be delinked with the geographical location where the goods are available for examination. Faceless assessment has been rolled out in phases manner and has been scheduled to cover the entire country by 31st October 2020.

After running pilot programmes since August 2019, the first formal phase of Faceless Assessment commenced in Bengaluru and Chennai in June 2020. It

primarily focused on cargo under Chapters 84 and 85 of the Customs Tariff Act, 1975. This was followed by other phases covering new Customs locations and new items of import. After running pilot programmes since August 2019, the first formal phase of Faceless Assessment commenced in Bengaluru and Chennai in June 2020. This was followed by other phases covering new Customs locations and new items of import. Assessment has now been firmed up. Faceless Assessment is expected to have considerable impact on India's performance on various independent global assessments and boost the country's trade competitiveness, including ease of doing business.

26.1 Need for the Faceless Assessment

Previous Customs clearance processes involved myriad requirements that were manually operated, complex, sequential and time-consuming. Migration of core Customs process to a technology platform opened-up a host of opportunities to reform the border clearance ecosystem. Earlier, the importers, exporters and other actors engaged in international trade (shipping lines, freight forwarders etc.) were required to prepare and submit large amount of information to border agencies to comply with various regulatory requirements. Also, this information had to be submitted separately to several different agencies, which their own specific automated or manual systems to process the data. This used to put a serious burden both on Government and trade. Thus, early initiatives by Customs focused on expeditious transmission of documents between Participating Government Agencies (PGA) as well as parallel processing of documents.

26.2 Key objectives of Faceless Assessment

- (i) Anonymity in assessment for reduced physical interface between trade and Customs
- (ii) Speedier Customs clearances through efficient utilisation of manpower
- (iii) Greater uniformity of assessment across locations
- (iv) Promoting sector specific and functional specialisation in assessment

It is estimated that the Faceless Assessment initiative will help slash release time to only few minutes and few hours, substantially lower than the present clearance times averaging three to four days. Accordingly, Faceless Assessment is expected to have considerable impact on India's performance on various independent global assessments and boost the country's trade competitiveness, including ease of doing business. Faceless Assessment also offers many other advantages to both trade and CBIC.

A pilot of the initiative was initiated last year by CBIC and post validation of the expected outcomes; it has been decided to roll out the programme nationally. These Pilot Programmes helped test Faceless Assessment first in the same zone, then across zones. Faceless Assessment is now being extended across all Customs ports in India to user a more modern, efficient, and professional Customs administration, with resultant benefits for trade and industry.

26.3 Workflow for BE under Faceless Assessment

| Sl. No. | Scenario | Workflow |
|---------|---|--|
| 1 | First Check | Approved for First Check by Faceless Assessment Groups, goes to local shed (Port Verification Unit) for examination, comes back to Faceless Assessment Group for assessment. |
| 2 | Provisional Assessment | Where prior permission is available, Faceless Assessment Group to assess it. Bond and BG to be registered at local port of import. If no prior permission, BE to be sent to port of import for assessment. |
| 3 | Reassessment for valuation | Either through query or consent. Or in case First Check is given for valuation by Chartered Engineer etc., then like case 1. |
| 4 | Reassessment for classification where testing is required | If ordered by Faceless Assessment Group as first check, then test memo to be sent by port of import and send back the BE to Faceless Assessment Group with test report. Alternately, can be sent to port of import for provisional assessment. |
| 5 | First check but for provisional assessment | Approved for 1'st Check by Faceless Assessment Group but assessment cannot be finalized by Faceless Assessment Group for want of further inputs/test reports. To be sent to port of import for provisional assessment. |

26.4 Institutional setup

The Faceless Assessment institutional set up has two levels, i.e., (i) Local and (ii) Virtual

A. Local Set up

26.5 Port of Import

The port of import is the Customs station of import where the goods lie and the importer has entered a BE for home consumption or warehousing. Its functions are as follows:

- > Turant Suvidha Kendra (TSK) to be set up at Port of Import for various document/report submission/generation for the assessment.
- > It will have one Port Assessment Group (PAG) to assess cases referred to by the FAG in specific circumstances.

26.6 Port Assessment Groups

The equivalent of Appraising Group currently located in each port of import for verification of the assessment and other related functions as is the normal practice. Their functions include:—

- (i) All functions pertaining to the BE which are not marked to the Faceless Assessment Group by the Customs Automated System.
- (ii) BEs that are referred by the Faceless Assessment Group to the port of import, for any reason.
- (iii) Handling of issues arising post assessment, relating to the BEs which were handled in the Faceless Assessment Group.

26.7 Turant Suvidha Kendras

Are facilitation centres which will handhold and facilitate trade, as it adapts to the new system. To reduce friction and to handhold stakeholders, TSK at the port of import will facilitate trade. Their functions illustratively include:—

- > Accept Bonds or Bank Guarantee;
- > Carry out any other verification that may be referred by FAGs;
- > Defacing of documents/permits/licenses, wherever required;
- > Debit of documents/permits/licenses, wherever required;
- > Handle queries related to assessment; and
- > Other functions determined by Commissioner to facilitate trade

B. Virtual Setup

27. National Assessment Centres

NACs have been created for the purpose of rollout of faceless assessment. 11 Customs Commissionerates have been partially re-organized as NACs, with all India jurisdictions. NACs are organized commodity-wise according to the First Schedule to the Customs Tariff Act, 1975.

28. Faceless Assessment Groups

Officers from different jurisdictions will be brought together on a technology platform to form various FAGs for assessment of particular groups in an NAC. BE will be assigned to these set of officers who are from different customs locations but are virtually connected.

Their role will require them to verify assessment of any BE that is assigned to their group by the Customs Automated System. Each FAG would have an all India jurisdiction and it may or may not necessarily have a presence in all Customs formations.

29. National Assessment Centre

30. Selection and Rationale of NAC

Is based on the share of the volume of import of a particular commodity group(s) in its Zone as compared to all India imports and/or share contributed by the said commodity group(s) or the share of import of the particular commodity group(s) in their own Zones.

The rationale for the selection of Conveners for the NAC is its share of all India revenue contributed by the said commodity group(s) or the share of the revenue contributed by the particular commodity group(s) in their own Zones.

31. Organization Structure of NAC

- (i) Each NAC shall be co-convened by Principal Chief Commissioners/Chief Commissioners of the Zones.
- (ii) Each NAC shall consist of Principal Commissioners/Commissioners of Customs from the Zones.
- (iii) For each NAC, the Principal Chief Commissioners/Chief Commissioners, having jurisdiction over the Zones, shall nominate a nodal Principal Commissioners/Commissioners.
- (iv) Chief Commissioners will be in charge of different zones. Nodal Commissioners will be responsible for performance of the FAG.

32. Functions of NAC

- (i) Monitoring of assessment practices adopted by FAGs
- (ii) Ensuring uniformity of classification, valuation, exemption benefit and compliance to import policy conditions
- (iii) Promotion of adoption of best practices (including international practices) among the FAGs aligned to them
- (iv) Examining audit objections and take necessary corrective action where required
- (v) Analysing RMS facilitated BEs pertaining to their industrial sector and advise, the Directorate General of Analytics and Risk Management (DGARM) on necessary interventions
- (vi) Liaising with Commissionerates on matters of interpretation pertaining to classification, valuation, exemption and policy conditions
- (vii) Interacting with sectoral trade and industry for insights and issue resolution
- (viii) Functioning as a knowledge hub or repository for that industrial sector
- (ix) Promoting uniformity in assessment by examining orders/appellate orders on assessment practices pertaining to commodities assigned to each NAC and provides inputs for review of such orders
- (x) Suggesting for policy interventions on commodities assigned to the NAC
- (xi) Working with National Academy of Customs and Indirect Taxes (NACIN) for design and development of training modules and impart training to officers to promote sector specific specialization
- (xii) Constituting working groups for matters relating to Monitoring timely assessment of BE, Valuation and related issues, Classification and related issues, Restrictions and prohibitions and co-ordination with PGAs, Communication and outreach strategies, any other matter relevant to uniform and timely assessment.
- (xiii) The working group to monitor timely assessment shall meet virtually on a daily basis. All other working groups shall have weekly virtual meetings.

33. Co-convenors of NAC

Shall monitor the functioning of the NACs and provide necessary leadership include Nomination of Principal Commissioners/Commissioners as Members of the NAC from Zones, Establishing working groups within NACs for smooth functioning,

Ensuring that NACs develop expertise over the assigned FAGs on different facets of assessment like classification, valuation, prohibitions and restrictions, Co-ordinating with other Directorates and NACs for functions elaborated subsequently and making timely recommendations to the Board for policy consideration.

34. Co-ordination among NAC Commissioners

As nodal officers are located in different geographies, institutional coordination is required to surmount teething issues. For this purpose, measures include web meetings to review ongoing performance and de-bottlenecking and weekly consultations to review technical matters of assessment.

35. Continuous Assessment

Endeavour to minimize delay in verification of assessment in case of a holiday for members of a particular FAG. This may be achieved by spreading work across multiple locations.

36. Coordination of NACs with Other Directorates

Will be required on an ongoing basis to achieve the project's intended objectives. Given the propensity of teething trouble as the system transitions to a new mode, it is critical that intensity of coordination activities in initial days is high, to allow timely course correction.

37. Process for Faceless Assessments**38. Procedure for Verification of Assessment by FAG**

From an importer's perspective, there will be no changes to the process of filing a BE. He/she will continue to file his/her documentation including BE and supporting documents on the ICEGATE portal. Customs Automated System will assign the BE to a FAG based on an inbuilt logic considering tariff entries in terms of either duty payable or highest assessable value, in that order. FAG will assess the BE for purposes of duty determination and compliance to restrictions. In cases where the FAG seeks additional information, communication to and from the importer shall be managed electronically through the system. Where authenticity of a document is in doubt and verification by an external agency is required, the same shall be communicated to shed officers at the Port of Import, for necessary action. Any assessment/speaking order passed by FAG, shall be appealable to the Commissioner of Customs (Appeals) at the Port of Import.

39. For Examination/Testing

- (a) If the FAG deems it fit to order examination/testing of goods for the purpose of assessment it shall coordinate the same with the shed officer at the Port of Import.

- (b) Instructions for 1st check examination/testing of the goods with specific directions of testing parameters should be communicated to the shed officers.
- (c) Onus of sending samples to the laboratory (with the requisite test memo) would lie with the shed officers and the TSK.
- (d) Results of examination/test report would be fed by shed officer in the system and referred to concerned FAG.
- (e) In case goods are confirmed to be in violation of some restriction/prohibition before or during assessment on the basis of examination/test report or otherwise, the FAG shall refer such BE to the PAG at Port of Import for adjudication and assessment.

40. Re-assessments

In case of the need for re-assessment, the re-assessment in different situations would be carried out in the following manner:

1. Before Out of charge, where request is made by Importer and change in assessment is requested, the same may be referred to FAG for consideration.
2. Before Out of charge, where request is made by Importer and change in details other than assessment is requested including consequential amendment related to short-shipments, changes in bond conditions, etc. may be carried out by PAG.
3. Before OOC, if reassessment to be done *suo moto* by Customs for any reason, may be carried out by PAG.
4. After OOC, reassessment to be done for any reason may be carried out by PAG

41. Provisional Assessment

- (i) If the requisite approval for provisional assessment as per the Customs Act, 1962 and department guidelines has already been obtained, the FAG may assess the BE provisionally.
- (ii) In other cases, FAG may forward the BE citing reasons for the same and refer the BE to the PAG at the Port of Import.
- (iii) In case the importer opts to move the goods to a warehouse u/s 49, such request shall be processed by the TSK at the port of import.
- (iv) Shed officers at the Port of Import would conduct necessary verification/examination, as required by the FAG or required as per Compulsory Compliance Requirements (CCR) of RMS.

42. Appellate Proceedings

Board has issued Notification No. 85/2020-Customs (N.T.), dated 4th September 2020 by virtue of which the Commissioners of Customs (Appeals) are empowered to take up appeals filed in respect of Faceless Assessments pertaining to imports made in their jurisdictions even though the Faceless Assessment

officer may be located at any other Customs station. To illustrate, Commissioners of Customs (Appeals) at Bengaluru would decide appeals filed for imports at Bengaluru though the Faceless Assessment officer is located at any other port of the country, say Delhi.

43. Review Proceedings

The review of any speaking order on re-assessment passed by a proper officer of Faceless Assessment Groups, under sub-section (2) of Section 129D of the Customs Act, 1962, shall lie with the reviewing authority having administrative control over the that proper officer of the Faceless Assessment Group.

44. Demands under Section 28 of the Customs Act, 1962

Issuing of demands under Section 28 of the Customs Act, 1962, adjudication thereof and handling of audit objections shall be done by the officers of the port of import. In matters where clarifications and inputs are required to be given by the Faceless Assessment Groups to the Port of Import, the nodal Commissionerates as in para 4 above shall co-ordinate with the ports of import.

45. Key Considerations for Faceless Assessments

The Nodal Commissioners in the NAC shall co-ordinate to ensure that Faceless Assessment is implemented smoothly and creates no disruption in the assessment and clearance of goods.

46. Identification of Location of FAG

- (i) National Assessment Centre have identified Customs locations within each Zone, where Faceless Assessment pertaining to a group would be undertaken. The volume of import and availability and experience of officers was considered for this purpose.
- (ii) It is critical to note that setting up adequate number of FAGs in a zone with sufficient number of officers is one key area which will enable faster disposal and more timely assessment

47. Uniform Assessment Practices

- (i) Consider audit objections, judicial and quasi-judicial decisions accepted by the Department relating to the assessment of the goods to be handled by the FAG under the concerned NAC and circulate among the officers
- (ii) Identify variations, if any, in assessment practices and harmonise them for application across FAGs for uniformity of assessment.
- (iii) Ensure that imported items are properly declared along with full details to ensure proper classification and eligibility for notification benefit.
- (iv) Keep track of all instances where the description is falling short of requirement and report the same in a monthly bulletin for the benefit of importers and customs brokers.
- (v) Study present assessment practice concerning major commodities in the Groups being imported at customs station and being assessed by them.

- (vi) Ensure uniformity in classification, valuation, exemption benefits, and compliance with import policy conditions
- (vii) Endeavour to reduce incidence of queries and issue public/trade notices from time to time to sensitise trade on good practices required to reduce incidence of queries. For e.g. sensitizing trade to provide complete details and description of a commodity such as brand name, model and any other specifications essential for the assessment.

48. Exchange of Port Specific Practice and Procedures

- (i) Faceless Assessment Group officers shall share the list of sensitive commodities and knowledge with regard to sensitive items that are traded from their respective port of jurisdiction with FAG officers of other zones to enhance uniformity and reduce dwell time of assessment.
- (ii) FAG officers shall share valuation practices among different FAGs of respective zones for clarity and uniformity in assessment processes.
- (iii) The Nodal Commissioners shall work in tandem with all nodal Commissionerates assessing the same chapter, to ensure that best assessment practices are in place for the group which will be the norm pan India.

49. Performance Measurement

Principal Commissioners/Commissioner of Customs shall be administratively responsible for monitoring and ensuring fast and uniform assessments in their respective zones. For this purpose of monitoring and measuring the impact of Turant Customs initiative, have been identified for monitoring impact of the initiative.

Chapter 33

Export Procedure under GST

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1. Introduction

Generally, export is one of the most important business activities in the present day economy for any country. Exports of goods and services result in inflow of foreign exchange earnings of the country. So, higher the volume of exports brings higher inflow of foreign exchange to the country resulting higher rate of growth of country's economy.

In Simple words "Export" means when goods or services are sent from our country to another country against consideration which translate in realization of foreign exchange earnings. As per Section 2(18) of Customs Act, 1962. "Export" means taking goods out of India to a place outside India.

2. Meaning of "Export of goods and services"

Under GST regime the definition of export has been defined vide sub-section (5) of Section 2 of IGST Act, 2017, as "**Export of goods**" with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India; and sub-section (6) of Section 2 of IGST Act, 2017 defines -

"Export of services" mean the supply of any service when,—

- (i) the supplier of service is located in India;
- (ii) the recipient of service is located outside India;
- (iii) the place of supply of service is outside India;
- (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange; and
- (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with *Explanation 1* in Section 8 of IGST Act, 2017.

Thus, if the recipient of goods and services or both is located outside India, then these supplies will be considered as export; Section 2(56) of CGST Act, 2017 defines "India" mean the territory of India as referred to in Article 1 of the Constitution, its territorial waters, sea-bed and sub-soil underlying such waters, continental shelf, exclusive economic zone or any other maritime zones as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 (80 of 1976), and the air space above its territory and territorial waters.

3. Treatment of Exports under GST

In the GST regime, as per the provisions of IGST Act, 2017 supplies of goods and services for exports are to be treated as "Zero rated supplies" implying that registered taxable person exporting goods and services shall follow the procedure of export under bond or letter of undertaking without payment of Integrated Tax and claim refund of unutilized input tax credit or on payment of integrated tax and claim refund of the tax so paid on goods and services exported.

In case of non-realisation sale proceeds of export of goods without payment of IGST, the exporter is liable to repay the refund of unutilised credit already granted within 30 days after the expiry of time limit as prescribed under FEMA Act, 1999 *vide* Notification No. 27/2023-CT, dated 31.07.2023.

4. Scope of zero rated Supply

Section 16 of the IGST Act, 2017 provides the scope of zero-rated supply; the relevant portion of IGST Act, 2017 is reproduced as under:

“16. (1) “zero rated supply” means any of the following supplies of goods or services or both, namely:—

- (a) export of goods or services or both; or
- (b) supply of goods or services or both [authorised operations] to a Special Economic Zone developer or a Special Economic Zone unit.

(2) Subject to the provisions of sub-section (5) of section 17 of the Central Goods and Services Tax Act, credit of input tax may be availed for making zero-rated supplies; notwithstanding that such supply may be an exempt supply.

(3) A registered person making zero-rated supply shall be eligible to claim refund under either of the following options, namely:—

- (a) he may supply goods or services or both under bond or Letter of Undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilized input tax credit; or
- (b) he may supply goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder”.

Section 123 of the Finance Act, 2021 - Section 16(1)(b) of the IGST Act: Zero-rated supplies to SEZ for authorised operations The CBIC *vide* Notification No. 27/2023-CT, dated July 31, 2023 made the stated change, which will remove the ambiguity that only the supplies made for authorised operations to SEZ unit or developer shall qualify as zero-rated supplies. Earlier, the requirement existed under Rule 89 to provide endorsement from the designated officer of SEZ regarding authorised operations while claiming refund of accumulated ITC or IGST by the DTA supplier. Now, the same has been incorporated under the Statute so that the Rules cannot be challenged as superseding the Statute.

Section 16(3) & (4) of IGST Act: IGST Zero-rated supplies not permitted with payment of IGST until notified The default option is now supplying under LUT without tax payment and claiming a refund of accumulated ITC, with the government authorized to notify categories permitted for IGST payment and refund route. The CBIC *vide* Notification No. 1/2023-IT, dated July 31, 2023, permits tax payment for all exports of goods and services, barring specific goods

like cigarettes, panmasala, and other tobacco-related products. Currently, no notification has been issued permitting supplies to SEZ units/ developers with payment of IGST. Hence, the default route of LUT without payment of IGST would only be available.

5. Export of Goods and Services to Nepal and Bhutan

Export of goods to Nepal or Bhutan fulfils the condition of GST Law regarding taking goods out of India as per Section 2(5) of the IGST Act, 2017. Hence, export of goods to Nepal and Bhutan will be treated as zero-rated and consequently will also qualify for all the benefits available to zero-rated supplies under the GST regime irrespective of the fact that export realization is received in Indian Currency. However, the definition of ‘export of services’ in terms of Section 2(6)(iv) of the IGST Act, 2017 requires that the payment for such services should have been received by the supplier of services in convertible foreign exchange. Hence, the payment received in India rupee shall not qualify for the export of services.

Section 54 has now been amended so that the supply of services to qualify as exports, even if payment is received in Indian Rupees, where permitted by the RBI with compliance to para 2.52 of the Foreign Trade Policy 2015-2020, wherein it is clarified that exports proceeds from Nepal and Bhutan can be realized in Indian rupees.

The Central Government vide Notification No. 42/2017-I.T. (Rate), dated 27th October, 2017 *made the amendment in the Notification No. 9/2017-I.T. (Rate), dated 28th June, 2017 whereby a new entry have been inserted in the exemption notification, namely, Supply of services having place of supply in Nepal or Bhutan, against payment in Indian Rupees.*

Though this great relief was provided to the service providers to these two countries by way of exemption from GST, a missing point is related to availment of Input Tax Credit (ITC). If such services are exempted then ITC cannot be claimed.

5.1 Recommendations made by the GST Council in the 23rd meeting at Guwahati on 10th November, 2017

Exports of services to Nepal and Bhutan have already been exempted from GST. It has now been decided that such exporters will also be eligible for claiming Input Tax Credit in respect of goods or services used for effecting such exempt supply of services to Nepal and Bhutan.

Therefore, Service to Nepal/Bhutan shall be treated as Export of Services irrespective of realization of payment in Indian Rupee. Such services are exempt from payment GST and allowed ITC.

6. Export to Nepal Transhipment of cargo

CBIC vide Notification No. 64/2020-Customs (N.T.), dated July 31, 2020, which made following amendments in Transhipment of Cargo to Nepal under Electronic Cargo Tracking System Regulations, 2019, namely. The details of such amendments are discussed as hereunder:—

1. In the Transhipment of Cargo to Nepal under Electronic Cargo Tracking System Regulations, 2019,—

- (i) in the sub-regulation (1) of regulation 2, for clause (b), the following clauses shall be substituted, namely:—

“(b) “authorised carrier” means an authorised sea carrier, authorised train operator or custodian, registered under regulation 3A;

(ba) “authorised sea carrier” means the master of the vessel carrying imported goods, export goods and coastal goods or his agent or any other person notified by the Central Government in terms of sub-section (1) of section 30 of the Act, in the case of a vessel;

(bb) “authorised train operator” means the train operator carrying imported goods and export goods;

(bc) “custodian” means a person approved by the Principal Commissioner or Commissioner of Customs, for the purposes of section 45 of the Act;”;

- (ii) after regulation 3, the following regulation shall be inserted, namely:—

“3A. Registration.—(1) The authorised carrier shall apply to the jurisdictional Principal Commissioner or Commissioner of Customs for registration in the Form-II, appended to these regulations.

(2) Where the jurisdictional Principal Commissioner or Commissioner of Customs is satisfied with the information provided by the applicant in Form-II, he shall approve the registration of such applicant for transacting business under these regulations for a period of three years from the date of issue of such registration.

(3) The jurisdictional Principal Commissioner or Commissioner of Customs shall review the registration before the expiry of the initial period of registration of three years and may extend such registration to a further period of five years at a time and in case of an authorised economic operator for a period of ten years.

(4) An authorised carrier registered under regulation 3 of the Sea Cargo Manifest and Transhipment Regulations, 2018, shall be deemed to be registered under these regulations.”

- (iii) in regulation 4, for clause (a), the following shall be substituted, namely:—

“(a) declare the cargo destined to Nepal and the port of final discharge in Nepal in the arrival manifest, if he is required to do so as per the Sea Cargo Manifest and Transhipment Regulations, 2018;”

- (iv) the “Form”, shall be numbered as “Form-I”, and after Form-I as so numbered, the following “Form-II” shall be inserted, namely:—

Note: The above amendments shall come into force on the day of their publication in the Official Gazette.

7. Export Documents

Rule 46 of CGST Rules, 2017 has prescribed for the provision of Tax invoice, wherein it is stipulates that in the case of the export of goods or services, the invoice shall carry an endorsement “Supply meant for export on Payment of Integrated Tax” or “Supply meant for export under bond or letter of undertaking without Payment of Integrated Tax”, as the case may be, and shall, in lieu of the details specified in clause (e), contain the following details, namely:—

- (i) name and address of the recipient;
- (ii) address of delivery; and
- (iii) name of the country of destination :

In addition to the above information “Unique Number allotted by the GST Officer on submission of LUT should be mentioned on Invoice” and GSTIN should be mentioned on the invoices.

Another important document for export is Shipping Bill in the earlier provision of export procedure. In order to ensure smooth transition from the earlier export procedure to the procedure laid down for export goods under the GST regime, the existing shipping Bill formats (both manual/electronic), have been modified to make them complaint with the IGST law. New formats of the Shipping Bill have already been made applicable. ARE-1 procedure which was being followed is dispensed with except in respect of commodities to which provisions of Central Excise Act would continue to be applicable.

8. Export procedure

C.B.E. & C. has issued Circular No. 26/2017-Cus., dated 1st July, 2017 and Notification No. 16/2017-C.T., 1st July, 2017 read with Circular No. 4/4/2017-GST, dated 7th July, 2017 regarding Export procedure and sealing of containers. The details of export procedures as under:

Any person making zero-rated supply (*i.e.* any exporter) shall be eligible to claim refund under either of the following options, namely:—

- (a) he may supply goods or services or both under bond or letter of Undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of Integrated Tax and claim refund of unutilized input tax credit; or
- (b) he may supply goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of Integrated Tax and claim refund of such tax paid on goods or services or both supplied, in accordance with the provisions of Section 54 (Refunds) of the Central Goods and Services Tax Act, 2017 or the rules made there under (*i.e.* the Central Goods and Service Tax Rules, 2017).

For the option (a) above, as per Rule 96A of the CGST Rules, 2017 any registered person exporting goods and services without payment of Integrated Tax is required to furnish bond or a Letter of Undertaking (LUT) in **FORM GST RFD-11**. The category of exporters who are eligible to export under LUT has been specified along with the conditions and safeguards *vide* Notification No.

16/2017-C.T., dated 1-7-2017. All exporters, are not covered by the said notification, would submit bond. The procedure for submission and acceptance of bond has already been prescribed *vide* Circular No. 2/2/2017-GST, dated 4th July, 2017. The bond shall be furnished on non-judicial stamp paper of the value as applicable in the State in which bond is being furnished. It is further clarified *vide* Circular No. 4/4/2017-GST, dated 7-7-2017 that the exporters shall furnish a one-time bond (a running bond). In case the bond amount is insufficient to cover the tax liability in yet to be completed exports, the exporters shall furnish a fresh bond to cover such liability. As regards LUT, it is clarified that it shall be valid for twelve months. If the exporters fails to comply with the conditions of the LUT he may be asked to furnish a bond. The exporters follow the procedure of option (a), shall file refund claim of unutilized input tax credit by an application electronically through Common portal with all supporting documents as prescribed in the said rules.

For the option (b), a registered person shall not be required to file any application for refund on payment of Integrated Tax on supply of goods for exports. The shipping bill, GST invoice details, filed by an exporter shall be deemed to be an application for refund of Integrated Tax paid on the goods exported out of India and the exporters has to furnish a valid return in **FORM GSTR-3**. The details of the relevant export invoices contained in **FORM GSTR-1**, shall be transmitted electronically by the common portal, the Customs system and said system shall in turn electronically transmit back to the common portal a confirmation that the goods covered by the said invoices have been exported out of India. The exporters are free to avail option (a) or option (b). The refund shall be governed by the provisions of the Section 16 of the IGST Act, 2017.

9. Sealing of Containers

Board has in past issued various circulars both on the Excise and Customs side on the issue of sealing of containers. At present, there are three categories of containers which arrive at the port/ICD;

- (a) Containers stuffed at factory premises or warehouse under self-sealing procedure.
- (b) Containers stuffed/sealed at factory premises or warehouse under supervision of central excise officer.
- (c) Containers stuffed and sealed at Container Freight Stations/Inland Containers Depot.

For the sake of uniformity and ease of doing business, Board has decided to simplify the procedure for stuffing and sealing of export goods in containers. Accordingly, Board has decided to do away with the sealing of containers with export goods by C.B.E. & C. officials; instead, self-sealing procedure shall be followed subject to the following:

- (i) The exporter shall be under an obligation to inform the details of the premises where a factory or warehouse or any other place where container stuffing is to be carried out, to the jurisdictional customs officer.

- (ii) The exporter should be registered under the GST laws and should be filing **GSTR-1** and **GSTR-2**. In case if exporter is not registered under the GST laws, in that case he shall bring the export goods to a CFS/ICD for stuffing and sealing of container. However, in certain situations, an exporter may follow the self-sealing procedure even if he is not required to be registered under GST laws. Such an exception is available to the Status Holders recognized by DGFT under a valid status holder certificate issued in this regard.
- (iii) Any exporter desirous to avail the facility of self-sealing of export goods, before 15 days of export he has to submit an intimation to the jurisdiction Customs officer and the intimation shall clearly contains the place/address of the approved premises, description of export goods and the details of incentive is being claimed. The jurisdiction Customs officer shall inspect the premises of exporter and submit a report to the Jurisdiction A.C/D.C within 48 hrs. The Jurisdiction A/C/D.C shall forward the proposal of exporter to the Principal Commissioner of Customs for approval of self-sealing in the approved premises. On receipt of self-sealing permission the exporter can start self-sealing of exports goods under intimation to jurisdictional Superintendent or customs officer.
- (iv) Where the inspection report of jurisdictional customs officer is not favourable and premises is not viable with regard to stuffing/sealing in the factory premises of containers, in that case exporter bring the export goods to the CFS/ICD/Port of export for sealing purposes.
- (v) Once the permission for self-sealing has given by the Principal Commissioner of Customs shall be valid for export at all the customs stations. The customs officer shall circulate the permission along with GSTIN of the exporter to all Customs Houses/Station concerned.
- (vi) The movement of sealed containers to the port of export shall be under cover of transport document as prescribed under GST laws. In the case of an exporter who is not a GST registrant, way bill or transport challan or lorry receipt shall be the transport document.
- (vii) The exporter shall seal the container with the tamper proof electronic-seal of standard specification. Before sealing the container, the exporter shall feed the data such as name of the exporter, IEC code, GSTIN number, description of the goods, tax invoice, name of the authorize signatory and shipping Bill number in the electronic seal. Thereafter, container shall be sealed with the same electronic seal before leaving the premises.
- (viii) The exporter intending to clear export goods on self-clearances (without employing a Customs Broker) shall file the shipping Bill under digital signature.
- (ix) All consignments in self-sealed containers shall be subject to risk based criteria and intelligence, if any, for examination/inspection at the port of

export. At the port/ICD as the case may be, the customs officer would verify the integrity of the electronic seals to check for tampering if any enroute. However, random or intelligence based selection of such containers for examination/scanning would continue till RMS system is revamped.

C.B.E & C's Circular No. 26/2017-Customs, dated 1-7-2017

Further, the Board *vide* Circular No. 4/4/2017-GST, dated 7-7-2017 has clarified the following additional points as per request of the exporters and filed formations due to difficulties are being faced in complying with the procedure prescribed for making exports of goods and services without payment of IGST.

(1) With regard to furnishing of bank guarantee with bond in terms of Rule 96A of the CGST Rules, 2017, it is directed that the Jurisdictional Commissioner may decide about the amount of bank guarantee depending upon the track record of the exporters. If Commissioner is satisfied with the track record of an exporter then furnishing of bond without bank guarantee would suffice. In any case the bank guarantee should normally not exceed 15% of the bond amount.

(2) As regards LUT, if the exporter fails to comply with the conditions of the LUT he may be asked to furnish a bond. Exports may be allowed under existing LUTs/Bonds till 31st July, 2017. Exporters shall submit the LUTs/bond in the revised format by 31st July, 2017.

(3) It is further stated that the Bond/LUT shall be accepted by the Jurisdictional Deputy/Assistant Commissioner having jurisdiction over the principal place of business of the exporter. The exporter is at liberty to furnish the bond/LUT before Central Tax Authority or State Tax Authority till the administrative mechanism for assigning of taxpayers to respective authority is implemented.

(4) It has been clarified that the existing practice of sealing the container with a bottle seal under Central Excise supervision or otherwise would continue till 1st September, 2017. Such sealing shall be done under the supervision of the officer having physical jurisdiction over the place of business where the sealing is being done. A copy of the sealing report would be forwarded to the Deputy/Assistant Commissioner having jurisdiction over the principal place of business.

Further, to ensure uniformity in the procedure of export under LUT, C.B.E. & C., *vide* its Circular No. 8/8/2017-GST, dated 4th October, 2017 has prescribed that the person (exporter) who intends to avail the facility of Export under LUT under Rule 96A of the CGST Rules, 2017, shall follow the following procedures export under LUT:

- (a) **Eligibility to export under LUT:** The facility of export under LUT has been now extended to all registered persons who intend to supply goods or services for export without payment of integrated tax except those who have been prosecuted for any offence under the CGST Act or the Integrated Goods and Services Tax Act, 2017 or any of the existing laws and the amount of tax evaded in such cases exceeds two hundred and

fifty lakh rupees unlike Notification No. 16/2017-C.T., dated 7th July, 2017 which extended the facility of export under LUT to status holder as specified in paragraph 5 of the Foreign Trade Policy 2015-2020 and to persons receiving a minimum foreign inward remittance of 10% of the export turnover in the preceding financial year which was not less than Rs. one crore.

- (b) **Validity of LUT:** The LUT shall be valid for the whole financial year in which it is tendered. However, in case the goods are not exported within the time specified in sub-rule (1) of Rule 96A of the CGST Rules and the registered person fails to pay the amount mentioned in the said sub-rule, the facility of export under LUT will be deemed to have been withdrawn. If the amount mentioned in the said sub-rule is paid subsequently, the facility of export under LUT shall be restored. As a result, exports, during the period from when the facility to export under LUT is withdrawn till the time the same is restored, shall be either on payment of the applicable Integrated Tax or under bond with bank guarantee.
- (c) **Form of LUT:** Till the time **FORM GST RFD-11** is available on the common portal, the registered person (exporters) may download the **FORM GST RFD-11** from the website of the Central Board of Excise and Customs (www.cbec.gov.in) and furnish the duly filled form to the jurisdictional Deputy/Assistant Commissioner having jurisdiction over their principal place of business. The LUT shall be furnished on the letter head of the registered person, induplicate, and it shall be executed by the working partner, the Managing Director or the Company Secretary or the Proprietor or by a person duly authorised by such working partner or Board of Directors of such company or proprietor. The bond, wherever required, shall be furnished on non-judicial stamp paper of the value as applicable in the State in which the bond is being furnished.
- (d) **Documents for LUT:** Self-declaration to the effect that the conditions of LUT have been fulfilled shall be accepted unless there is specific information otherwise. That is, self-declaration by the exporter to the effect that he has not been prosecuted should suffice for the purposes of Notification No. 37/2017-C.T., dated 4th October, 2017. Verification, if any, may be *post-facto* basis.
- (e) **Time for acceptance of LUT:** As LUT is a prior requirement for export, including exports to a SEZ developer or a SEZ unit, the LUT should be processed on top most priority. It is clarified that LUT should be accepted within a period of three working days of its receipt along with the self-declaration as stated in para 2(d) above by the exporter. If the LUT is not accepted within a period of three working days from the date of submission, it shall be deemed to be accepted.
- (f) **Bank guarantee:** Since the facility of export under LUT has been extended to all registered persons, bond will be required to be furnished by those persons who have been prosecuted for cases involving an

amount exceeding Rupees two hundred and fifty lakhs. A bond, in all cases, shall be accompanied by a bank guarantee of 15% of the bond amount.

- (g) **Clarification regarding running bond:** The exporters shall furnish a running bond where the bond amount would cover the amount of self-assessed estimated tax liability on the export. The record of such entries shall be furnished to the Central tax officer as and when required.
- (h) **Sealing of containers:** It is prescribed electronic sealing of container under self-sealing procedure from 1st November, 2017 and old system of sealing with bottle seal will continue up to 31st October, 2017.
- (i) **Procure by CT-1:** It is clarified that there is no provision of for issuance of CT-1 form which enable merchant exporters to procure goods without payment of tax in GST regime.
- (j) **Transaction with EOUs:** Supplies from DTA to EOUs, Zero rating is not applicable and supplies to EOUs are taxable like any other supplies. EOUs, to the extent of exports, are eligible for zero rating like any other exporter.
- (k) **Realization of exports proceeds:** Export proceeds to be realized as per RBI guidelines and FEMA Act, 1999. However, export proceeds against specific exports may also be realized in rupees.
- (l) **Jurisdictional officer:** In exercise of the powers conferred by subsection (3) of Section 5 of the CGST Act, it is stated that the LUT/Bond shall be accepted by the jurisdictional Deputy/Assistant Commissioner having jurisdiction over the principal place of business of the exporter. The exporter is at liberty to furnish the LUT/bond before either the Central Tax Authority or State Tax Authority till the administrative mechanism for assigning of taxpayers authority is implemented and it is further decided by the GST Council that all type of exporters are covered under LUT and LUT will suffice for export without payment duty in place of Bond.

10. Procedure of refund of IGST

The exporters are free to avail option of Refund of IGST paid on export of goods under Rule 96 of CGST Rules, 2017 .The refund shall be governed by the provisions of the Section 16 of the IGST Act, 2017. Further, C.B.E. & C., vide its Instruction 15/2017-Cus. has issued certain guidelines for smooth disposal of refund of IGST paid on export goods under Rule 96 of CGST Rules, 2017. The following instructions are issued for the filed formations:—

11. Export General Manifest

Filing of correct Export General Manifest is a must for treating shipping bill or bill of export as a refund claim. Commissioners must ensure that the concerned airlines/shipping lines/carriers file EGM/Export report within prescribed time. Cases which remain in EGM error due to any reason should be followed up to ensure that records are updated at the gateway port, especially for

ICDs. Exporters may be advised that they should follow up with their carriers to ensure that correct EGM/export reports are filed in a timely manner.

12. Details of export supplies in Table 6A of GSTR-1

(1) The details of zero rated supplies declared in Table 6A of return in **Form GSTR-1** are matched electronically with the corresponding details available in Customs Systems as per details provided in shipping bills/bill of export. Thus exporters must file their **GSTR-1** very carefully to ensure that all relevant details match. For their convenience, the details available in the Customs System have been made available for viewing in their ICEGATE login.

(2) Exporters, who have not filed their **GSTR-1** for month of July, 2017, shall file immediately.

(3) For month of August, 2017 and subsequent months, facility of filing **GSTR-1** has not been made available by GSTN at present. In order to facilitate processing of refunds, GSTN is making available a separate utility for filing details in Table 6A of **GSTR-1** on the GSTN web portal. Exporters may be advised to submit the requisite details once GSTN develops the utility.

13. Valid return in Form GSTR-3 or Form GSTR-3B

Filing of valid return in **GSTR-3** or **Form GSTR-3B** is another precondition for considering shipping bill/Bill of export as claim for refund. Exporters may be advised that they must file these returns expeditiously without waiting for the last date, to ensure that their refund is processed in a timely manner.

14. Bank account details

(1) As per Rule 96 of CGST Rules, 2017, the refund is to be credited in the bank account of the applicant mentioned in his registration particulars. In order to ensure smooth processing and payment of refund of IGST paid on exported goods, it has been decided that said refund amount shall be credited to the bank account of the exporter registered with Customs even if it is different from the bank account shown in the GST registration.

(2) Further, as the refund payments are being routed through the PFMS portal, the bank account details need to be verified and validated by PFMS. The status of validation of bank account with PFMS is available in ICES. Exporters may be advised that if the account has not been validated by PFMS, they must get their details corrected in the Customs system so that their bank account gets validated by PFMS.

15. Processing of refund claims

(1) Proper officer of each jurisdiction shall generate a payment scroll of eligible IGST refunds in the same manner as RoSL scrolls are generated. The scroll shall be transmitted electronically to PFMS system for onward payment into their bank accounts. Proper officers may be designated in each Commissionerate, who should be in readiness to start generating refund scrolls from 10-10-2017.

16. Handling of cases under Rule 96(4)(a)

(1) Sub-rule (4)(a) of Rule 96 provides that refund is to be withheld if a request has been received from the Jurisdictional Commissioner in accordance with the provisions of sub-section (10) or sub-section (110) of Section 54 of CGST Act. In such cases, the proper officer of IGST at the Customs station has to intimate to the applicant and necessary communication transmitted to the common portal.

(2) The Commissioner should put in place a mechanism for keeping record of such intimations received from the jurisdictional Commissioner and The necessary communication to the applicant and jurisdictional Commissioner, in respect of claims withheld should be promptly sent or communicate the same to common portal.

17. Exports in violation of the provisions of the Customs Act, 1962

(1) In case where proper officer determines that the goods exported in violation of the provisions of the Customs Act, 1962, IGST refund has to be withheld in terms sub-rule 94(4)(b) of aforesaid Rule 96. So the necessary action in such cases to ensure that IGST refund is withheld should be taken.

18. Additional Procedure for self-sealing

The self-sealing of export procedures were further liberalized vide Circular No. 36/2017-Cus., dated 28th August, 2017 [2017 (353) E.L.T. (T22) which was again clarified by Board Circular No. 37/2017-Cus., dated 20th September, 2017 [2017 (354) E.L.T. (T3)] and additional procedures were innovated.

- (a) The exporters who were availing sealing at their factory premises under the system of supervised factory stuffing, will be automatically entitled for self-sealing procedure. All exporter AEOs will also be eligible for self-sealing. All those exporters who are already operating under the self-sealing procedure need not approach the jurisdiction Customs authorities for the self-sealing permission.
- (b) The permission to self-sealing the export goods from a particular premise, under the revised procedure, once granted shall be valid unless withdrawn by the jurisdictional Principal Commissioner or Commissioner of Customs if non-compliance to law, rules and regulations is noticed. In case the exporter makes a request for a change in the approved premise(s), then the procedure prescribed in Circular 26/2017-Cus. shall be followed, and a fresh permission granted before commencement of self-sealing at the new premises.
- (c) With respect to para 9(v) of the Circular 26/2017-Cus., Principal Commissioners/Commissioners would be required to communicate to Risk Management Division (RMD) of CBEC, the IEC (Importer Exporter Code) of the following class of exporters :
 - (i) exporters newly granted permission for self-sealing;
 - (ii) exporters who were already operating under self-sealing procedure;
 - (iii) exporters who were permitted factory stuffing facility; and
 - (iv) AEOs

- (d) Under the new procedures, the exporter will be obliged to declare the physical serial number of the e-seal at the time of filing the online integrated shipping bill or in the case of manual shipping bill before the container is dispatched for the designated port/ICD/LCS.
- (e) Exporters shall directly procure RFID seals from vendors, conforming to the standard specification mentioned in para 3 below. Since the procedure seeks to enhance integrity of transportation of goods, the exporters will be required to obtain seals directly. They shall provide details such as IEC etc., at the time of purchase for identification as well as for using the standard web application necessary to support an RFID self-sealing ecosystem.
- (f) In case, the RFID seals of the containers are found to be tampered with, then mandatory examination would be carried out by the Customs authorities.

19. Standard Specification of the Seal

C.B.E. & C. Circulars Nos. 36/2017 and 37/2017 present the technical features of the new export procedure for container sealing which are as below:—

- (a) The electronic seal referred to in para 9(vii) of the Circular No. 26/2017-Cus., dated 1-7-2017 shall be an “RFID tamper proof one-time-bolt seal”, each bearing a unique serial number. The exporters shall be responsible for procuring the seals at their own cost for use in self-sealing.
- (b) Each seal be a one-time-bolt-seal bearing a unique serial number and brand of the vendor in the format ABCDXXXX XXXX, where ABCD stands for the brand of the vendor and X 8 digit) is a numerical digit from 0-9.
- (c) The RFID seal shall confirm to ISO 17712:2013(H) and ISO/IEC 18000-6 Class 1 Gen 2 which is globally accepted in industrial applications and can be read with the use of HUF (i.e. 860 MHz to 960 MHz) Reader-Scanners.
- (d) The manufacturer or vendor, as the case may be, shall be in possession of certifications required for conformance of the ISO standard ISO 17712:2013 (H) namely, clause 4, 5 and 6. Before commencement of sales, the vendor shall submit self-certified copies of the above certifications to the Risk Management Division (RMD) and all the ICDs/Ports where he intends to operate along with the unique series of the seals proposed to be offered for sale.

20. Application, Record keeping and Data Retrieval System

The Circular No. 36/2017 has also modified the procedural norms that exporters must follow to be able to use the new procedure, whose chief features are as below:

- (a) It is clarified that the information sought from the exporter in para (vii) of the Circular No. 26/2017-Cus. shall be read as : IEC (Importer

Exporter Code), Shipping Bill Number, Shipping Bill date, e-seal number, Date of sealing, Time of sealing, Destination Customs Station for export, Container Number, Trailer-Truck Number. It is further clarified that the information need not be mounted “in the electronic seal” but tagged to the seal using a ‘web/mobile application’ to be provided by the vendor of the RFID seals. Data once uploaded by the exporter should not be capable of being overwritten or edited.

- (b) All vendors will be required to transmit information in para (a) above to RMD and the respective destination ports/ICDs of export declared by the exporter. The arrangements for transmission of data may be worked out in consultation with the RMD and nodal Customs officer at each ICD/Port.
- (c) All vendors shall be required to make arrangements for reading/scanning of RFID one-time-Bolt seals at the Customs ports ICDs at their own cost, whether through handheld readers or fixed readers.
- (d) The integrity of the RFID seal would be verified by the Customs officer at the port/ICD by using the reader-scanners which are connected to Data Retrieval System of the vendor.
- (e) Since all ICDs/ports where containerized cargo is handled would require reader scanners, Principal Commissioners or Commissioners exercising administrative control over such ports/ICDs shall notify the details of the nodal officers for the smooth operation of this system.
- (f) The transaction history of the self-sealing should be visible to the exporters for their reference.
- (g) The vendor shall also undertake to integrate the information stored on the data retrieval server with ICEGATE at his own cost on a date and manner to be specified by the Directorate General of Systems, New Delhi.

Board has further announced that all vendors who propose to offer RFID Tamper Proof One-Time-Bolt Container Seals to exporters for self-sealing, must submit self-attested Certificates from seal manufacturers to the CBEC before commencing sales. Where the certification is found to comply with the requirements of the ISO standard, the names of such vendors shall be put up on the Board’s website (www.cbec.gov.in) for ease of reference of the trade and field formations. For the ease of reference of the exporters, vendors have been advised to publicize on their website, the name of each port/ICD where they have provided readers.

Considering the difficulties expressed by trade associations in locating vendors of RFID seals, the Board has decided that the date for mandatory self-sealing and use of RFID container seals will be deferred to 1st November, 2017. The earlier practice will continue till such time RFID seals are freely available to exporters and they voluntarily adopt the new self-sealing procedure based on RFID sealing.

Further, the Board vide its Circular No. 41/2017-Cus., dated 30th October, 2017 clarified that since exporters using RFID e-seals backed by application of technology, while the progress made in the coverage of reader network across ports and ICDs is well recognized, but factoring that it may take some time for the field formations to fully set up systems and procedures to handling RFID e-sealed containers as well as receipt of data, it has been decided that mandatory e-sealing for different classes of exporters shall be brought in a phased manner as indicated below:

(1) In respect of all exporters who have been permitted self-sealing facilities under erstwhile procedures and exporters who are AEO's, it would be mandatory to seal their export containers with prescribed RFID e-seal w.e.f. 8th Nov., 2017. Any non-compliance will subject the containers to usual RMS parameters.

(2) In respect of the category of exporters who are availing supervised stuffing at their premises, extent practice of supervised stuffing may continue till 19th November, 2017. With effect from 20th November, 2017, they shall have to switch to RFID e-sealing procedures.

(3) Regarding the exporters who have newly applied to the jurisdictional customs authority for self-sealing permission under Circular 26/2017-Cus., dated 1st July, 2017, they shall commence use of the facility subject to grant of permission and upon adoption of RFID e-sealing.

(4) The applicable date for RFID e-sealing implies that exporters are required to use this procedure from the prescribed date. Any container sealed at the exporters premises before the prescribed date, shall not be required to brought with RFID e-seal.

(5) It is also clarified that those exporters who are in possession of RFID e-seals are at liberty commence availing the facilitative procedures forthwith. It may be recalled that vide Circular 37/2017-Cus., the e-sealing procedure had been made voluntary subject to availability of reader facilities.

(6) As the RFID e-seal based self-sealing procedure has been introduce as a measure of export facilitation, the field formations are advised to guide the exporters and work closely with the private service providers for smooth rill-out of the system.

(7) The procedures in respect of customs stations where readers have not been provided by any vendor so far shall continue till 31st December, 2017, as per existing practice, Board shall take necessary steps to make sure that the readers are made available at such customs stations by 1st January, 2018.

C.B.I. & C, *vide* Circular No. 88/07/2019-GST, dated 1st February, 2019 has amended the Circular No. 8/8/2017 dated 04.10.2017, in view of the amendment carried out in section 2(6) of the IGST Act, 2017 *vide* section 2 of the IGST (Amendment) Act, 2018 as under:

Amended Para 2(k):

Realization of export proceeds in Indian Rupee: Attention is invited to para A (v) Part- I of RBI Master Circular No. 14/2015-16, dated 01st July, 2015

(updated as on 05th November, 2015), which states that “there is no restriction on invoicing of export contracts in Indian Rupees in terms of the Rules, Regulations, Notifications and Directions framed under the Foreign Exchange Management Act, 1999. Further, in terms of Para 2.52 of the Foreign Trade Policy (2015-2020), all export contracts and invoices shall be denominated either in freely convertible currency or Indian rupees but export proceeds shall be realized in freely convertible currency. However, export proceeds against specific exports may also be realized in rupees, provided it is through a freely convertible Vostro account of a non-resident bank situated in any country other than a member country of Asian Clearing Union (ACU) or Nepal or Bhutan”. Further, attention is invited to the amendment to section 2(6) of the IGST Act, 2017 which allows realization of export proceeds of services in INR, wherever allowed by the RBI. Accordingly, it is clarified that the acceptance of LUT for supplies of goods or services to countries outside India or SEZ developer or SEZ unit will be permissible irrespective of whether the payments are made in Indian currency or convertible foreign exchange as long as they are in accordance with the applicable RBI guidelines.

21. Online filling and Issuance of Preferential Certificate of Origin under SAFTA & SAPTA for India's Exports to Nepal

Trade Notice No. 41/2019-20 Dated 12-12-2019

Online filling and Issuance of Preferential Certificate of Origin under SAFTA & SAPTA for India's Exports to Nepal w.e.f. 18th December, 2019

In continuation to Trade Notice 34/2015-2020, dated 19.09.2019, it is informed that the new online platform for issuance of Preferential Certificate of Origin has been live since 19.09.2019. The platform is designed as a single-point access for all FTAs/PTAs, for all designated Certificate of Origin (CoO) issuing agencies and for all export products. The platform is accessible at the following URL: <https://coo.dgft.gov.in>

2. IGFT is working for on-boarding the FTAs/PTAs and the designated issuing agencies. Since 25th September 2019, all CoOs for exports from India to Chile under India Chile PTA are required to be applied and issued through the platform (URL: <https://coo.dgft.gov.in>).

3. Similarly, for exports to Nepal under South Asian Free Trade Area (SAFTA) and SAARC Preferential Trading Arrangement (SAPTA), the Preferential Certificate of Origin shall be applied and issued only from this platform with effect from 18th December 2019. All agencies are required to issue preferential CoO for exports to Nepal under SAFTA and SAPTA through the platform URL: <https://coo.dgft.gov.in>

4. In light of the given cut-off date of 18th December 2019, exporters to Nepal intending to take benefits under SAFTA and SAPTA are requested to register on the new platform immediately.

5. Following points may be taken note of by exporters in regard to the CoO portal/application process:

- (a) Digital Signature would be required for the purpose of electronic verification. The digital signature would be the same as used in other DGFT applications;
- (b) The digital signature to be used may be Class II or Class III and should have the IEC number of the firm embedded in the DSC;
- (c) On registration at the portal, a password would be sent on the email link to the IEC holder. In case the IEC holder desires to update email on which communication is to be done with the portal, the same may be done by using the 'Online IEC application' module on the DGFT website.
- (d) Once registration is done, all directors'/partners' details and branch details would be auto-populated in the certificate of origin as available in the DGFT-IEC database. Please ensure that latest updated IiC details are available in the DGFTIEC database and necessary steps taken to modify the IEC details online, whenever required;
- (e) For further guidance, registration and application help manual & FAQs may be seen on the main page of the CoO platform.
- (f) For any assistance you may utilize any of the following channels —
 - (i) Raise a complaint/suggestion ticket through Contact@DGFT service available on the DGFT website.
 - (ii) Call the Helpline at the Toll Free number 1800-111-550
 - (iii) Drop an email to coo-dgft@gov.in

22. Standard Operating Procedure (SOP) to expedite the verification for IGST refunds

Several cases of monetisation of credit fraudulently obtained or ineligible credit through refund of Integrated Goods & Service Tax (IGST) on exports of goods have been detected in past few months. On verification, several such exporters were found to be non-existent in a number of cases. In all these cases it has been found that the Input Tax Credit (ITC) was taken by the exporters on the basis of fake invoices and IGST on exports was paid using such ITC.

To mitigate the risk, the Board has taken measures to apply stringent risk parameters-based checks driven by rigorous data analytics and Artificial Intelligence tools based on which certain exporters are taken up for further verification. Overall, in a broader time frame the percentage of such exporters selected for verification is a small fraction of the total number of exporters claiming refunds. The refund scrolls in such cases are kept in abeyance till the verification report in respect of such cases is received from the field formations. Further, the export consignments/shipments of concerned exporters are subjected to 100 % examination at the customs port.

While the verifications are caused to mitigate risk, it is necessary that genuine exporters do not face any hardship. In this context it is advised that exporters whose scrolls have been kept in abeyance for verification would be informed at the earliest possible either by the jurisdictional CGST or by Customs. To expedite the verification, the exporters on being informed in this regard or on

their own volition should fill in information in the format attached as Annexure 'A' to this Circular and submit the same to their jurisdictional CGST authorities for verification by them. If required, the jurisdictional authority may seek further additional information for verification. However, the jurisdictional authorities must adhere to timelines prescribed for verification.

Verification shall be completed by jurisdiction CGST office within 14 working days of furnishing of information in proforma by the exporter. If the verification is not completed within this period, the jurisdiction officer will bring it to the notice of a nodal cell to be constituted in the jurisdictional Pr. Chief Commissioner/Chief Commissioner Office.

After a period of 14 working days from the date of submission of details in the prescribed format, the exporter may also escalate the matter to the Jurisdictional Pr. Chief Commissioner/Chief Commissioner of Central Tax by sending an email to the Chief Commissioner concerned (email IDs of jurisdictional Chief Commissioners are in Annexure B).

The Jurisdictional Pr. Chief Commissioner/Chief Commissioner of Central Tax should take appropriate action to get the verification completed within next 7 working days.

In case, any refund remains pending for more than one month, the exporter may register his grievance at www.cbic.gov.in/issue by giving all relevant details like GSTIN, IEC, Shipping Bill No., Port of Export & CGST formation where the details in prescribed format had been submitted etc.. All such grievances shall be examined by a Committee headed by Member GST, CBIC for resolution of the issue.

(Circular No. 131/I/2020-GST, dated 25th January'2020)

* * *

23. Export to Nepal under electronic cargo tracking system

Export of goods or Services to Nepal will be treated as zero-rated supply irrespective of the fact that export realization is received in Indian currency.

It is pertinent to mentioned the Government vide Notification No. 42/2017-I.T. (Rate), dated 27th October, 2017 made the amendment in the Notification No. 9/2017-I.T. (Rate), dated 28th June, 2017 whereby a new entry have been inserted in the exemption notification, namely, Supply of services having place of supply in Nepal, against payment in Indian Rupees. The supply of Services to Nepal shall be treated as Export of Services irrespective of realization of payment in Indian Rupee.

23.1 Treatment of Exports to Nepal

As per the provisions of IGST Act, 2017 supplies of goods and services for exports are to be treated as "Zero rated supplies" implying that registered taxable person exporting goods and services shall follow the procedure of export under bond or letter of undertaking without payment of integrated tax and claim refund of unutilized input tax credit or on payment of integrated tax and claim refund of the tax so paid on goods and services exported.

The above provisions also are applicable to Nepal and Bhutan for exporting goods and services. A registered person making export of goods and services to Nepal and Bhutan shall follow either of the following options, namely:—

- (a) he may supply goods or services or both under bond or Letter of Undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilized Input Tax Credit; or
- (b) he may supply goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder”.

23.2 Transhipment of Cargo to Nepal under Electronic Cargo

23.3 Tracking System

C.B.I & C, vide its Notification No. 68/2019-Customs (N.T.) dated 39th September, 2019 as amended by Notification No. 64/2020-Cus. (N. T.), dated 31-7-2020 has introduced the Transhipment of Cargo to Nepal under Electronic Cargo Tracking System, 2020.

23.4 Application

These regulations shall apply to the transhipment of cargo from the ports of Kolkata, Haldia and Visakhapatnam in India to Birgunj in Nepal by rail and from the ports of Kolkata, Haldia and Visakhapatnam to Batnaha in India by rail and from Batnaha to Biratnagar in Nepal by road.

23.5 Registration

(1) The authorised carrier shall apply to the jurisdictional Principal Commissioner or Commissioner of Customs for registration in the Form-II, appended to these regulations.

(2) Where the jurisdictional Principal Commissioner or Commissioner of Customs is satisfied with the information provided by the applicant in Form-II, he shall approve the registration of such applicant for transacting business under these regulations for a period of three years from the date of issue of such registration.

(3) The jurisdictional Principal Commissioner or Commissioner of Customs shall review the registration before the expiry of the initial period of registration of three years and may extend such registration to a further period of five years at a time and in case of an authorised economic operator for a period of ten years.

(4) An authorised carrier registered under regulation 3 of the Sea Cargo Manifest and Transhipment Regulations, 2018, shall be deemed to be registered under these regulations.”

23.6 Declaration of transshipment

The authorised carrier shall,—

- (a) declare the cargo destined to Nepal and the port of final discharge in Nepal in the arrival manifest, if he is required to do so as per the Sea Cargo Manifest and Transhipment Regulations, 2018;”

- (b) undertake to transport the goods by rail or rail-cum-road till they reach the port of final discharge in Nepal;
- (c) directly procure ECTS seals at their own cost from the managed service provider;
- (d) execute a general bond for an amount as directed by the proper officer;
- (e) file a declaration of transhipment, in triplicate, in the Form appended to these regulations before the proper officer, along with a copy of the commercial invoice.

23.7 Permission to load goods

No person-in-charge of a conveyance shall permit the loading of goods destined to Nepal, onto a railway vehicle, unless the declaration of transhipment relating to them has been approved by the proper officer.

23.8 Permission for transhipment

- (1) where pursuant to the approval referred to in regulation 5, goods have been loaded on a railway vehicle, the proper officer shall,—
 - (a) ensure that the cargo is sealed securely with the ECTS seals and related information is entered into the associated web-application;
 - (b) endorse all the three copies of the declaration of transhipment with the ECTS seal number and retain a copy therefrom and hand over the remaining two copies of the declaration of transhipment to the person in charge of the railway vehicle for being carried along with the goods.
- (2) The authorised carrier shall submit a copy of the endorsed declaration of transhipment at the land customs station of exit from India and the other copy shall be handed over to the customs at the port of final discharge in Nepal.

23.9 Arrival at the land customs station

- (1) The containers which are affixed with an ECTS seal shall be halted at the land customs station of exit in India for unsealing by the proper officer.
- (2) The proper officer shall, before unsealing, check the integrity of the seal using web application and if no alert of unauthorized unsealing is found, he shall remove the ECTS seal.
- (3) In case the ECTS indicates an alert about any unauthorized unsealing, the proper officer shall make due verification of the goods to check whether the goods are in accordance with the declaration of transhipment and shall allow the transhipment to Nepal, upon being satisfied that there is no irregularity.
- (4) The proper officer shall make an endorsement of unsealing on both the copies of declaration of Transhipment, retain one copy, and shall hand over the other to the authorised carrier for onward submission to Nepal Customs.
- (5) The person-in-charge of the conveyance shall not commence onward journey to Nepal unless the proper officer has permitted him so to do by an order endorsed on the declaration of transhipment.

23.10 Discharge of bond

(1) The proper officer shall extract trip reports from the ECTS web application as proof of completion of transhipment.

(2) The reconciliation of transhipment of consignments shall be carried out on the basis of trip report, by the proper officer at the Ports of Kolkata, Haldia or Visakhapatnam, as the case may be, and the general bond submitted by the authorised carrier will be re-credited or discharged.

(3) File a declaration of transhipment, in triplicate, in the Form-I appended to these regulations before the proper officer, along with a copy of the commercial invoice.

23.11 Customs procedure for export cargo to Nepal

The Customs procedure for export cargo in containers and closed bodied trucks from ICDs/CFSs through Land Customs Stations (LCSs) has been clarified Vide C.B.I. & C Circular No. 52/2017-Customs, dated 22-12-2017. The Board has taken into consideration the bi-lateral project being implemented under the auspices of the Asian Development Bank, pursuant to the Memorandum of Intent signed between India & Nepal dated 6'th June'2017. Under the project, transit cargo from Kolkata to Nepal and vice versa shall be transported under Electronic Cargo Tracking System (ECTS). As a part of the project, facilities for locking/unlocking ECTS seals will be provided at Kolkata Port and at the border points of Raxaul, Jogbani and Sonauli, Commissioner of Customs, Kolkata (Port) shall be issuing a public notice regarding the procedure to be followed for ECTS services.

Further, the Board has decided to leverage the introduction of new technology being provided under “Managed Service Provider” system to monitor and facilitate transhipment of consignments sealed at ICDs/CFSs and destined for export to Nepal or Bangladesh. Exporters opting to avail the facility for export of goods to Bangladesh or Nepal may do so through all ICDs and for export of goods by road through the specified LCS namely Raxaul, Jogbnai, Sonauli, Nepalgunj, Panitanki, Petrapole, Gede, Ghojadanga and Mahadipur.

The exporters will be required to bring goods meant for export to the designated ICD/CFSs, and file a shipping Bill on EDI. The Shipping Bill shall be assessed as per EDI/RMS procedures. Three copies of the shipping Bill shall be printed (including one transference copy). The original of the Shipping Bill shall be retained by the ICD while one copy (transference copy) shall be carried with the cargo by the driver in a sealed envelope to the LCS of exit. The triplicate copy shall be retained by the exporter. The goods to be exported shall be stuffed in a closed body truck or container, as is convenient to the exporter, and sealed with ECTS seal. The ECTS seal number shall be recorded in all the copies of shipping bill. The custodians shall be responsible for obtaining the ECTS seal from the MSP managing the transit project for Nepal cargo for this purpose.

At the LCS, the transference copy of Shipping Bill shall be submitted by the driver to the proper officer of Customs. The Customs Officer shall verify the trip report through the LCTS web application and where no alert of any unauthorized

un-sealing is found, he shall record the same in the transference copy of the Shipping Bill and put his name, signature, date, and retain the same at the LCS for record. The officer shall remove the ECTS e-seal and allow the movement of the container/close body truck, as the case may be, across the border for export. Simultaneously, the originating ICDS/CFS shall view the same trip report on the ECTS web application and where no alert of any unauthorized unsealing is found, he shall take a print of the same and attach it with the original Shipping Bill along with his name, signature and date.

In case the trip report indicates any unauthorized un-sealing, the matter shall be brought to the notice of the Deputy/Assistant Commissioner/Superintendent of Customs and such container/truck shall be subjected to 100% examination. If any deviation from the Shipping Bill or invoice is detected during examination, adjudication proceedings may be initiated. The Assistant/Deputy Commissioner of Customs at the originating ICD/CFS may take appropriate action under the Customs Act including raising a demand on the custodian, equal to the export duty, drawback and/or any other export incentives, in respect of the export goods, in addition to any other action that is required to be taken against the exporter. The matter shall also be reported to the jurisdictional Commissioner of GST for recovery of taxes.

24. C.B.I & C Clarification on Export Services

Clarification relating to export of services – condition (v) of section 2(6) of the IGST Act, 2017-Reg. Circular No. 161/17/2021 GST, dated 20.09.2021

Various representations have been received citing ambiguity caused in interpretation of the Explanation 1 under section 8 of the IGST Act 2017 in relation to condition (v) of export of services as mentioned in sub-section (6) of the section 2 of the IGST Act 2017. Doubts have been raised whether the supply of service by a subsidiary/sister concern/group concern, etc. of a foreign company in India, which is incorporated under the laws in India, to the foreign company incorporated under laws of a country outside India, will hit by condition (v) of sub-section (6) of section 2 of IGST Act.

2. The matter has been examined. In view of the difficulties being faced by the trade and industry and to ensure uniformity in the implementation of the provisions of the law across field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”), hereby clarifies the issue in succeeding paragraphs.

Relevant legal provisions

3.1 The export of services has been defined in sub-section (6) of the section 2 of the IGST Act 2017 as under:—

- (6) “export of services” means the supply of any service when,
 - (i) the supplier of service is located in India;
 - (ii) the recipient of service is located outside India;
 - (iii) the place of supply of service is outside India;

- (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange; and
- (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section-8

3.2 Explanation 1 of the Section 8 of the IGST Act provides for the conditions wherein establishments of a person would be treated as establishments of distinct persons, which is reproduced as under

Explanation 1.—For the purposes of this Act, where a person has,

- (i) an establishment in India and any other establishment outside India;
- (ii) an establishment in a State or Union territory and any other establishment outside that State or Union territory; or
- (iii) an establishment in a State or Union territory and any other establishment being a business vertical registered within that State or Union territory, then such establishments shall be treated as establishments of distinct persons

As per the above *Explanation*, an establishment of a person in India and another establishment of the said person outside India are considered as establishments of distinct persons.

3.3 Reference is also invited to the Explanation 2 of Section 8 of IGST Act, which is reproduced below:

Explanation 2.—A person carrying on a business through a branch or an agency or a representational office in any territory shall be treated as having an establishment in that territory.

3.4 Reference is also invited to the definition of “person” as provided under CGST Act 2017, made applicable to IGST Act vide section 2(24) of IGST Act 2017. “Person” has been defined under sub-section (84) of the section 2 of the CGST Act 2017, as under

- (84) “person” includes—
 - (a) an individual;
 - (b) a Hindu Undivided Family;
 - (c) a company;
 - (d) a firm;
 - (e) a Limited Liability Partnership;
 - (f) an association of persons or a body of individuals, whether incorporated or not, in India or outside India;
 - (g) any corporation established by or under any Central Act, State Act or Provincial Act or a Government company as defined in clause (45) of section 2 of the Companies Act, 2013;
 - (h) any body corporate incorporated by or under the laws of a country outside India;
 - (i) a co-operative society registered under any law relating to co-operative societies;

- (j) a local authority;
- (k) Central Government or a State Government;
- (l) society as defined under the Societies Registration Act, 1860;
- (m) trust; and
- (n) every artificial juridical person, not falling within any of the above.

3.5 The definitions of company and foreign company have been provided under section 2 of Companies Act 2013, as under:

(20) “company” means a company incorporated under this Act or under any previous company law;

(42) “foreign company” means any company or body corporate incorporated outside India which—(a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and (b) conducts any business activity in India in any other manner.

Analysis of the issue:

4.1 Clause (v) of sub-section (6) of section 2 of IGST Act, which defines “export of services”, places a condition that the services provided by one establishment of a person to another establishment of the same person, considered as establishments of distinct persons as per Explanation 1 of section 8 of IGST Act, cannot be treated as export. In other words, any supply of services by an establishment of a foreign company in India to any other establishment of the said foreign company outside India will not be covered under definition of export of services.

4.2 Further, perusal of the *Explanation 2* to section 8 of the IGST Act suggests that if a foreign company is conducting business in India through a branch or an agency or a representational office, then the said branch or agency or representational office of the foreign company, located in India, shall be treated as establishment of the said foreign company in India. Similarly, if any company incorporated in India, is operating through a branch or an agency or a representational office in any country outside India, then that branch or agency or representational office shall be treated as the establishment of the said company in the said country

4.3 In view of the above, it can be stated that supply of services made by a branch or an agency or representational office of a foreign company, not incorporated in India, to any establishment of the said foreign company outside India, shall be treated as supply between establishments of distinct persons and shall not be considered as “export of services” in view of condition (v) of sub-section (6) of section 2 of IGST Act. Similarly, any supply of service by a company incorporated in India to its branch or agency or representational office, located in any other country and not incorporated under the laws of the said country, shall also be considered as supply between establishments of distinct persons and cannot be treated as export of services.

4.4 From the perusal of the definition of “person” under sub-section (84) of section 2 of the CGST Act, 2017 and the definitions of “company” and “foreign

company” under Section 2 of the Companies Act, 2013, it is observed that a company incorporated in India and a foreign company incorporated outside India, are separate “person” under the provisions of CGST Act and accordingly, are separate legal entities. Thus, a subsidiary/sister concern/group concern of any foreign company which is incorporated in India, then the said company incorporated in India will be considered as a separate “person” under the provisions of CGST Act and accordingly, would be considered as a separate legal entity than the foreign company

Clarification

5.1 In view of the above, it is clarified that a company incorporated in India and a body corporate incorporated by or under the laws of a country outside India, which is also referred to as foreign company under Companies Act, are separate persons under CGST Act, and thus are separate legal entities. Accordingly, these two separate persons would not be considered as “merely establishments of a distinct person in accordance with Explanation 1 in section 8”.

5.2 Therefore, supply of services by a subsidiary/sister concern/group concern, etc. of a foreign company, which is incorporated in India under the Companies Act, 2013 (and thus qualifies as a ‘company’ in India as per Companies Act), to the establishments of the said foreign company located outside India (incorporated outside India), would not be barred by the condition (v) of the sub-section (6) of the section 2 of the IGST Act 2017 for being considered as export of services, as it would not be treated as supply between merely establishments of distinct persons under Explanation 1 of section 8 of IGST Act 2017 . Similarly, the supply from a company incorporated in India to its related establishments outside India, which are incorporated under the laws outside India, would not be treated as supply to merely establishments of distinct person under Explanation 1 of section 8 of IGST Act 2017. Such supplies, therefore, would qualify as ‘export of services’, subject to fulfilment of other conditions as provided under sub-section (6) of section 2 of IGST Act.

25. CBIC notifies list of goods which may not be exported on payment of integrated tax and on which the supplier of such goods or services may claim the refund of tax so paid

CBIC vide *Notification No. 01/2023-Integrated Tax, dated July 31, 2023*, has issued the list of goods that are not eligible for export on payment of integrated tax. In other words, the goods and services other than those mentioned in the notification can be exported on payment of integrated tax and the supplier of such goods or services may claim the refund of tax so paid.

| Sl. No. | Chapter Heading/ Sub-Heading/ Tariff Item | Description of Goods. |
|------------|---|-----------------------|
| (1) | (2) | (3) |
| 01 | 2106 90 20 | Pan-masala |

| Sl. No. | Chapter Heading/ Sub-Heading/ Tariff Item | Description of Goods. |
|--------------------|--|---|
| (1) | (2) | (3) |
| 02 | 2401 | Unmanufactured tobacco (without lime tube) – bearing a brand name |
| 03 | 2401 | Unmanufactured tobacco (with lime tube) – bearing a brand name |
| 04 | 2401 30 00 | Tobacco refuse, bearing a brand name |
| 05 | 2403 11 10 | 'Hookah' or 'gudaku' tobacco bearing a brand name |
| 06 | 2403 11 10 | Tobacco used for smoking 'hookah' or 'chilam' commonly known as 'hookah' tobacco or 'gudaku' not bearing a brand name |
| 07 | 2403 11 90 | Other water pipe smoking tobacco not bearing a brand name. |
| 08 | 2403 19 10 | Smoking mixtures for pipes and cigarettes |
| 09 | 2403 19 90 | Other smoking tobacco bearing a brand name |
| 10 | 2403 19 90 | Other smoking tobacco not bearing a brand name |
| 11 | 2403 91 00 | "Homogenised" or "reconstituted" tobacco, bearing a brand name |
| 12 | 2403 99 10 | Chewing tobacco (without lime tube) |
| 13 | 2403 99 10 | Chewing tobacco (with lime tube) |
| 14 | 2403 99 10 | Filter khaini |
| 15 | 2403 99 20 | Preparations containing chewing tobacco |
| 16 | 2403 99 30 | Jarda scented tobacco |
| 17 | 2403 99 40 | Snuff |
| 18 | 2403 99 50 | Preparations containing snuff |
| 19 | 2403 99 60 | Tobacco extracts and essence bearing a brand name |
| 20 | 2403 99 60 | Tobacco extracts and essence not bearing a brand Name |
| 21 | 2403 99 70 | Cut tobacco |
| 22 | 2403 99 90 | Pan masala containing tobacco 'Gutkha' |
| 23 | 2403 99 90 | All goods, other than pan masala containing tobacco 'gutkha', bearing a brand name |
| 24 | 3301 24 00, 3301 25 10, 3301 25 20, | Following essential oils other than those of citrus fruit namely: - (a) Of peppermint (<i>Mentha piperita</i>); |
| 25 | 3301 25 30, 3301 25 40, 3301 25 90 | (b) Of other mints: Spearmint oil (ex- <i>mentha spicata</i>), Water mint-oil (ex- <i>mentha aquatic</i>), Horsemint oil (ex- <i>mentha sylvestris</i>), Bergamot oil (ex- <i>mentha citrata</i>), <i>Mentha arvensis</i> |

Explanation.—(i) In this Table, “tariff item”, “sub-heading”, “heading” and “chapter” shall mean respectively a tariff item, subheading, heading and chapters as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).

(ii) The rules for the interpretation of the First Schedule to the said Customs Tariff Act, 1975 (51 of 1975), including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this notification.

(iii) For the purposes of this notification, the phrase “brand name” means brand name or trade name, whether registered or not, that is to say, a name or a mark, such as symbol, monogram, label, signature or invented word or writing which is used in relation to such specified goods for the purpose of indicating, or so as to indicate a connection in the course of trade between such specified goods and some person using such name or mark with or without any indication of the identity of that person.

The notification is effective from October 1, 2023.

26. Case Law

Sale of goods from Duty free shops located at International Airports constitutes ‘export’:

[*Sandeep Patil v Union of India* reported in 2019(31) G.S.T.L.398 (Bom)]

The assessee sells goods to international passengers from duty free shops (DFS) situated in international airport at Mumbai. Such goods are mainly imported or procured from SEZ units in India and are sold before they cross customs barrier. The assessee had challenged the order passed by the Dy. Commissioner denying the refund of ITC on accumulated on account of services received by duty free shops at the airport.

The High Court observed that export means ‘taking goods out of India to a place outside India’. Supply by assessee from DFS to the outbound passenger constitutes export. Warehoused goods supplied before clearance for home consumption is neither supply of goods nor supply of services. Sales from DFS to arriving passengers are sales from the customs area as the goods have neither crossed customs frontier nor cleared for home consumption by DFS and, hence, customs duty and IGST are not payable by DFS. The High Court, thus, sets aside the order passed by the Dy. Commissioner and held that the sale of goods from DFS located at International Airports constitutes ‘export of goods’ and, hence, assessee is entitled to get refund of input tax credit.

* * *

Accommodation services provided to SEZ units are to be treated as ‘zero rated supplies’: Advance Ruling Authority –GST.

[*Carnation Hotels (P.) Ltd., In re* 2019 (29) GSTL.832 (AAR-Karnataka)]

The applicant having its registered office in New Delhi is proposing to operate hotels and rent out the rooms to the employees of SEZ units. It has sought an Advance Ruling to determine whether the accommodation services rendered by the applicant to SEZ units can be treated as ‘zero rated supplies’ under GST?

Supply of goods or services or both to a SEZ Developer or SEZ Unit are treated as ‘Zero Rated Supplies’ under GST. Such supplies of goods or services or both shall be treated as supplies to SEZ Developer/SEZ unit only when those are used towards authorised operations. If the hotel or accommodation services are received by SEZ developer or SEZ unit for authorized operations, as endorsed by the specified officer of the zone, the benefit of zero rated supply shall be available to the supplier. Therefore, accommodation services supplied by the applicant to SEZ units are to be treated as ‘zero rated supplies’ under GST.

* * *

Refund of IGST on exported goods couldn't be withheld due to excess claim of duty drawback: Gujarat High Court

[*Amit Cotton Industries v Principal Commissioner of Customs* reported in 2019 (029) GSTL.200 (Guj)]

The applicant was a registered person who was running a cotton ginning mill. It exported its goods and claimed refund of the IGST paid in respect of such goods. The revenue authorities held that applicant was not entitled to refund of IGST paid on goods exported as it had availed of higher duty drawback in respect of those goods. The applicant had filed writ petition to sought sanction of refund of IGST paid for exported goods.

The High Court observed that as per the CGST Rules, 2017 shipping bill filed by the assessee would deemed to be refund application of IGST paid for goods exported out of India. Further, refund could be withheld only when request was received by the jurisdictional Commissioner regarding the same or when the goods were exported in violation of the Customs Act, 1962 as determined by proper officer of Customs. There was neither any provision nor any circular or instruction under GST law which would restrict IGST refund for reason that higher rate of drawback was claimed. The High Court held that the applicant was entitled to claim IGST refund in respect of goods exported and directed revenue authorities to immediately sanction the refund amount along with 7 per cent interest from date of shipping bills till date of actual refund.

* * *

Supplies to SEZ Developer or SEZ unit if not used in authorised operation are not covered under ‘zero rated supplies: AAR-GST

The Authority for Advance Ruling Under GST, Karnataka, IN RE: *Poppy Dorothy Noel* 2019 (30) G.S.T.L. 129 (A.A.R. - GST)

Accommodation services - Services to SEZ units but rendered outside SEZ Zone - Provisions in Section 7(5)(b) of Integrated Goods and Services Tax Act, 2017 overrides provisions in Section 12(3)(c) ibid - Transaction an inter-State supply of services, provided that supply of services made to SEZ unit was an authorized operation under Special Economic Zones Act, 2005 - In terms of Circular No. 2/2014, dated 25-7-2014 issued by Development Commissioner, Office of Zonal Development Commissioner, Kerala and Karnataka Special Economic Zones accommodation services added to list of services to enable SEZ units to avail Service Tax benefits for their authorized operation - If authorized

operations, then it is covered under “zero-rated supplies” and if not authorised operations, then it would be not covered under “zero-rated supplies” and liable to tax at 18% IGST with place of supply being provision of such services - Sections 7(5)(b) and 16(1) of Integrated Goods and Services Tax Act, 2017.

* * *

Supplies to SEZ are Deemed export, which is equivalent to Zero-rated supply: Karnataka High Court.

In the High Court of Kerala, in the case of *Lalitha Muraleedharan v Range Forest Officer*, reported in 2020(34) G.S.T.L.102 (Ker.)

SEZ - Supply to SEZ - Deemed export - Zero-rated supply – Exporter of sandalwood products in Tamil Nadu purchasing sandalwood in e-auction from Forest Department in Kerala - GST being destination based tax, therefore, tax finally payable where goods and services are consumed - Petitioner upon completion of other sale conditions although receives the sandalwood logs at Marayoor Forest Department depot, Kerala, acknowledgment of goods there not results in termination of movement of goods but results in further movement of goods at the hands of recipient to SEZ - Accordingly actual place of supply by plain interpretation of Section 10(1) of Integrated Goods and Services Tax Act, 2017 within SEZ in Madras, State of Tamil Nadu, but not in State of Kerala - Subject supply comes as inter-State movement of goods to SEZ outside the State of Kerala and subject transaction to be treated as a ‘Zero-rated supply’ in terms of Section 16(1)(b) ibid and at par with physical export-IGST not payable.

Chapter 34

Deemed Exports

Synopsis

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1. Meaning of Deemed Exports

“Exports” means supplies of goods out of India to a place outside India and the objective is to earn foreign exchange. “Deemed Exports” means the movement of goods within the country and does not leave the country, however, it helps in import substitution, thereby saving precious foreign exchange. Therefore, the Government is giving the equal importance to deemed exports like physical exports as both are essential ingredients of economic development of the country.

2. Provision of Deemed Exports under Foreign Trade Policy

The term “Deemed Exports” has been defined under Chapter 7 of the Foreign Trade Policy 2015-2020 as ‘transactions in which goods supplied do not leave country, and payment for such supplies is received either in Indian rupees or in free foreign exchange. Supply of goods as specified in Paragraph 7.02 shall be regarded as “Deemed Exports” provided goods are manufactured in India’.

Chapter 7.02 of the Foreign Trade Policy has prescribed that the following categories of supply of goods by manufacturer and supply by main/sub-contractors shall be regarded as “Deemed Exports”.

- Supply of goods against Advance Authorisation/Advance Authorisation for annual requirement/DFIA;
- Supply of goods to EOU/STP/EHTP/BTP;
- Supply of capital goods against EPCG Authorisation;
- Supply of marine freight containers by 100% EOU (Domestic freight containers-manufacturers) provided said containers are exported out of India within 6 months or such further period as permitted by customs;

- (e) Supply of goods to projects financed by multilateral or bilateral Agencies/Funds as notified by Department of Economic Affairs (DEA), MoF, where legal agreements provide for tender evaluation without including customs duty.
- (f) Supply of goods to any project or supply of good required for setting up of any mega power project.
- (g) Supply of goods to United Nations or International Organizations for their official use or supplied to the projects financed by the said United Nations or an International organization approved by Government of India.
- (h) Supply of goods to nuclear power projects.

3. Benefits for Deemed Exports

There are three types of deemed export benefits in terms of 7.03 of the FTP-2015-2020 in respect of manufacture and supply of goods, qualifying as deemed exports, subject to terms and conditions as given in HBP and ANF-7A:

- (a) Advance Authorisation/Advance Authorisation for annual requirement/ Duty free Replenishment certificates (DFIA).
- (b) Deemed Exports Drawback.
- (c) Refund of terminal excise duty, if exemption is not available.

The above cited benefits are available to the deemed exports suppliers subject to fulfilment of terms and conditions as per Chapter 7 of FTP-2015-2020, the advance authorization is to be claimed from the Regional Authorities (DGFT) by the Supplier. In case of deemed exports drawback or refund of terminal excise duty may be claimed by recipient from the Development Commissioner as per terms & conditions under para 7.05 to 7.07 of the Foreign Trade Policy-2015-2020.

4. Deemed exports benefits on specified supplies

The deemed exports benefits on specified supplies have been prescribed at para 7.08 of the FTP 2015-2020 as follows:

- (i) Deemed export benefits shall be available for supplies of ‘Cement’ under Para 7.02(e) only.
- (ii) Deemed export benefit shall be available on supply of “steel” as an inputs to Advance Authorization/Annual Advance Authorization/DFIA holder/an EOU and to multilateral/bilateral funded Agencies.
- (iii) Deemed export benefit shall be available on supply of “Fuel” provided supplies are made to project listed for petroleum operations in the Customs Notification No. 12/2012-Cus., dated 17-3-2012/EOUs/ Advance Authorisation holder/Annual Advance Authorisation holder.

5. Deemed Exports under GST

Section 2(39) of the CGST Act, 2017 defines; “deemed exports” means such supplies of goods as may be notified under Section 147;

Section 147 of CGST Act, 2017; the Government may, on the recommendations of the Council, notify certain supplies of goods as deemed exports, where goods supplied do not leave India, and payment for such supplies is received either in Indian rupees or in convertible foreign exchange, if such goods are manufactured in India.

C.B.E. & C. has issued the Notification in respect of “Deemed Exports” for treatment of supplies of goods as deemed exports and procedure of refund of tax paid on such goods.

The Central Government, on the recommendations of the Council, hereby notifies the following supplies of goods as deemed exports, namely:—

1. Supply of goods by a registered person against Advance Authorisation.
2. Supply of capital goods by a registered person against Export Promotion Capital Goods Authorisation.
3. Supply of goods by a registered person to Export Oriented Unit.
4. Supply of gold by a bank or Public Sector Undertaking specified in the Notification No. 50/207-Cus., dated 30th June, 2017 (as amended) against Advance Authorisation.

(Refer Notification No. 48/2017-CT, dated 18th October, 2017)

6. Documents for claiming Deemed export Refund

Further, it is notified that the supplier of deemed export supplies has to produce the following documents as evidence for claiming refund under Rule 89(2)(g) of the CGST Rules, 2017.

1. Acknowledgement by the jurisdictional Tax officer of the Advance Authorisation holder or Export Promotion Capital Goods Authorisation holder, as the case may be, that the said deemed export supplies have been received by the said Advance Authorisation or Export Promotion Capital Goods Authorisation holder, or a copy of the tax invoice under which such supplies have been made by the supplier, duly signed by the recipient Export Oriented Unit that said deemed export supplies have been received by it.
2. An undertaking by the recipient of deemed export supplies that no input tax credit on such supplies has been availed of by him.
3. An undertaking by the recipient of deemed export supplies that he shall not claim the refund in respect of such supplies and the supplier may claim the refund.

(Refer Notification No. 49/2017-C.T., dated 18th October, 2017)

7. Manner of filing Refund Application

The Government *vide* Notification No. 47/2017-CT, dated 18th October, 2017 has amended CGST Rules 89 with regard to manner of filing application for refund of GST and amendment of **GST RFD-01**. There are two option of

filing application in respect of supplies regarded as deemed exports, the application of refund may be filed by:

- (a) the recipient of deemed export supplies; or
- (b) the supplier of deemed export supplies in cases where the recipient does not avail of input tax credit on such supplies and furnishes an undertaking to the effect that the supplier may claim the refund.

8. Procedure of Supplies of goods from DTA to EOU/EHTP/STP/BTP Unit

The GST Council has been decided that supplies of goods by a registered person to EOU/EHTP/STP/BTP, would be treated as deemed export under Section 147 of the CGST Act, 2017 and refund of tax paid on such supplies can be claimed either by the recipient or supplier of such supplies under Rule 89 of the CGST Rules, 2017. Accordingly, the Government vide it's Circular No. 14/14/2017-GST, dated 6th November, 2017 has prescribed procedure regarding procurement of supplies of goods from DTA by EOU/EHTP/STP/BTP Units. The details of procedure as under:

- (i) The recipient EOU/EHTP/STP/BTP unit shall give prior intimation in a prescribed proforma in "Form-A" bearing a running serial number containing the goods to be produced, as pre-approved by the Development Commissioner and the details of the supplier before such deemed export supplies are made. The said intimation shall be given to—
 - (a) the registered supplier;
 - (b) the jurisdictional GST Officer in charge of such registered supplier; and
 - (c) its jurisdictional GST officer.
- (ii) The registered supplier thereafter will supply goods under tax invoice to the recipient EOU/EHTP/STP/BTP unit.
- (iii) On receipt of such supplies, the EOU/EHTP/STP/BTP unit shall endorse the tax invoice and send a copy of the endorsed tax invoice to -
 - (a) the registered supplier,
 - (b) the jurisdictional GST officer in charge of such registered supplier; and
 - (c) its jurisdictional GST officer.
- (iv) The endorsed tax invoice will be considered as proof of deemed export supplies by the registered person to EOU/EHTP/STP/BTP unit.
- (v) The recipient EOU/EHTP/STP/BTP unit shall maintain records of such deemed export supplies in digital form, based upon data elements contained in "Form-B". The software for maintenance of digital records shall incorporate the feature of audit trail. While the data elements contained in the Form-B are mandatory, the recipient units will be free to add or continue with any additional data fields, as per their commercial requirements. All recipient units are required to enter data accurately and

immediately upon the goods being received in, utilized by or removed from the said unit. The digital records should be kept updated, accurate, complete and available at the said unit at all times for verification by the proper officer, whenever required. A digital copy of Form-B containing transactions for the month, shall be provided to the jurisdictional GST officer, each month (by the 10th of month) in a CD or Pen drive, as convenient to the said unit.

The above procedure and safeguards are in addition to the terms and conditions to be adhered to by a EOU/EHTP/STP/BTP unit in terms of the Foreign Trade Policy, 2015-2020 and the duty exemption notification being availed by such unit.

9. Deemed Export obligation

Deemed Export obligation: Deemed exports stipulated under Notification No. 48/2017-C.T., dated 18th October, 2017, wherein only physical exports were to be considered for fulfilment of export obligation. A change has been made vide Notification No. 1/2019-Cus., dated 10th January, 2019 by inserting a proviso to Condition No. (viii) as well as para 4.14 of the FTP 2015-20 to even by making domestic supplies mentioned at Serial Numbers 1, 2 and 3 of the table contained in Notification No. 48/2017-C.T. shall be taken into consideration for fulfilment export obligation. [Refer. D.G.F.T. Notification No. 53/2015-20, dated 10th January, 2019]

10. Amendment of Advance Authorisation

The Central Board of Indirect Taxes & Customs (“CBIC”) vide its *Notification No. 1/2019-Central Tax, dated January 15, 2019* makes the following amendment in Notification No. 48/2017-Central Tax, which notifies certain supplies as deemed export u/s 147 of the CGST Act, 2017 by inserting a proviso clause to submit a certificate within 6 months to jurisdictional commissioner, duly attested by a CA, if input tax credit on input is used in the manufacture and supply of goods which was exported. Further the definition and meaning of “Advance Authorization” is amended by omitting the word Pre import basis.

11. Simplify the procedure of Deemed Exports.

Guidelines for Applicants under ANF-4F of Handbook of Procedures 2015-2020: (procedures have been amended to simplify the procedure and reduce the compliance burden for applying EODC in case of deemed exports)

For Deemed Exports

- (i) A copy of the invoice or a statement of invoices duly signed by the unit receiving the material certifying the item of supply, its quantity, value and date of such supply. However in case of supply of items which are non-excisable or supply of excisable items to a unit producing non excisable product(s), a project authority certificate (PAC) certifying quantity, value and date of supply would be acceptable in lieu of excise/GST certification. However, in respect of supplies to EOU/EHTP/

STP/BTP, a copy of CT-3/ARE-3 duly signed by the jurisdictional excise/GST authorities certifying the item of supply, its quantity, value and date of such supply can be furnished in lieu of the excise/GST attested invoice(s) or statement of invoices as given above. However, in case of supply of the product by the Intermediate supplier to the port directly for export by the ultimate exporter (holder of Advance Authorisation or DFIA) in terms of paragraph 4.30 of HBP, copy of the shipping bill with the name of domestic supplier as Intermediate supplier endorsed on it along with the file No/Authorisation No. of the ultimate exporter and the intermediate supplier shall be required to be furnished.

[*D.G.F.T. Public Notice No. 11/2015-20, dated 07.06.2022*]

Chapter 35

Merchant Exports

Synopsis

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1. Meaning of Merchant Export

Merchant export is popular term under EXIM policy and having equal importance with manufacturer export. Merchant exports also generate inflow of foreign exchange earnings for the Country like normal export. Merchant export mainly confined to goods exports and not services. The person who carried merchant export is called as Merchant exporter. Merchant exporter do not have own any manufacturing facilities but they buy goods from the manufacturer in Domestic Tariff Area (DTA) to execute exports sales with overseas customers.

It is observe that some of the manufacturer exporters due to less production capacity buy goods from other manufacturer to meet export order of overseas customers. They are called manufacturer merchant exporter.

2. Definition of Merchant Exporter

As per Foreign Trade policy (2015-20), Para 9.33 "**Merchant Exporter**" means a person engaged in trading activity and exporting or intending to export goods.

Para 9.32 of FTP, "**Manufacturer Exporter**" means a person who exports goods manufactured by him or intends to export such goods.

3. Advantages of Merchant Exports

1. A medium and small manufacturer without any financial or human resources makes their products marketable in overseas market.
2. The merchant exporter arranges pre-shipment finances to the manufacturer without any security.
3. The merchant exporter takes responsibility of products shipment, sales and collection of exports proceeds from the foreign buyers.

4. The merchant exporter used to arrange exports orders from the Overseas Customers and makes relax to manufacturer.
5. The merchant exporter without any manufacturing facilities enjoys the benefits of multiple products exporters.
6. The merchant exporter with higher export performance qualifies to obtain Export Status House certificate.
7. The manufacturer takes advantages of international market experience of his product without any research and development and create brand image in the overseas markets.

4. Merchant Exports in Pre-GST regime

Generally, in pre-GST regime Merchant exporters was permitted to carry out business of exports of goods after executing B-1 bond with Surety/security before the Deputy/Assistant Commissioner of Central Excise as the case may be, having jurisdiction over the factory or warehouse or before the Maritime Commissioner at Mumbai, Chennai, Kolkata, Paradeep, Kandla, Tuticorin, Visakhapatnam and Cochin.

After execution of bond Merchant exporter was used to obtain Form C.T-1 certificate from the Deputy Commissioner/Assistant Commissioner where he executed bond for procuring goods from a factory or warehouse without payment of tax for export. It is pertinent to mention that a Form C.T-1 certificate contains detail of goods, price/Value of goods, quantity of goods and also specification of goods and C.T-1 certificate is supported by purchase order. Merchant exporter handed over C.T-1 Certificate to the Manufacturer-Supplier with duly signed ARE-1 Form. After goods got ready for despatch the supplier submit a copy of the CT-1 certificate along with ARE-1 Form duly counter signed by him to the jurisdictional Central Excise officer. The superintendent of Central Excise after due verification of export documents with C.T-1 certificate and take examination of export packages. Thereafter, the Superintendent uses to sign the documents and allows goods for stuffing into container, then sealed the container for onward despatch to port of shipment. Merchant exporter may opt for self sealing of goods and examination at place of dispatch or at port of exportation.

Merchant exporter uses to arrange the proof of export documents and provides to the manufacturer supplier for onward submission to the jurisdictional Deputy/Assistant Commissioner of Central Excise in order to discharge export obligation. With regard to waiver of CST the Merchant exporter collects H form the Sales Tax department and provides the same to the Manufacturer Supplier for onward submission to the Sales tax authority.

5. Merchant Exports in the GST regime

In the GST regime, export & import is governed under IGST Act, as per the provisions of IGST Act, 2017 supplies of goods and services for exports are to be treated as “Zero rated supplies” implying that registered taxable person exporting goods and services.

Further, in terms of Section 7(5)(a) “- when the supplier is located in India and the place of supply is outside India, Supply of goods or services or both, shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce. Since export is treated as inter-State supplies. Thereby, Merchant exporter would be required to obtain registration under GST in terms of Section 24 of the CGST Act, 2017.

The provision for merchant exporter and manufacturer exporter having the equal status under GST regime. The procedures relating to merchant exports have been simplified so as to do away with earlier documents like C.T-1 Certificate to procure goods without payment of tax and submission H-form for sales tax purpose. The requirement of filing Form ARE-1 and ARE-2 also has been dispensed with and shipping bill has been given much importance even for the purpose of refund of IGST or input tax credit on exported goods.

6. Merchant Export procedure

The manufacturer exporter and merchant exporter can carry out export goods or services on the following two ways as under:

- (a) The registered person may supply goods or services or both for export under bond or Letter of Undertaking without payment of Integrated Tax and claim refund of unutilized input tax credit; or
- (b) The registered person may supply goods or services or both for export on payment of Integrated Tax and claim refund of such tax paid on goods or services or both supplied, in accordance with the provisions of Section 54 of the Central Goods and Services Tax Act.

7. Execution of Letter of Undertaking (LUT)

The execution of LUT by the registered person for export in erstwhile Central Excise provision was limited to manufacturer exporters only. But under GST the facility of furnishing LUT has been liberalized and extended the same facility to both manufacturer exporter as well as merchant exporter vide Notification No. 16/2017-C.T., dated 7th July, 2017 and Circular No. 5/5/2017-GST, dated 11th August, 2017.

In terms of the said Notification and Circular, the registered person who has received a minimum foreign inward remittance of 10% of export turnover in the preceding financial year is eligible for availing the facility of LUT provided that the amount received as foreign inward remittance is not less than Rs. one crore. Which implies that only such exporters are eligible to avail LUT facilities who have received a remittance of Rs. one crore or 10% of export turnover, whichever is a higher amount, in the previous financial year.

It is pertinent to mention that a registered person having Status holder certificate in terms of paragraphs 3.20 and 3.21 of the Foreign Trade Policy 2015-2020 is eligible for LUT facility irrespective of whether a registered person has satisfied the conditions as stipulated cited Notification/Circular. The registered exporter or merchant exporter has to arrange LUT on the letter head of the Company and submitted to the jurisdictional Deputy/Assistant Commissioner

for execution. The jurisdictional officer has to accept the said LUT with his signature and seal, allot LUT number and handed over a copy of LUT to the registered person. The registered person has to incorporate LUT number detail on the Export invoice to supply goods for export without payment of Tax. Generally, LUT is valid for one year or up 31st March and from 1st April of every year the registered person has to execute new LUT for export.

8. Execution of Bond & Bank Guarantee

The procedure of execution of Bond has been prescribed vide Circular No. 4/4/2017, dated 7th July, 2017 that bank guarantee should normally not exceed 15% of the bond amount. The commissioner has the authority to waive off the requirement to furnish bank guarantee taking into consideration of the facts and circumstances of each case. There are certain exemption has been provided to the exporter that if an exporter registered with recognized Export Promotion Council can be permitted to execute bond without bank guarantee on the submission of a self-attested copy of the registration certificate with a recognized Export Promotion Council. The registered person with State-wise registration under GST, in that case for considering of minimum foreign inward remittance of 10% of export turnover in the preceding financial year or foreign inward remittance is not less than Rs. one crore shall be considered for all the registered persons having one PAN number. If the total turnover more than prescribed limit the registered person can be permitted to submit bond without bank guarantee. The Bond shall be executed with non-judicial stamp paper and presented to the jurisdictional Deputy/Assistant Commissioner for acceptance. A running bond account shall be maintained by the exporter to determine the liability of exported goods.

9. Procurement of goods by Merchant Exporter

In the pre-GST era, Merchant exporters were exempted from paying Excise duties by following procedures of Form CT-1/ARE-1 formalities and also CST was exempted against H-Form. On implementation of GST, the facility of procurement of goods without payment of tax by the Merchant exporter for export has been dispensed with. Consequently, Merchant exporters have faced problem of cash crunch due to buying goods on payment of GST for export and their hard cash has been held up due to the same. This has strained of his working capital and has particularly hit small exporters. Consequently, the transaction cost of Merchant exporters has been enhanced. This situation was brought to the knowledge of the Government. Thereby, with the recommendations of GST Council, the Government exempts the intra-State supply of taxable goods by a registered supplier to a registered recipient for export reduced GST rate of 0.1% vide Notification No. 40/2017-C.T. (Rate), dated 23-10-2017 subject to fulfillment of the following conditions, namely:—

- (i) the registered supplier shall supply the goods to the registered recipient on a tax invoice;

- (ii) the registered recipient shall export the said goods within a period of ninety days from the date of issue of a tax invoice by the registered supplier;
 - (iii) the registered recipient shall indicate the Goods and Services Tax Identification Number of the registered supplier and the tax invoice number issued by the registered supplier in respect of the said goods in the shipping bill or bill of export, as the case may be;
 - (iv) the registered recipient shall be registered with an Export Promotion Council or a Commodity Board recognized by the Department of Commerce;
 - (v) the registered recipient shall place an order on registered supplier for procuring goods at concessional rate and a copy of the same shall also be provided to the jurisdictional tax officer of the registered supplier;
 - (vi) the registered recipient shall move the said goods from place of registered supplier—
 - (a) directly to the Port, Inland Container Depot, Airport or Land Customs Station from where the said goods are to be exported; or
 - (b) directly to a registered warehouse from where the said goods shall be moved to the Port, Inland Container Depot, Airport or Land Customs Station from where the said goods are to be exported;
 - (vii) if the registered recipient intends to aggregate supplies from multiple registered suppliers and then export, the goods from each registered supplier shall move to a registered warehouse and after aggregation, the registered recipient shall move goods to the Port, Inland Container Depot, Airport or Land Customs Station from where they shall be exported;
 - (viii) in case of situation referred to in condition (vii), the registered recipient shall endorse receipt of goods on the tax invoice and also obtain acknowledgement of receipt of goods in the registered warehouse from the warehouse operator and the endorsed tax invoice and the acknowledgement of the warehouse operator shall be provided to the registered supplier as well as to the jurisdictional tax officer of such supplier; and
 - (ix) when goods have been exported, the registered recipient shall provide copy of shipping bill or bill of export containing details of Goods and Services Tax Identification Number (GSTIN) and tax invoice of the registered supplier along with proof of export general manifest or export report having been filed to the registered supplier as well as jurisdictional tax officer of such supplier.
2. The registered supplier shall not be eligible for the above mentioned exemption if the registered recipient fails to export the said goods within a period of 90 days from the date of issue of tax invoice.

10. Refund of IGST/Unutilized Input Tax Credit

The exporters are free to avail option of refund of IGST paid on export of goods under Rule 96 of CGST Rules, 2017 and in case of zero-rated supply or services or both without payment of tax under bond or letter of undertaking in accordance with the provisions of sub-section (3) of Section 16 of the IGST Act, 2017. A registered person making zero-rated supply shall be eligible to claim refund either of the following options, namely:—

- (a) supply of goods or services or both for export under bond or letter of undertaking, without payment of integrated tax and claim refund of unutilized input tax credit; or
- (b) supply goods or services or both for export on payment of Integrated Tax and claim refund of such tax paid on goods or services or both supplied, in accordance with the provisions of Section 54 of the CGST Act, or the rules made thereunder.

As per Section 54(3) of the CGST Act, Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilized input tax credit at the end of any tax period:

Provided that no refund of unutilized input tax credit shall be allowed in cases other than—

- (i) zero rated supplies made without payment of tax;
- (ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council:

Provided further that no refund of unutilized input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty:

Provided also that no refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies.

11. Manual filing of the Refund Claim

Due to the non-availability of the refund module on the common port, C.B.E. & C. has issued Circular No. 17/17/2017 has been prescribed the following conditions and procedures are laid down for the manual filing and processing of the refund claims:

1. The registered person may make zero-rated supplies of goods or services or both on payment of integrated tax and claim refund of unutilized input tax credit in relation to such zero rated supplies.
2. The application for refund of integrated tax paid on zero-rated supply of goods to a Special Economic Zone developer or a Special Economic Zone unit or in case of zero-rated supply of services is required to be filed in **FORM GST RFD-01A** by the supplier on the common portal and a print out of the said form

shall be submitted before the jurisdictional proper officer along with all necessary documentary evidences as applicable within the time stipulated for filing of such refund under the CGST Act.

3. The application for refund of unutilized input tax credit on inputs or input services used in making such zero-rated supplies shall be filed in **FORM GST RFD-01A** on the common portal and the amount claimed as refund shall get debited in the electronic ledger to the extent of the claim. The common portal shall generate a proof of debit (ARN-Acknowledgement Receipt Number) which would be mentioned in the **FORM GST RFD-01A** submitted manually, along with the print out of **FORM GST RFD-01A** to the jurisdictional proper officer, and with all necessary documentary evidences as applicable within the time stipulated for filing of such refund under the CGST Act.

4. The registered person needs to file the refund claim with the jurisdictional tax authority to which the taxpayer has been assigned as per the administrative order issued in this regard by the Chief Commissioner of Central Tax and the Commissioner of State Tax. In case such an order has not been issued in the State, the registered person is at liberty to apply for refund before the Central Tax Authority or State Tax Authority till the administrative mechanism for assigning of taxpayers to respective authority is implemented. However, in the latter case, an undertaking is required to be submitted stating that the claim for sanction of refund has been made to only one of the authorities. It is reiterated that the Central Tax officers shall facilitate the processing of the refund claims of all registered persons whether or not such person was registered with the Central Government in the earlier regime.

5. Once such a refund application in **FORM GST RFD-01A** is received in the office of the jurisdictional proper officer, an entry shall be made in a refund register. Once completion of verification of application and supporting documents in totality ascertained, an acknowledgement in **FORM GST RFD-02** shall be issued within 15 days from the date of filing of the application and entry shall be made in the Refund register for receipt of refund applications.

6. In case of any deficiency of refund claim, a deficiency memo shall be issued by the proper officer in **FORM GST-03** to the claimant manually instead of common portal.

7. The proper officer shall grant provisional refund within 7 days of receipt of refund application and an order shall be issued in **FORM GST RFD-04** along with payment advice to be issued in **FORM GST RFD-05**. The refund amount would be made directly electronically into the claimant's Bank account mentioned in the registration.

8. After the sanction of the provisional refund, final order in **FORM GST RFD-06** is to be issued within 60 days after due verification of the documentary evidences and receipt of complete application form. Pre-audit of the manually processed refund applications is not required to be carried out. The proper officer shall issue the refund order manually. The details of the refund along with taxpayer bank account details shall be manually submitted in PFMS system by

the jurisdictional Division's DDO and a signed copy of the sanction order shall be sent to PAO office for release of payment and amount if any will be paid by an order with payment advice in **FORM GST RFD-05**.

9. The refund application for various taxes i.e. CT/ST/UT/IT/Cess can be filed with any one of the tax authorities and shall be processed by the said authority, however the payment of the sanctioned refund amount shall be made only by the respective tax authority of the Centre or State Government and communicated to the concerned counter-part tax authority within three days for the purpose of payment of the relevant sanctioned refund amount of tax or cess, as the case may be.

As per sub-rule (4) of Rule 89 of CGST Rules, 2017 in the case of zero-rated supply of goods or services or both without payment of tax under bond or letter of undertaking in accordance with the provisions of sub-section (3) of Section 16 of the IGST Act, 2017, refund of input tax credit shall be granted as per the following formula:—

Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) x Net ITC/Adjusted Total Turnover.

And as per sub-rule (5) in the case of refund on account of inverted duty structure, refund of input tax credit shall be granted as per the following formula:—

Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services) x Net ITC/Adjusted Total Turnover) - tax payable on such inverted rated supply of goods and services.

Chapter 36

Works Contract Service

Synopsis

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1. Meaning of Works Contract Service

The treatment and taxability of “Works Contract Service” has been a matter of litigation in the pre-GST era. The activities of works contract involve a composite supply of both goods and services. A works contract service relates to both immovable and movable property is undertaken to execute a contract. Even though the concept of ‘works contract’ has been incorporated under GST but it is limited to immovable property only.

2. Works Contract in the GST regime

The provision of ‘works contract’ has been restricted to any work undertaken for an “Immovable Property” and works contract for movable property is not under scope of GST.

3. Definition of works contract service

Section 2(119) of the CGST Act, 2017 defines “works contract” means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract.”

The plain reading of the above definition, it is clarified that works contract has been confined to contract for construction of building, fabrication, erection, fitting out etc. of any immovable property only. Further, the supply of goods undertaken for fabrication, modification, renovation, Alternation, fitting out or paint job where as such supply qualifies as composite supplies unlike earlier tax regime, but will not be treated as a Works Contract for the purposes of GST.

As per entry No. 5(b) of schedule II to the CGST Act, 2017, construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.

Thus it is ample clear that works contract in relation to civil construction of building, complex or any civil structure is treated as supply of service if it is sold before completion of construction. However, if entire consideration on works contract has been received after issuance of completion certificate issued by the competent authority or before its first occupation, whichever is earlier then no GST is leviable on such supply as this become immovable property and GST can't be levied on sale of immovable property.

Further, as per entry No. 6(a) of Schedule II to the CGST Act, 2017, works contracts as defined in Section 2(119) of the CGST Act, 2017 (composite supply of goods and services) shall be treated as a supply of services. This provision has been clarified in Section 7(1) of the CGST Act, 2017 (Scope of supply for levy of tax). GST law has clearly clarified the tax liability of works contract. Thereby, this implies works contract will be treated as service and tax would be charged accordingly. This clarity on provision of works contract as service and not as supply of goods.

4. Applicable Rate of GST

The rate of GST for Works Contract service has been prescribed in serial number 3 of Notification No. 11/2017-C.T. (Rate), dated 28-6-2017 as amended by Notification No. 20/2017-C.T. (Rate), dated 22-8-2017 & Notification No. 24/2017-C.T. (Rate), dated 21-9-2017 & Notification No. 1/2018-C.T. (Rate), dated 25-1-2018 and is as under:

| Sr. | Description of Services | GST Rate Applicable |
|-------|--|---------------------|
| (i) | Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier. (Provisions of paragraph 2 of this notification shall apply for valuation of this service) | 12% |
| (ii) | composite supply of works contract as defined in clause 119 of Section 2 of Central Goods and Services Tax Act, 2017 | 12% |
| (iii) | Composite supply of works contract as defined in clause (119) of Section 2 of the Central Goods and Services Tax Act, 2017, supplied to the "Central Government, State | 12% |

| Sr. | Description of Services | GST Rate Applicable |
|------|---|---------------------|
| | <p>Government, Union territory, a local authority or *a Governmental authority or a Government entity" by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,—</p> <p>(a) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);</p> <p>(b) canal, dam or other irrigation works;</p> <p>(c) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal "provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority, as the case may be"</p> | |
| (iv) | <p>Composite supply of works contract as defined in clause (119) of Section 2 of the Central Goods and Services Tax Act, 2017, supplied by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,—</p> <p>(a) a road, bridge, tunnel, or terminal for road transportation for use by general public;</p> <p>(b) a civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana;</p> <p>(c) a civil structure or any other original works pertaining to the "In-situ rehabilitation of existing slum dwellers using land as a resource through private participation" under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana;</p> <p>(d) a civil structure or any other original works pertaining to the "Beneficiary led individual house construction/ enhancement" under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana;</p> <p>"(da) a civil structure or any other original works pertaining to the "Economically weaker section (EWS) houses" constructed under the Affordable Housing in</p> | 12% |

| Sr. | Description of Services | GST Rate Applicable |
|-----|---|---------------------|
| | <p>partnership by State or Union territory or local authority or urban development authority under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana (Urban);</p> <p>(db) a civil structure or any other original works pertaining to the “houses constructed or acquired under the Credit Linked Subsidy Scheme for Economically Weaker Section (EWS)/Lower Income Group (LIG)/Middle Income Group-1 (MIG-1)/Middle Income Group-2 (MIG-2)” under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana (Urban)”,</p> <p>(e) a pollution control or effluent treatment Plant, except located as a part of a factory; or</p> <p>(f) a structure meant for funeral, burial or cremation of deceased.</p> <p>(g) a building owned by an entity registered under Section 12AA of the Income Tax Act, 1961 (43 of 1961), which is used for carrying out the activities of providing, centralized cooking or distribution, for midday meals under the mid-day meal scheme sponsored by the Central Government, State Government, Union territory or local authorities.”;</p> | |
| (v) | <p>Composite supply of works contract as defined in clause (119) of Section 2 of the Central Goods and Services Tax Act, 2017, supplied by way of construction, erection, commissioning, or installation of original works pertaining to,—</p> <p>(a) railways, monorail and metro;</p> <p>(b) a single residential unit otherwise than as a part of a residential complex;</p> <p>(c) low-cost houses up to a carpet area of 60 square metres per house in a housing project approved by competent authority empowered under the ‘Scheme of Affordable Housing in Partnership’ framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India;</p> <p>(d) low cost houses up to a carpet area of 60 square metres per house in a housing project approved by the competent authority under (1) the “Affordable Housing in Partnership “component of the Housing for All</p> | 12% |

| Sr. | Description of Services | GST Rate Applicable |
|-------|--|---------------------|
| | <p>(Urban) Mission/Pradhan Mantri Awas Yojana; (2) any housing scheme of a State Government;</p> <p>(da) low cost houses up to a carpet area of 60 square meters per house in an a affordable housing project which has been given infrastructure status vide notification of Government of India, in Ministry of Finance, Department of Economic Affairs vide F. No. 13/6/2009-INF, dated the 30'th March'2007;</p> <p>(e) post-harvest storage infrastructure for agricultural produce including a cold storage for such purposes; or</p> <p>(f) mechanised food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages</p> | |
| (vi) | <p>Services provided to the Central Government, State Government, Union Territory, a local authority or *a governmental authority or a Government Entity by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of – (a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession; (b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or (c) a residential Complex predominantly meant for self-use or the use of their employees or other persons specified in paragraph 3 of the Schedule III of the Central Goods and Services Tax Act, 2017.</p> <p>“provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority, as the case may be”</p> | 12% |
| (vii) | Composite supply of works contract as defined in clause (119) of Section 2 of the Central Goods and Services Tax Act, 2017, involving predominantly earth work (that is, constituting more than 75 per cent. of the value of the works contract) provided to the Central Government, State Government, Union territory, local authority, *a Government Authority or a Government Entity. | 5% |

| Sr. | Description of Services | GST Rate Applicable |
|--------|---|---------------------|
| | “provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority, as the case may be” | |
| (viii) | Composite supply of works contract as defined in clause 119 of Section 2 of the Central Goods and Services Tax Act, 2017 and associated services, in respect of offshore works contract relating to oil and gas exploration and production (E&P) in the offshore area beyond 12 nautical miles from the nearest point of the appropriate base line. | 12% |
| (ix) | Composite supply of works contract as defined in clause 119 of Section 2 of the Central Goods and Services Tax Act, 2017 provided by a sub-contractor to the main contractor providing services specified in item (iii) or item (vi) above to the Central Government, State Government, Union territory, a loc authority, *a Government Authority or a Government Entity. “provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority, as the case may be” | 12% |
| (x) | Composite supply of works contract as defined in clause (119) of Section 2 of the Central Goods and Services Tax Act, 2017 provided by a sub-contractor to the main contractor providing services specified in item (vii) above to the Central Government, State Government, Union territory, a loc authority, *a Government Authority or a Government Entity. “provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority, as the case may be” | 5% |
| (xi) | Services by way of housekeeping, such as plumbing, carpentering, etc. where the person supplying such service through electronic commerce operator is not liable for registration under section (1) of Section 22 of the Central Goods and Services Tax Act, 2017. | 5% |

| Sr. | Description of Services | GST Rate Applicable |
|-------|--|---------------------|
| | “Provided that credit of input tax charged on goods and services has not been taken [please refer to <i>Explanation No. (iv)</i>]. | |
| (xii) | Construction services other than (i), (ii), (iii), (iv), (v), (vi), (vii), (viii), (ix), (x) and (xi) above. | 18% |

* *Remarks:* Notification No. 11/2017-Central Tax (Rate), dated 28th June, 2017 has been amended by Notification No. 15/2021-Central Tax (Rate), dated 18th November, 2021 has brought changes in the composite supply of works contract services for items falling under 3 sub item (iii), (vi), (vii), (ix) and (x). By this amendment the new Notification has removed the words “Government Authority or a Government Entity” from item 3 sub item (iii), (vi), (vii), (ix), and (x) w.e.f. 1st January, 2022. This implying that any works contract services in relation item 3(iii), (vi), (vii), (ix), and (x) provided to Central Government, State Government, Union Territory or local authority shall be levied at the rate of 12%. However, when such similar nature services shall be provided to a government entity or authority it shall be taxable at the rate 18% from 1st January, 2022.

Remarks: with effect from 18.07.2022 (Notification No. 3/2022-CT., dated 13.07.2022)

- GST rate increased from 12% to 18% in respect of various works contract services.
- Entry 3(vii) and 3(x) of Notification No. 11/2017-CTR substituted.
- Works contract involving pre-dominantly earth work provided to Government.
- Sub-contractor providing such services.
- Entry 3(iii), (iv), (v), (va), (vi) and (ix) of Notification No. 11/2017-CT(R) omitted.
- Higher rate would be applicable to:
 - Construction of Canal/dam/irrigation work for Government.
 - Construction of road/bridge/tunnels etc.
- Works contract pertaining to affordable housing.
- Works contract pertaining to railways.
- Construction of single residential unit.
- Sub-contractor WCT services to main contractor providing certain services.

5. Valuation of works contract service

Valuation of a works contract service is dependent upon whether the contract includes transfer of property in land as a part of the works contract.

In case of supply of service, involving transfer of property in land or undivided share of land, as the case may be, the value of supply of service and goods portion in such supply shall be equivalent to the total amount charged for such supply less the value of land or undivided share of land, as the case may be, and the value of land or undivided share of land, as the case may be, in such supply shall be deemed to be one third of the total amount charged for such supply.

Explanation.—For the above purpose of “total amount” means the sum total of,—

- (a) consideration charged for aforesaid service; and
- (b) amount charged for transfer of land or undivided share of land, as the case may be.

6. Place of Supply in respect of Works Contract

Works Contract under GST would necessarily involve immovable property. In view of the same the place of supply would be governed by Section 12(3) of the IGST Act, 2017, where both the supplier and recipient are located in India. The place of supply would be where the immovable property is located.

In case the immovable property is located outside India, and the supplier as well as recipient both are located in India, the place of supply would be the location of recipient as per proviso to Section 12(3) of the IGST Act, 2017.

As per Section 13(4) of the IGST Act, 2017, in cases where either the Supplier or the Recipient are located outside India, the place of supply shall be the place where the immovable property is located or intended to be located.

7. Maintenance of records

As per Rule 56(14) of the CGST Rules, 2017, every registered person executing works contract shall keep separate accounts for works contract showing—

- (a) the names and addresses of the persons on whose behalf the works contract is executed;
- (b) description, value and quantity (wherever applicable) of goods or services received for the execution of works contract;
- (c) description, value and quantity (wherever applicable) of goods or services utilized in the execution of works contract;
- (d) the details of payment received in respect of each works contract; and
- (e) the names and addresses of suppliers from whom he received goods or services.

8. Input Tax Credit (ITC)

As per Section 17(5)(c) of the CGST Act, 2017, input tax credit shall not be available in respect of the works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service.

Thus, ITC for works contract can be availed only by one who is in the same line of business and is using such services received for further supply of works contract service. For example a building developer may engage services of a subcontractor for certain portion of the whole work. The subcontractor will charge GST in the tax invoice raised on the main contractor. The main contractor will be entitled to take ITC on the tax invoice raised by his sub-contractor as his output is works contract service. However if the main contractor provides works contract service (other than for plant and machinery) to a company say in the IT business, the ITC of GST paid on the invoice raised by the works contractor will not be available to the IT Company.

Plant and Machinery in certain cases when affixed permanently to the earth would constitute immovable property. When a works contract is for the construction of plant and machinery, the ITC of the tax paid to the works contractor would be available to the recipient, whatever is the business of the recipient. This is because works contract in respect of plant and machinery comes within the exclusion clause of the negative list and ITC would be available when Works Contract in GST used in the course or furtherance of business.

Hence, Input Tax Credit shall not be available for any work contract services. ITC for the construction of an immovable property cannot be availed, except where the input service is used for further work contract services.

Further, No ITC is available for goods/services for construction of an immovable property on his own account. Even if such goods/services are used in the course or furtherance of business, ITC will not be available.

But this rule does not apply to plant or machinery. ITC is available on inputs used to manufacture plant and machinery for own use.

Example—

Ajay Steel Industries constructs an office building for its headquarters. ITC will not be available.

Ajay Steel Industries also constructs a blast furnace to manufacture steel. ITC is available since it is a plant.

With the introduction of GST in India, litigation on account of treatment of ‘works contract’ comes to an end. In pre-GST era the same works contract was subject levy of tax by both Central Government (on service component of a works contract) and State Government (on sale of goods portion execution of works contract). But the GST law has clarified that a works contract is supply of services as per Entry No. 5(b) and 6(a) of Schedule-II to the CGST Act, 2017. GST law has made it clear that a works contract as a supply of service and specified a uniform rate of tax applicable on same value across India. With this clarity on ‘works contract’ tax system will be simpler and litigation free.

9. Advance Rulings

In Re: **Manpar Icon Technologies**, reported in 2021 (53) G.S.T.L. 82 (A.A.R. - GST - U.P.) Pure Service - Consultancy Services - Project Development

Service and Project Management Consultancy Services provided under contract for State Urban Development Authorities; and Project Management Consultancy services provided under Contract for **Pradhan Mantri Awas Yojana** are in relation to functions entrusted to Municipalities under Article 243W and to **Panchayats** under Article 243G of Constitution of India qualify as Pure Service (excluding **works contract** service or other composite supplies involving supply of any goods) as provided in Sr. No. 3 of Notification No. 12/2017-C.T. (Rate), dated 28-6-2017, as amended (Sl. No. 3A) by Notification No. 2/2018-C.T. (Rate), dated 25-1-2018 issued under Central Goods and Services Tax Act, 2017 and corresponding notifications issued under Uttar Pradesh Goods and Services Tax Act, 2017 where Project cost includes cost of service rendered along with reimbursement of cost of procurement of goods for rendering such service, and, thus, be eligible for exemption from levy of CGST and UPGST, respectively.

* * *

In Re: *Kunal Structure (India) Pvt. Ltd.*, reported in 2021 (52) G.S.T.L. 208 (A.A.R. - GST - Guj.) Work Contract - Services by sub-contractor to main contractor - Main contractor providing **works contract** services to Government Entity for construction of a medical college - Principal rate Notification No. 11/2017-C.T. (Rate), dated 28-6-2017 was amended vide Notification No. 1/2018-C.T. (Rate), dated 25-1-2018 and new entries inserted - Composite Supply of **Works Contract** services provided by a sub-contractor to main contractor were dealt with in entries at Serial No. 3(ix) & 3(x) of amended Notification No. 11/2017-C.T. (Rate) - Construction service provided by applicant in capacity of sub-contractor to main contractor is eligible for GST @ 12% from 25-1-2018 and not for period prior to 25-1-2018.

In Re: *NBCC (India) Limited*, reported in 2021 (52) G.S.T.L. 188 (App. A.A.R. - GST - Odisha) **Works Contract** service - Composite supply - Applicant provided **works contract** service on turnkey basis to IIT-Bhubaneswar which included construction of faculty/staff quarters, Director's bungalow - For this purpose survey, soil testing and investigation to determine load bearing capacity of soil to ensure technical stability of structure and its foundation were conducted and also design and architectural drawing was prepared - Advance Ruling Authority while allowing concessional rate of GST under Sl. No. 3(vi)(b) of Notification No. 11/2017-C.T. (Rate) to construction part, disallowed such benefit to other part of services being Project Management Consultancy services and held that works executed by applicant not a composite supply - Such observation made by Advance Ruling Authority clearly contradictory in view of provisions of Sl. No. 3(ii) to 3(vi) of Notification ibid which provided that services eligible for concessional rate of GST are composite supply of **Works Contract** only - Agreement with IIT stipulating that project awarded on turnkey basis for works relating to planning, designing and supervision of building infrastructure development and interior work in its campus/extended campus and after completion of such project, to hand over the said building in ready to use

condition - Said agreement nowhere provided that work orders offered differently for different works and separate invoices issued for separate works - Hence, works executed by applicant on turnkey basis to be termed as a **Works Contract** under Section 2(119) of Central Goods and Services Tax Act, 2017 and a composite supply in terms of Section 2(30) ibid - Such composite supply of **Works Contract** to be considered as a supply of service under Para 6 of Schedule II to said Act and eligible to concessional rate of 12% GST (6% CGST + 6% SGST) under Sl. No. 3(vi) of Notification No. 11/2017-C.T. (Rate).

In Re: *KSC Buildcon Private Limited, 2021 (51) G.S.T.L. 347 (A.A.R. - GST - Haryana)*, Works contract - Composite supply - Work contract with Haryana State Industrial & Infrastructure Development Corporation Ltd. (HSIIDC) for excavation of stones, loading and unloading of goods, transportation services and development of mines - *HELD*: Work order in nature of composite supply of work contract as defined in Clause (119) of Section 2 of Central Goods and Services Tax Act, 2017 - Section 2 of Haryana Goods and Services Tax Act, 2017 - Nature of work also requires transfer of property in goods - Moreover, HSIIDC, Government entity as 100% equity shares of company held by State Government and as per Clause 53 of Section 2 of Haryana Goods and Services Tax Act, 2017 Government entity means State Government of Haryana - Further, as per Section 617 of Companies Act, 1955, HSIIDC registered as Government company - Also, major part of contract involves earth work, *i.e.* more than 75% is "Earth Work" - Assessee qualify for benefit of Serial No. 3 of Notification No. 31/2017-C.T. (Rate) - GST applicable at rate of 5% (2.5% CGST + 2.5% HGST).

In Re: *Hadi Power Systems, reported 2021 (50) G.S.T.L. 552 (A.A.R. - GST - Kar.)* Composite supply - Works contract service - Applicant was allocated electrical subcontractor works by first sub-contractor of main contractor who is a provider of works contract to a State Government entity - No privity of contract between applicant and Government entity and also between applicant and main contractor - Privity of contract being between applicant and sub-contractor, which is not covered under Central Government, State Government, Union Territory, a local authority or a Governmental Authority or a Government Entity - Services provided by applicant is not covered under Entry 3(iii) or 3(vi) or 3(ix) of Notification No. 11/2017-C.T. (Rate), dated 28-6-2017 (as amended) - Concessional rate of duty of 12% not available to applicant - GST chargeable @ CGST @ 9% and KGST @ 9%.

Chapter 37

GTA Services

Synopsis

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1. Meaning of GTA

GTA means Goods Transport Agency, and refers to the services of transportation of goods rendered by a service provider. The legal provision contained under Service Tax regime has been carried in to GST. In terms of Notification No. 11/2017-C.T. (Rate), dated 28th June, 2017 at entry No. 9 (iii) (Services Code 9965) as per explanation given, “Goods Transport Agency” or GTA means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called. Therefore, the issuance of Consignment Note was an integral part of Service Tax is now a mandatory requirement under GST.

2. Meaning of Consignment Note

The issuance of a consignment note is the hallmark of a GTA operator in both Service Tax as well as under GST laws. Even though Consignment note has not been defined in the GST Act, but explained under Rule 4B of Service Tax Rules, 1994, means a document, issued by a goods transport agency against receipt of goods of the purpose of transport of goods by road in a goods carriage, which is serially numbered and contains particulars of goods as mentioned in Tax invoice. Thus, the supplier of services of transportation of goods by road who used to issue consignment note is to be considered as a Goods Transport Agency. If such a consignment note is not issued by the transporter, the service provider will not come within the ambit of goods transport agency. The consignment note ensures safety of transportation of goods upto the place of delivery of customer as responsibility shall be shifted from owner of the goods to the transporter. The individual truck/tempo operators who do not issue any consignment note are not covered within the meaning of the term GTA. These service providers are exempted from GST.

3. Exemption of Services by way of Transportation of Goods

In terms of Notification No. 12/2017-C.T. (Rate), dated 28-6-2017 (Sr. No. 18), the following services are exempt from GST.

Services by way of transportation of goods (Heading 9965):

- (a) by road except the services of;
 - (i) a goods transportation agency;
 - (ii) a courier agency;
- (b) by inland waterways.

4. Exemption to certain GTA services

Thus, any transportation of goods by road without services rendered by GTA is exempt from GST. Even if Services rendered by GTA, the following transportation goods GST will not attract. (Notification No. 12/2017, date 18-06-2017 (Sr. No. 21), (Heading No. 9965 or 9967) is exempt from payment of tax:

Services provided by a goods transport agency, by way of transport in a goods carriage of:

- (1) agricultural produce;
- (2) goods, where consideration charged for the transportation of goods on a consignment transported in a single carriage does not exceed one thousand five hundred rupees;
- (3) goods, where consideration charged for transportation of all such goods for a single consignee does not exceed rupees seven hundred and fifty;
- (4) milk, salt and food grain including flour, pulses and rice;
- (5) organic manure;
- (6) newspaper or magazines registered with the Registrar of Newspapers;
- (7) relief materials meant for victims of natural or man-made disasters calamities, accidents or mishap; or
- (8) defence or military equipments.

Similarly, the services received by the GTA (Heading 9966 or 9973) is also exempt in terms of Notification No. 12/2017-C.T. (Rate), dated 28-6-2017 (Sr. No. 22) Services by way of giving on hire:

- (a) to a State transport undertaking, a motor vehicle means to carry more than twelve passengers; or
- (b) to a goods transport agency, a means of transportation of goods.

Thus, if the GTA hires a means of transportation of goods, no GST is payable on such transactions.

5. GST Rates on services provided by GTA

GST rates has been specified *vide* Notification No. 11/2017-C.T. (Rate), dated 28-6-2017 as amended by Notification No. 20/2017-C.T. (Rate), dated 22-8-2017. Sr. No. 11, (i) Services of Goods Transport Agency (GTA) in relation to transportation of goods (including used household goods for personal use) with

Heading 9965 & 9967 respectively attracts GST @2.5% or 6% CGST; identical rate would be applicable for SGST also, taking the effective rate to 5% or 12%. The GST rate of 5% is subject to the condition that credit of input tax charged on goods or services used in supplying the service has not been taken. Similarly, GST rate of @6% (cumulative 12%) is subject to the condition that the goods transport agency opting to pay central tax @6% under this entry shall, henceforth, be liable to pay central tax @6% on all the services of GTA supplied by it. Further, there is no restriction on the GTA from taking ITC if this option is availed on forward charge.

Further, Notification No. 11/2017-C.T. (Rate), Sr. No. 11, (ii) also provides that supporting services in transport other than those mentioned in (i) (Heading 9967) would attract GST @9% CGST. Identical rate would be applicable for SGST also, taking the effective rate to 18%. Similar rate has been prescribed for services falling under heading No.9965 in terms of Notification No. 11/2017-C.T. (Rate), Sr. No. 9(v).

6. ITC on GTA Services

The recipient of GTA services is liable to discharge tax under reverse charge basis under GST and is entitled to take Input Tax Credit (ITC) of the amount of tax paid by him, provided it is to be used in the course or furtherance of business at his end. Further the recipient would be eligible for ITC of the GST paid by GTA on forward charge basis.

7. Liability to Pay GST on GTA services

Generally, the supplier of service is required to assess his tax liability and discharge tax. But in the case of GTA services the recipient for supply of services by a Goods Transport Agency (GTA) who has not paid Central tax at the rate of 6% in respect of transportation of goods by road, recipient of such services is required to assess and pay tax liabilities under reverse charge basis. In terms of Notification No. 13/2017-C.T. (Rate), dated 28-6-2017 (Sr. No. 1) as amended by Notification No. 22/2017-C.T. (Rate), dated 22-8-2017, if the recipients (located in the taxable territory), the following category of persons to discharge the tax liabilities under

8. GTA services liability under Reverse Charge Mechanism

- (a) Any factory registered under or governed by the Factories Act, 1948 (963 of 1948); or any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India; or
- (b) any co-operative society established by or under any law; or
- (c) any person registered under the Central Goods and Services Tax Act or the Integrated Goods and Services Tax Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act; or
- (d) anybody corporate established, by or under any law; or
- (e) any partnership firm whether registered or not under any law including association of persons; or
- (f) any casual taxable person.

Therefore, in the cases where services of GTA are availed by the above categories of persons in the taxable territory the GTA supplier has the option to pay tax (and avail ITC) @12% (6% CGST + 6% SGST); and if the GTA does not avail this option, the liability to pay GST will fall on the recipients. In all other cases where the recipients do not fall in the categories mentioned above, the liability will be on the supplier of GTA services.

9. Place of Supply for GTA under GST

The place of Origin and place of supply having important roles to ascertain tax liability one has to discharge under GST. In terms of Section 12(8) of the IGST Act, 2017, the place of supply of services by way of transportation of goods, including by mail or courier to—

- (a) a registered person, shall be the location of such person;
- (b) a person other than a registered person, shall be the location at which such goods are handed over for their transportation.

10. Registration by GTA

There is no specific provision for registration by GTA under GST, if all the services of the GTA fall under Reverse Charge Mechanism then a GTA is not required to register and therefore there is no obligation to comply the provision of GST. Even if he is engaged exclusively transporting goods, wherein turnover exceeds ₹20 lakhs as the total tax is required to be paid by the recipient under reverse charge basis, a GTA does not have to register under GST.

To sum up, the provision of GTA was prevailing under the erstwhile Service Tax regime has been carried forward into the GST law. The Goods Transport Agency neither requires to take registration or discharge tax liability of services supplied by them under GST regime except in exceptional cases not covered by No. 13/2017 as amended. To attract liability of GST, a GTA must necessarily issue consignment note against transporting of goods by road. In other words, only those transport services provided by a GTA are taxable under GST wherein goods transportation is covered under the consignment note. The GST law recognizes that pure transportation of goods services are mostly provided by persons in the unorganized sector and such operators specifically been excluded from the tax net. In respect of those who provide agency services in transport, the liability is cast on the recipients in most of the cases or unless option to pay under forward charge basis has been exercised by the GTA.

11. Goods Transport Agency (GTA) under RCM and Forward Charge

Important amendment for Goods Transport Agency (GTA) under Reverse Charge Mechanism (RCM) and Forward Charge Basis option.

As per recommendation of 47th GST Council Meeting, the Government has notified on 13-07-2022 the changes option provided to Goods Transport Agency (GTA) under RCM and Forward charge for discharging GST liabilities against services provided to the clients.

The summary of changes of relevant Notifications as follows:—

1. Notification No. 3/22-C.T. (Rate), dated 13.07.2022 as amended by Notification No. 11/2017-C.T. (Rate), dated 28.06.2017 - Forward charge [under section 9(1)]
2. Notification No. 5/22-C.T. (Rate), dated 13.07.2022 as amended by Notification No. 13/2017-C.T. (Rate), dated 28.06.2017 - Reverse Charge [under section 9(3)]

Amendment was brought under Forward Charge section 9(1) of CGST Act, 2017 whereby the Original Notification No. 11/2017-C.T., dated 28.06.2017 by issuing amended Notification No. 3/2022-C.T. (Rate), dated 13.07.2022 vide the said notification provision has been provided an option to GTA to charge rate @5% under Forward Charge in addition to existing rate @12%. It is implied that in the beginning of each Financial Year the GTA has to exercise option either to charge GST under Forward charge @5% without ITC or to Charge @12% with ITC.

GTA has no need to file a declaration for Forward Charge mechanism in every Financial Year *vide* Notification No. 8/2023-CT (Rate), dated 26.07.2023.

Amendment under Reverse Charge Mechanism – Section 9(3) of CGST Act, 2017 by amending original Notification No. 13/2017-C.T. (Rate), dated 28.06.2017 by issuing Notification No. 5/2022-C.T. (Rate), dated 13.7.2017. As per the amended Notification, the specified service recipient need to discharge GST under RCM if the same service provided by GTA who had not opt for Forward Charge payment of GST as provided under Notification No. 3/2022-C.T. (Rate), dated 13.07.2022 Meaning thereby, if the service recipient received a Tax invoice from the GTA containing the declaration (mentioned in Notification No. 5/2022-C.T. (Rate), dated 13.07.2022 that the GTA has opted for Payment of Tax under Forward Charge, then the service recipient is not required to pay tax under RCM. In the absence of such Tax invoice and declaration as per Annexure-III of the Notification No. 5/2022-C.T. (Rate), dated 13.07.2022; the specified service recipient is liable to discharge GST under RCM.

Declaration by GTA under Notification No. 5/2022-C.T. (Rate), dated 13.07.2022 in Tax invoice as under:

“I/We have taken registration under the CGST Act, 2017 and have exercised the option to pay tax on services of GTA in relation to transport of goods supplied by us during the Financial Year..... under Forward Charge.”

New Declaration by GTA under Notification No. 14/2022-Central Tax dated 5-07-2022 as per Sl. No. 4 of the Notification as follows:

4. In the said rules, in rule 46, after clause (r), the following clause shall be inserted, namely:— ‘(s) a declaration as below, that invoice is not required to be issued in the manner specified under sub-rule (4) of rule 48, in all cases where an invoice is issued, other than in the manner so specified under the said sub-rule (4) of rule 48, by the taxpayer having aggregate turnover in any preceding financial

year from 2017-18 onwards more than the aggregate turnover as notified under the said sub-rule (4) of rule 48—

“I/We hereby declare that though our aggregate turnover in any preceding financial year from 2017-18 onwards is more than the aggregate turnover notified under sub-rule (4) of rule 48, we are not required to prepare an invoice in terms of the provisions of the said sub-rule.”

GSTN Advisory on Functionalities for GTA Taxpayers on the portal

The GSTN issued an *Advisory No. 620, dated January 01, 2024* on the functionalities available on the portal for the GTA taxpayers.

The following Functionalities are made available on the portal for the GTA Taxpayers.

Filing of Online Declaration in Annexure V and Annexure VI for the existing GTA Taxpayers: As per the Notification No. 06/2023-Central Tax (Rate), dated 26.07.2023, the option by GTA to pay GST on Forward Charge mechanism or the Reverse Charge mechanism respectively on the services supplied by them during a Financial Year shall be exercised by making a declaration in **Annexure V or Annexure VI from the 1st January of the current Financial Year till 31st March of the current Financial Year, for the next Financial Year.**

To comply with the above notification, online filing in

Annexure V Form and **Annexure VI Form** is available on the portal for the existing GTA taxpayers for filing declaration in Annexure V Form or Annexure VI Form for the succeeding FY 2024-25 from 01.01.2024 to 31.03.2024.

To Access Annexure V Form: Post login on the FO portal-Navigate to Services>>User Services>>GTA>>**Opting Forward Charge Payment by GTA (Annexure V).**

To Access Annexure VI Form: Post login on the FO portal-Navigate to Services>>User Services>>GTA>>**Opting to Revert under Reverse Charge Payment by GTA (Annexure VI)**

Filing of Online Declaration in Annexure V for the Newly registered GTA Taxpayers: As per the Notification No. 5/2023-Central Tax (Rate), dated 09.05.2023, the option to pay GST on Forward Charge mechanism on the services supplied the Newly registered taxpayers can now be able to file their declaration within the specified due date for the current Financial Year i.e. 2023-2024 and onwards. The due date (before the expiry of forty-five days from the date of applying for GST registration or one month from the date of obtaining registration whichever is later) is now being configured by the system and the same would be displayed to the newly registered taxpayers on their dashboard. The newly registered GTA taxpayers can now file their online declaration on the portal for the current FY within the specified due date.

To Access: Post login on the FO portal-Click YES on the pop up message on post login (or) Navigate to Services>>User Services>>GTA>>**Opting Forward Charge Payment by GTA (Annexure V).**

Uploading manually filed Annexure V Form for the FY 2023-24 on the portal: The Existing/Newly registered GTA taxpayers who have already submitted Declaration in Annexure V Form for the FY 2023-24 manually with the jurisdictional authority are requested to upload their duly acknowledged legible copy of the Annexure V Form on the portal, mentioning correct particulars as mentioned in the physical Annexure V submitted, with correct date of acknowledgement from jurisdictional office, where such physical Annexure V was filed for the record purposes. Further it is informed that if the Annexure V was filed manually within the specified due date for the FY 2023-24, he need not to file it again on the portal for the FY 2024-25 or any succeeding FY. By utilizing the manual upload facility, you can upload the legible copy of duly acknowledged manually filed Annexure V for 2023-24, with correct particulars.

To Access: Post login on the FO portal-Navigate to **Services>>User Services>>GTA>> Upload Manually Filed Annexure V.**

As per the above notification, the option exercised by GTA to itself pay GST on the services supplied by it during a Financial Year shall be deemed to have been exercised for the next and future financial years unless the GTA files a declaration in Annexure VI to revert under reverse charge mechanism.

However, the GTAs who filed declaration for the FY 2024-25 on the portal for the period from 27.07.2023 till **22-08-2023** has been considered as filed and valid. Those taxpayers are requested that they need not file declaration in Annexure V Form for the subsequent FYs if they wish to continue their option for pay GST on Forward charge mechanism.

12. Advance Rulings

In Re: *Liberty Translines*, reported in 2020 (41) G.S.T.L. 657 (App. A.A.R. - GST - Mah.) held –GTA -Sub-contract - Hiring of Vehicles - Classification - Contract to undertake transportation of goods given by consignor/consignee to main contractor and not to appellant - Issuance of consignment note to main contractor does not make him a GTA inasmuch as definition of Consignment Note in erstwhile Service Tax law requiring said Note to be issued to consignor/consignee - It is main operator who issues E-way Bill as GTA and not appellant - Transit insurance is also being done by main contractor - Merely issuance of Lorry Receipt as bailee not meaning it to be a consignment note - Therefore, merely hiring out their transport vehicles to main transporter would not make appellant as GTA - Appellant only a Goods Transport operator and not a GTA - Activity of appellant appropriately covered under SAC 9966 of Notification No. 11/2017-C.T. (Rate) and taxable accordingly - Impugned AAR ruling sustainable

* * *

In Re: *POSCO India Steel Distribution Centre Pvt. Ltd.* reported in 2020 (39) G.S.T.L. 72 (A.A.R. - GST - Mah.) Consignment notes issued by assessee but actual transportation done by third party transporter - In terms of para 2(ze) of Notification No. 12/2017-C.T. (Rate), “Goods Transport Agency” means any person who provides service in relation to transport of goods by road and issues

consignment note, by whatever named called - Assessee providing services in relation to transport of goods by road, and also issuing consignment notes for such transactions - Assessee to be considered as Goods Transport Agency (GTA) - Services covered under SAC 996511 as 'Land Transport Services of Goods' - Services chargeable to GST @ 5% under Serial No. 9(iii) of Notification No. 11/2017-C.T. (Rate) provided that credit of input tax credit charged on goods and services used in supplying services not taken - GST Rate of 12% applicable provided that goods transport agency opted to pay Central Tax @ 6% under this entry on all services of GTA supplied by it - Since third party transporter not charging any GST on services supplied by it to assessee, assessee cannot avail input tax credit in this respect.

* * *

In Re: K.M. Trans Logistics Private Limited, reported in 2020 (35) G.S.T.L. 346 (App. A.A.R. - GST - Raj.) GTA-Transportation services provided by appellants with own vehicles on the basis of Invoice(s) and E-way Bill but without generating consignment notes - Details of consignor and consignee of goods not being mentioned, it can be inferred that appellant will be providing their own vehicles either to the raw material supplier or to the exporting units for use in the transportation of goods which is raw material for the exporting units - Lien of the goods if transferred and appellant becomes responsible for the goods till its safe delivery to the consignee, services classifiable as Goods Transport Agency services and issuance of consignment note or its non-issuance not makes any difference - Mere non issuance of consignment note in such cases not makes them entitled for exemption from payment of GST - However, if the vehicles provided to client on rental for use as per their requirement, services classifiable as 'rental services of transport vehicles' - Accordingly, services to be provided by appellant will be liable to payment of GST as specified under Notification No. 11/2017-C.T. (Rate) (as amended) read with exemption Notifications, under the services relating to transportation of goods or rental services of transport vehicle including supporting service, depending upon the exact nature of activity to be carried out by them - Format of E-way Bill, in whatever manner designed or amended, not relevant for deciding the classification of the activity carried out by them.

* * *

In Re: Sri Saravana Perumal, reported in 2020 (33) G.S.T.L. 39 (A.A.R. - GST - Kar.) GTA-Hiring of vehicles by one GTA to another GTA - Taxability - GST notifications give different and independent treatment to services provided as a GTA and service provided by way of giving vehicles on hire basis to another GTA - Further there is no provision in law barring person being a GTA from renting vehicle to another GTA - Accordingly, for supplying **GTA services** applicant is liable to pay GST @ 5% without ITC and 12% with ITC - Further, in certain cases, this liability has to be discharged under RCM - As regards services of providing vehicles on hire basis to another GTA is concerned, same is exempt under Entry No. 22 of Notification No. 12/2017-C.T. (Rate) - Section 9 of Central Goods and Services Tax Act, 2017.

* * *

In Re: *Balasubramanyam Saravana Perumal*, reported in 2020 (32) G.S.T.L. 795 (A.A.R. - GST - A.P.) GTA - Arranging Supply of Vehicle on commission basis - Taxability - In terms of statutory provisions, issuance of Consignment Note is sine qua non for a supplier of service to be considered as a Goods Transport Agency - Documents produced by applicant indicate that he is registered under GST law and is issuing Lorry Receipts (LR) for vehicles arranged by him in his own name - These LR are nothing but Consignment Notes as these contain all details as were prescribed under erstwhile Service Tax law viz. registration number, truck number, date of issue, consigner name and consignee name with address, nature of the goods for transport, invoice issued by the consigner, weight, freight charges and also mentions who has to discharge GST - Accordingly, applicant is fully covered in definition of GTA - In view of above GST has to be discharged on entire consideration either directly or under RCM as per each case - Rate of GST would be either 5% (2.5% CGST + 2.5% SGST) or 12% (6% CGST + 6% SGST) depending upon as to whether conditions of availing 5% GST ibid are fulfilled or not - Supporting services other than transport are leviable to 18% GST (9% CGST + 9% SGST) - In view of above, commission charged for arranging vehicles is not taxable separately in hand of GTA services provider - Section 9 of Central Goods and Services Tax Act, 2017.

Chapter 38

GST on Education Sectors

Synopsis

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1. Introduction

Education is the back bone of a Country's prosperity and growth of its economy. To generate Skill in our human resources there is a need of better schooling with quality training for the young generations in the Country. Accordingly, the Government has been allotting a substantial amount of funds in the every year's Finance budget for education, Skill development and vocational training programme. So, the Government ensures "Free and Compulsory Education to all Children" guaranteed in Article 21A of the chapter of Fundamental Right in the Indian Constitution.

2. Tax provisions on Education sector under pre-GST era

In the Service Tax regime, services relating to education sectors were included in the negative list of Service Tax. But only the following specified education Services were exempted from the payment of Service Tax:

- pre-school education and education up to higher secondary school or equivalent;
- education as part of a prescribed curriculum for obtaining a qualification recognized by law for the time being in force; and
- education as a part of an approved vocational education course.

With regard to meaning of ‘education as a part of curriculum for obtaining a qualification recognized by law’ was clearly explained in para 4.12.1 of Taxation of Services: An Education Guide issued by C.B.E. & C., w.e.f 1-7-2012, the relevant para is reproduced as under:—

“It means that only such educational services are in the negative list as are related to delivery of education as ‘a part’ of the curriculum that has been prescribed for obtaining a qualification prescribed by law. It is important to understand that to be in the negative list the service should be delivered as part of curriculum. Conduct of degree courses by college, universities or institutions which lead grant of qualifications recognized by law would be covered. Training given by private coaching institutions would not be covered as such training does not lead to grant of a recognized qualification”.

3. Tax provisions on Education Sector in the GST regime

The Central Goods and Services Tax Act, 2017 nowhere defines the meaning of Education.

The Supreme Court in its decision in the case of “*Loka Shikshana Trust v Commissioner of Income Tax*” has defined Education as the “Process of training and developing knowledge, skill and character of students by normal schooling” It is necessary that the role of any school or educational institution extends to teach good character and other skills and not restrict by providing only the technical education.

4. Responsibility of the Government

Education is listed under the Concurrent list wherein both the Centre and States are jointly responsible for all promotional measures relating to education have to be taken by both the Central Government and State Government. Article 21A of Constitution of India binds the State to provide for free and compulsory education of all children in the age group of six to fourteen years as a Fundamental right in such manner as the State or Centre may determines their policies.

5. Requirement of Taxing Education Sector

While the basic and elementary education is a Constitutional right, but in reality the present scenario, where education sector has turned into commercialization just like a business profession. So the Government has restricted its policy to give blanket exemption to all education institutions and fixed exemption to certain categories to end up profiteering activities and imposed tax on certain categories of education sectors.

6. Taxability of Education in the GST-regime

The education services provided by the institutions and providing the following are fully exempted:

1. Pre-school to Higher Secondary School
2. Qualifications recognized by Indian law
3. Approved vocational educational course

It is important to note that core education services with respect to school education irrespective of whether it is recognized by Indian law or not is exempt. For instance, Services provided by international schools giving international certifications such as International Baccalaureate (IB) is exempt.

The requirement of the qualification being recognized by Indian law arises only after school education. Hence, if a college course leads to a qualification not recognized by Indian law, the fees received by the college in that respect is fully taxable.

7. Exemption on entrance fees

Educational Institutions also provide support services in addition to the core educational services. Such support services either are in addition to or aid to the core educational services provided by such institutions. Any fees collected for conducting entrance examination by any educational institution, be it school or a college is completely exempt.

8. Applicable GST Rates

Taxability of Services by Education Intuitions is exempted summarized in the below Table: Notification No. 12/2017-C.T. (Rate), dated 28-6-2017 and Notification No. 2/2018-C.T. (Rate), dated 25-1-2018.

| Chapter Heading | Description of Service | Rate % | Notification No. |
|------------------------|---|---------------|---|
| 9992 | Education Service | 9% + 9% | 11/2017-C.T. (Rate), dated 28-6-2017 |
| 9981 | Research and development services | 9% + 9% | 11/2017-C.T. (Rate), dated 28-6-2017 |
| 9992 | Services provided— (a) by an educational institution to its students, faculty and staff; (aa) by an educational institution by way of conduct of entrance examination against consideration in the form of entrance fee;”; (b) to an educational institution, by way of,— (i) transportation of students, faculty and staff; (ii) catering, including any mid-day meals scheme sponsored by the Central Government, State Government or Union territory; | Nil | 12/2017-C.T. (Rate), dated 28-6-2017 |

| Chapter Heading | Description of Service | Rate % | Notification No. |
|------------------------|--|---------------|--------------------------------------|
| | <p>(iii) security or cleaning or housekeeping services performed in such educational institution;</p> <p>(iv) services relating to admission to, or conduct of examination by, such institution;</p> <p>“(v) supply of online educational journals or periodicals :”;</p> <p>“Provided further that nothing contained in sub-item (v) of item (b) shall apply to an institution providing services by way of,- (i) pre-school education and education up to higher secondary school or equivalent; or (ii) education as a part of an approved vocational education course.”;</p> | | |
| 9992 | <p>Services provided by the Indian Institutes of Management, as per the guidelines of the Central Government, to their students, by way of the following educational programmes, except Executive Development Programme:—</p> <p>(a) two year full time Post Graduate Programmes in Management for the Post Graduate Diploma in Management, to which admissions are made on the basis of Common Admission Test (CAT) conducted by the Indian Institute of Management;</p> <p>(b) fellow programme in Management;</p> <p>(c) five year integrated programme in Management.</p> | Nil | 12/2017-C.T. (Rate), dated 28-6-2017 |
| 9992 or 9996 | <p>Services provided to a recognized sports body by-</p> <p>(a) an individual as a player, referee, umpire, coach or team manager</p> | Nil | 12/2017-C.T. (Rate), dated 28-6-2017 |

| Chapter Heading | Description of Service | Rate % | Notification No. |
|----------------------------------|--|---------------|--------------------------------------|
| | for participation in a sporting event organized by a recognized sports body; (b) another recognized sports body. | | |
| 9983 or 9985 or 9992 | Services of assessing bodies empanelled centrally by the Directorate General of Training, Ministry of Skill Development and Entrepreneurship by way of assessments under the Skill Development Initiative Scheme. | Nil | 12/2017-C.T. (Rate), dated 28-6-2017 |
| 9992 or 9983 or 9991 | Any services provided by,— (a) the National Skill Development Corporation set up by the Government of India; (b) a Sector Skill Council approved by the National Skill Development Corporation; (c) an assessment agency approved by the Sector Skill Council or the National Skill Development Corporation; (d) a training partner approved by the National Skill Development Corporation or the Sector Skill Council, in relation to— (i) the National Skill Development Programme implemented by the National Skill Development Corporation; or (ii) a vocational skill development course under the National Skill Certification and Monetary Reward Scheme; or (iii) any other Scheme implemented by the National Skill Development Corporation. | Nil | 12/2017-C.T. (Rate), dated 28-6-2017 |

| Chapter Heading | Description of Service | Rate % | Notification No. |
|------------------------|--|---------------|--|
| 9992 | Services provided by training providers (Project implementation agencies) under Deen Dayal Upadhyaya Grameen Kaushalya Yojana implemented by the Ministry of Rural Development, Government of India by way of offering skill or vocational training courses certified by the National Council for Vocational Training. | Nil | 12/2017-C.T., (Rate), dated 28-6-2017 |
| 9992 | Services provided to the Central Government, State Government, Union territory administration under any training programme for which total expenditure is borne by the Central Government, State Government, Union territory administration. | Nil | 12/2017-C.T., (Rate), dated 28-6-2017 |
| 9966 or 9973 | “(c) motor vehicle for transport of students, faculty and staff, to a person providing services of transportation of students, faculty and staff to an educational institution providing services by way of pre-school education and education upto higher secondary school or equivalent.” | Nil | 12/2017-C.T (Rate) as amended by No. 2/2018-C.T., (Rate) dated 25-1-2018 |

Specific Notifications/Clarifications have been provided with respect to Hostel mess fees Hostel Accommodation fees:

9. GST on Hostel Mess fees

College/Education institution running mess of its own accord for its students is fully exempt, since it is in the nature of a composite supply- wherein the principal supply is provision of education and the consequently mess fees collected is a supply that is naturally bundled to the principal supply.

Circular No. 28/2/2018-GST, dated 25-1-2018 issued in the above subject clarifies that “the educational institutions have mess facility for providing food to their students and staff. Such facility is either run by the institution/students themselves or outsourced to a third person. Supply of food or drink provided by a mess or canteen is tax at 5% without Input Tax Credit. It is immaterial whether the service is provided by the education institution itself or the institution outsources the activity to an outside contractor.

10. GST on Hostel accommodation fees

No GST is chargeable on Annual subscription/fees charged as lodging/boarding charges by educational institutions from students for hostel.

However, to create a tab on the fees or to control the illegal fees collected by the educational institutions, general provisions as applicable to a hotel, guest house, club or inn by whatever name called, for residential or lodging purposes is applicable to educational institution.

If the declared tariff charged by the educational institution for hostel accommodation is less than ₹1000 per day, then such fees is fully exempt. Otherwise, it is taxable at the respective rates as applicable to the declared tariffs.

11. Liability of GST on Other Fees

- Any other fees collected by an educational institution like additional fees for extra-curricular activities to students or any income earned from private enterprises for conducting some research work, etc., is taxable at 18% GST.
- Provision of technical aids for education, rehabilitation, vocational training and employment of the blind will attract at 5% GST.
- Any supply by an educational institution of Instruments, apparatus, and models, designed only for demonstrational purposes will attract 28% GST.
- Any supply to an educational institution of a service which is not in the nature of core educational services, GST rates as applicable at 18%.

12. Exemption Restricted to educational institutions

The following exemptions are restricted only to educational institutions providing pre-school to Higher Secondary School education.

- Service provided to an educational institution by way of catering, including any mid-day meals scheme sponsored by the Central Government, State Government or Union Territory.
- Services by way of Security, Cleaning and housekeeping services provided to an educational institution.

However, any of supply provided by students, faculty, or staff to an educational institution if it is in the nature of core educational services, such supplies are completely free from GST if it is provided to the following institution:

1. Pre-school to High Secondary School.
2. Qualifications recognized by Indian law.
3. Approved vocational educational course.

In case of any supply of service which is not in the nature of core educational services as cited above liable for GST as applicable rates for goods or services.

In nutshell, Under GST, the Government has been provided 100% exemption to certain education services rendered by the educational institutions for all those

have been providing pre-school to higher secondary school education and institutions also providing degree recognized by Indian law. But those categories of institutions who do not cover come under the said category and are not providing educational degree and are not recognized by law are liable for payment of GST.

Thus, services provided by an educational institution to students, faculty and staff are exempt. Educational Institution means an institution providing services by way of:

- (i) pre-school education and education up to higher secondary school or equivalent;
- (ii) education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force;
- (iii) education as a part of an approved vocational education course.

Within the term “educational institution”, sub-clause (ii) covers institutions providing services by way of *education as a part of curriculum for obtaining a qualification recognised by any law* for the time being in force. This is an area where doubts have persisted as to what would be the meaning of “*education as part of curriculum for obtaining qualification recognised by law*”. GST on services being a legacy carried forward from the Service Tax regime, the explanation given in the Education guide of 2012 can be gainfully referred to understand the meaning of the term which reads as under;

What is the meaning of ‘education as a part of curriculum for obtaining a qualification recognized by law’?

It means that only such educational services are in the negative list as are related to delivery of education as ‘a part’ of the curriculum that has been prescribed for obtaining a qualification prescribed by law. It is important to understand that to be in the negative list the service should be delivered as part of curriculum. Conduct of degree courses by colleges, universities or institutions which lead grant of qualifications recognized by law would be covered. Training given by private coaching institutes would not be covered as such training does not lead to grant of a recognized qualification.

Are services provided by way of education as a part of a prescribed curriculum for obtaining a qualification recognized by a law of a foreign country covered in the negative list entry?

No. To be covered in the negative list a course should be recognized by an Indian law.

Within the term “educational institution”, sub-clause (iii) covers institutions providing services by way of education as a part of **approved vocational course**, and institutions providing the above courses will come within the ambit of the term educational institution. Notification No. 12/2017-C.T. (Rate), dated 28th June, 2017, defines approved vocational education course as under:

An “approved vocational education course” means,—

- (i) a course run by an industrial training institute or an industrial training centre affiliated to the National Council for Vocational Training or State Council for Vocational Training offering courses in designated trades notified under the Apprentices Act, 1961 (52 of 1961); or
- (ii) a Modular Employable Skill Course, approved by the National Council of Vocational Training, run by a person registered with the Directorate General of Training, Ministry of Skill Development and Entrepreneurship.

It is to be noted that only those institutions whose operations conform to the specifics given in the definition of the term “Educational Institution”, would be treated as one and entitled to avail exemptions provided by the law. This would mean that private coaching centres or other unrecognized institutions, though self-styled as educational institutions, would not be treated as educational institutions under GST and thus cannot avail exemptions available to an educational institution.

Thus, educational institutions up to Higher Secondary School level do not suffer GST on output services and also on most of the important input services. Some of the input services like canteen, repairs and maintenance etc. provided by private players to educational institutions were subject to service tax in pre-GST era and the same tax treatment has been continued in GST regime.

Thus output services of lodging/boarding in hostels provided by such educational institutions which are providing preschool education and education up to higher secondary school or equivalent or education leading to a qualification recognized by law, are fully exempt from GST. Annual subscription/fees charged as lodging/boarding charges by such educational institutions from its students for hostel accommodation shall therefore, not attract GST.

Similarly, output services related to the specified courses provided by IIM's would be exempt. Executive Development Programs run by the IIM's are specifically excluded, hence such courses would be subject to GST.

Regarding, input services, it may be noted that where output services are exempted, the Educational institutions may not be able to avail credit of tax paid on the input side. The four categories of services known as Auxiliary Education services, which educational institutions ordinarily carry out themselves but may obtain as outsourced services from any other person, have been exempted [as per Notification No. 12/2017-C.T. (Rate)]. Auxiliary education services other than what is specified above would not be entitled to any exemption. The exemption also comes with a rider. Such services are exempt only for educational institutions providing services by way of education up to higher secondary or equivalent, (from pre-school to HSC). Thus if such auxiliary education services are provided to educational institutions providing degree or higher education, the same would not be exempt. For instance, the services of conducting admission

tests for admission to colleges in case of educational institutions are providing qualification recognized by law for the time being in force shall not be liable to GST.

13. Who will pay GST?

Education Services are under forward charge. Therefore, GST shall be paid by the supplier of services.

What will be the Place of Supply of Educational Services where the location of supplier of services and the location of the recipient of services is in India?

As per section 12(6) of the IGST Act, 2017, the place of supply of services provided by way of admission to an educational or any other place and services ancillary thereto, shall be the place where the event is actually held or such other place is located.

As per section 12(7) of the IGST Act, 2017, the place of supply of services provided by way of,— (a) organisation of a cultural, artistic, sporting, scientific, educational or entertainment event including supply of services in relation to a conference, fair, exhibition, celebration or similar events; or (b) services ancillary to organisation of any of the events or services referred to in clause (a), or assigning of sponsorship to such events,—

- (i) to a registered person, shall be the location of such person;
- (ii) to a person other than a registered person, shall be the place where the event is actually held

and if the event is held outside India, the place of supply shall be the location of the recipient.

What will be the Place of supply of Educational Services where the location of the supplier of services or the location of the recipient of services is outside India?

As per section 13(5) of the IGST Act, 2017, the place of supply of services supplied by way of admission to, or organisation of a cultural, artistic, sporting, scientific, educational or entertainment event, or a celebration, conference, fair, exhibition or similar events, and of services ancillary to such admission or organisation, shall be the place where the event is actually held.

14. Educational Institution runs by charitable organizations

Charitable Trusts running institutions conforming to the definition of Educational Institution as specified in the notification would be entitled to the exemptions discussed above. Apart from the general exemption available to all educational institutions, charitable activities of entities registered under Section 12AA of the Income Tax Act is also exempt. The term charitable activities are also defined in the notification. Thus, if trusts are running schools, colleges or any other educational institutions or performing activities related to advancement of educational programmes specifically for abandoned, orphans, homeless children, physically or mentally abused persons, prisoners or persons over age of 65 years residing in a rural area, activities will be considered as charitable and

income from such services will be wholly exempt from GST in terms of Notification No.12/2017-C.T. (Rate), dated 28th June, 2017.

15. Composite and Mixed Supply insofar as Education is concerned

Boarding schools provide service of education coupled with other services like providing dwelling units for residence and food. This may be a case of bundled services if the charges for education and lodging and boarding are inseparable. Their taxability will be determined in terms of the principles laid down in section 2(30) read with section 8 of the CGST Act, 2017. Such services in the case of boarding schools are naturally bundled and supplied in the ordinary course of business. Therefore, the bundle of services will be treated as consisting entirely of the principal supply, which means the service which forms the predominant element of such a bundle. In this case since the predominant nature is determined by the service of education, the other service of providing residential dwelling will not be considered for the purpose of determining the tax liability and in this case the entire consideration for the supply will be exempt.

Let's take another example where a course in a college leads to dual qualification only one of which is recognized by law. Would service provided by the college by way of such education be covered by the exemption notification? Provision of dual qualifications is in the nature of two separate services as the curriculum and fees for each of such qualifications are prescribed separately. Service in respect of each qualification would, therefore, be assessed separately.

If an artificial bundle of service is created by clubbing two courses together, only one of which leads to a qualification recognized by law, then by application of the rule of determination of taxability of a supply which is not bundled in the ordinary course of business, it shall be treated as a mixed supply as per provisions contained in section 2(74) read with section 8 of the CGST Act, 2017. The taxability will be determined by the supply which attracts highest rate of GST.

However incidental auxiliary courses provided by way of hobby classes or extra-curricular activities in furtherance of overall well-being will be an example of naturally bundled course, and therefore treated as composite supply one relevant consideration in such cases will be the amount of extra billing being done for the unrecognized component viz-a-viz the recognized course. If extra billing is being done, it may be a case of artificial bundling of two different supplies, not supplied together in the ordinary course of business, and therefore will be treated as a mixed supply, attracting the rate of the higher taxed component for the entire consideration.

The Education guide of 2012 for the purpose of service tax has given the following important clarifications in respect of educational services. The same can be gainfully referred to, for the purpose of clarity under the GST regime:

“The supply of placement services provided to educational institutions for securing job placements for the students shall be liable to service tax. Similarly, educational institutes such as IITs, IIMs charge a fee from

prospective employers like corporate houses/MNCs, who come to the institutes for recruiting candidates through campus interviews in relation to campus recruitments. Such services shall also be liable to service tax.”

16. Applicability of GST on various fees

Applicability of GST on application fee charged for entrance or the fee charged for issuance of eligibility certificate for admission or for issuance of migration certificate by educational institutions:

It is stated that educational services supplied by educational institutions to its students are exempt from GST vide entry 66 of the notification No. 12/2017 Central Tax (Rate) dated 28.06.2017 relevant portion of which reads as under,

“Services provided—

- (a) by an educational institution to its students, faculty and staff;
- [(aa) by an educational institution by way of conduct of entrance examination against consideration in the form of entrance fee;]...”

Therefore, it can be seen that all services supplied by an ‘educational institution’ to its students are exempt from GST. Consideration charged by the educational institutes by way of entrance fee for conduct of entrance examination is also exempt. The exemption is wide enough to cover the amount or fee charged for admission or entrance, or amount charged for application fee for entrance, or the fee charged from prospective students for issuance of eligibility certificate to them in the process of their entrance/admission to the educational institution. Services supplied by an educational institution by way of issuance of migration certificate to the leaving or ex-students are also covered by the exemption. Accordingly, such activities of educational institution are also exempt.

Accordingly, it is clarified that the amount or fee charged from prospective students for entrance or admission, or for issuance of eligibility certificate to them in the process of their entrance/admission as well as the fee charged for issuance of migration certificates by educational institutions to the leaving or ex-students is covered by exemption under Sl. No. 66 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017

C.B.I & C, Vide Circular No. 177/09/2022-GST, dated 03.08.2022

NO GST LEVIABLE ON COURSE FEES PAID BY STUDENTS TO EDUCATIONAL INSTITUTIONS.

The Hon'ble Delhi High Court in the case of *Association of Diplomate of National Board Doctors v National Medical Commission [W.P No. 10326 of 2021, dated November 1, 2023]* directed the Respondent to refund amount of GST collected on course fees, as no GST is leviable on the amount of Course Fees paid to educational institutions.

Chapter 39

Pure Agent Services

Synopsis

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1. Meaning of Pure Agent

Generally, speaking agent means a person who plays role of intermediary to facilitate business between two parties or to arrange goods or services for his client procuring from another person. An agent gets commission or brokerage amount on requirement order of his client. The concept of pure agent was also available under Service Tax law. A pure agent concept was borrowed from the erstwhile Service Tax Determination of Value Rules, 2006 and the same provision incorporated under GST law.

2. Pure Agent concept in pre-GST era

Pure agent has been defined in Explanation to sub-rule 2 of Rule (5) of the Valuation Rules as a person who:—

- enters into a contractual agreement with the recipient of service to act as his pure agent to incur expenditure or costs in the course of providing taxable service;
- neither intends to hold nor holds any title to the goods or services so procured or provided as pure agent of the recipient of service;
- does not use such goods or services so procured; and
- receives only the actual amount incurred to procure such goods or services.

3. Pure Agent concept in the GST regime

Section 2(5) of the CGST Act, 2017 defines “agent” means a person, including a factor, broker, commission agent, *arhatia, del credere* agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another;

Thus, the GST Act defines an Agent as a person including a factor, broker, commission agent, agent, *arhatia, del credere* agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another.

Broadly speaking, a pure agent is one who while making a supply to the recipient, also receives and incurs expenditure on some other supply on behalf of the recipient and claims reimbursements (as actual, without adding it to the value of his own supply) for such supplies from the recipient of the main supply. While the relationship between them (provider of service and recipient of service) in respect of the main service is on a principal to principal basis, the relationship between them in respect of other ancillary services is that of a pure agent.

4. Relevance of Pure Agent under GST

The concept of pure agent has been explained in Rule 33 of the CGST Rules, 2017 of Chapter IV of Determination of Value of Supply and a pure agent expression meaning as follows:—

A “pure agent” means a person who:

- (a) enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;
- (b) neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply;
- (c) does not use for his own interest such goods or services procured; and
- (d) receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.

Thus important thing to note is that a pure agent does not use the goods or services so procured for his own interest and this fact has to be determined from the terms of the contract.

Simple speaking, pure agent is a person who makes a supply of goods and services to the recipient. He undertakes to receive ancillary services from other suppliers of goods or services and incurs expenditure on behalf of his client. On delivering of goods or services to the client he claimed the actual expenditures as reimbursement.

5. Illustration of Pure Agent

The Pure agent situation can be explained in the following example

Illustration: A is an importer and B is a custom broker. A approaches B for custom clearance of import consignment and delivery thereof, which require a transportation facility to be provided to B. So, A authorizes B to procure service of transportation and agreed to reimburse the actual amount which would be incurred for such procurement of transportation service. B provides the custom broker service and paid to the transporter on behalf of A for the delivery of goods so cleared. There is a contractual agreement between A & B to incur the

expenditure in the course of supply of his Customs Broker Service and the agreement provides reimbursement of transport services utilised at actual. B will receive the actual amount which was paid by him to transporter. The ancillary service of transportation provided by B is on pure agent basis; the value of transportation service claimed as reimbursement and will not be part of taxable value of Customs Broker service.

6. Exclusion from value of supply for levy of GST

The GST law provides that expenditure incurred as pure agent becomes relevant for the determination of the value of a supply for levy of GST. Thus, the valuation rules provide that expenditure incurred as pure agent, will be excluded from the value of supply and also from aggregate turnover. However, such exclusion of expenditure incurred as pure agent is possible only and only if all the conditions required to be considered as a pure agent and further conditions stipulated in the rules are satisfied by the supplier in each case.

As per Rule 33 of the CGST Rules, 2017 as prescribed that the expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply, if all the following conditions are satisfied, namely:—

- (i) the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorisation by such recipient;
- (ii) the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and
- (iii) the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.

In case the above conditions are not satisfied, such expenditure incurred shall be included in the value of supply under GST.

7. Illustration of exclusion from value of supply

The exclusion from value can be explained in the following example

Illustration: Corporate services firm, A is engaged to handle the legal work pertaining to the incorporation of Company B. Other than its service fees, A also recovers from B, registration fee and approval fee for the name of the company paid to the Registrar of Companies. The fees charged by the Registrar of Companies for the registration and approval of the name are compulsorily levied on B. A is merely acting as a pure agent in the payment of those fees. Therefore, A's recovery of such expenses is a disbursement and not part of the value of supply made by A to B.

8. Examples of pure agent expenditures:

1. Port fees, Port Charges, Custom duty, dock dues, transport charges etc. paid by Customs Broker on behalf of owner of imported goods.

2. Expenses incurred by C & F agent and reimbursed by principal such as freight, godown charges.

Illustration:

Suppose a Customs Broker issues an invoice for reimbursement of a few expenses and for consideration towards agency service rendered to an importer. The amounts charged by the Customs Broker are as below:

| Sl. No. | Component Charged in invoice | Amount (₹) |
|---------|------------------------------------|------------|
| 1 | Agency Income; | 10,000/- |
| 2 | Travelling expenses/Hotel expenses | 15,000/- |
| 3 | Customs Duty | 55,000/- |
| 4 | Docks Dues | 5,000/- |

In the above situation, agency income and travelling/hotel expenses shall be added for determining the value of supply by the Customs Broker whereas Docks dues and Customs Duty shall not be added to value, provided the conditions of pure agent are satisfied.

In nutshell, the concept of pure agent is not a new provision, which was available under Service Tax law and the same provision has incorporated under GST. This topic clearly explained that the reimbursement expenditure paid by the supplier should not be considered as part of value for levy of GST and also while calculating the aggregate turnover for determination of threshold limit of registration, the expenditure incurred by the supplier for such expenses of pure agent should be excluded. Therefore, any person who wishes to act as pure agent shall ensure to satisfy the conditions as specified under Rule 33 of CGST Rules, so that value of services so supplied by him is not subject to GST. The concept of pure agent has direct implications on the value of taxable supply and it affects the amount of GST charged on a particular supply if he fails to satisfy the conditions so specified under Valuation Rules. If he satisfies the stipulated conditions provided under valuation rules, he will be qualified as a pure agent under GST.

9. Advance Rulings

In Re: *Cigma Medical Coding Private Ltd*, reported in 2021 (53) G.S.T.L. 51 (A.A.R. - GST - Ker.), held that “the students are not enrolled with the applicant for training but have approached the applicant for facilitating payment of fees to AAPC for procuring the examination and certification services provided by AAPC. The applicant collects the actual amount of examination fee and remits that amount to AAPC on behalf of the student without collecting any service charges either from the student or from AAPC. In this situation the applicant collects the examination fee from the students and remits it to AAPC and no service charge is collected for the fee payment facilitation service either from the student or AAPC. In order to come within the scope and meaning of supply as defined in Section 7 of the CGST Act the activity/transaction shall be for a consideration in the course or furtherance of business. Though the fee payment facilitation services are provided by the applicant in the course or furtherance of

their business as the same is being made without consideration it falls outside the meaning and scope of supply as defined in Section 7 of the CGST Act, 2017. Therefore, the applicant is not liable to pay GST on the fee payment facilitation services provided to outside students without consideration. The collection and payment of examination fee to AAPC by the applicant on behalf of outside students (who are not enrolled for training with the applicant) without collecting any service charge either from students or AAPC is not liable to GST for the reasons as stated above.”

* * *

In Re: *Logic Management Training Institutes Pvt. Ltd*, reported in 2020 (40) G.S.T.L. 399 (A.A.R. - GST - Ker.) held that “As per Section 15 of the CGST Act, 2017 the entire consideration received by the applicant from the recipient of services is liable to GST. However, if in respect of the amount collected as examination fees/other fees the conditions prescribed in Rule 33 of the CGST Rules, 2017 are satisfied then such amount can be excluded from the value of taxable supply as expenditure incurred by the applicant as a pure agent of the recipient of services.”

* * *

In Re: *Asiatic Clinical Research Private Limited*, reported in 2020 (33) G.S.T.L. 42 (A.A.R. - GST - Kar.), observed that” taking into consideration the terms of the agreements and the facts of the case it is clear that when the applicant was engaged by the sponsor it was known to the sponsor that the applicant was not capable of conducting the clinical trials themselves and that the same would have to be carried out by a third entity. In other words the fact that the clinical trial services would have to be performed by another person was known to the service recipient. Accordingly after the Institutions and/or Principal Investigators were identified the tripartite agreement was prepared. The applicant receives the required amount and the same amount is transferred to the Institutions and/or Principal Investigators. This amount is besides the amount that the applicant receives for the services provided by them. The only infraction is that the pure agent is required to incur the expenditure and recover the same later and in this case the payment is made to the Institutions and/or Principal Investigators only after the same is received from the Sponsor. We see that this arrangement does not change the nature of a pure agent as long as the amount received is completely transferred to the Institutions and/or Principal Investigators for their services. The examination of the agreement of Clinical Trial Services since the applicant satisfies all the conditions laid down in the Explanation to Rule 33, the applicant qualifies as a pure agent of the recipient of service, i.e. the Sponsor. He also satisfies all the conditions prescribed in Rule 33 of the CGST Rules and hence the value of invoice raised by the applicant on the sponsor for making payment to the principal investigator and the institution would be excluded from the value of supply. However this ruling has a caveat that this ruling is not a ruling on the nature of the supply of services by the principal investigator and the institution to the sponsor.

RULING

(1) The first question whether the services provided by the applicant to the foreign client amount to export of service cannot be answered as Section 97 of the CGST Act, 2017 does not empower the Authority to give Ruling on the Place of Supply of Goods or Services?

(2) In respect of question 2 it is Ruled that the applicant qualifies to be a Pure Agent in receiving amounts from the foreign clients and passing it on to the Local Research Institutions, as provided in the agreements placed before the Authority.

* * *

In Re: *TUI India Private Limited, reported in 2019 (28) G.S.T.L. 346* (A.A.R. – GST-Delhi), Tour operator - Reservation for hotel accommodation only - Assessee booking hotel rooms in foreign countries for its Indian clients for a convenience fee - Assessee covered as ‘agent’ - Definition of “supplier” includes an agent, who is supplying services on behalf of another - Assessee a “supplier” in relation to supply of hotel accommodation service supplied by the foreign hotel or hotel aggregator - Assessee covered by definitions of “agent”, “supplier” and “taxable person” - Assessee fell under categories of persons requiring compulsory registration while booking hotel accommodation in foreign countries for its clients in India - Consideration for rendering services supplied by assessee partly received from the Indian clients as service fee/convenience fee and partly received from foreign hotel aggregator as target based sales commission - Since, assessee charging same amount from their client as paid by them to hotel aggregators and all other conditions of “pure agent” also satisfied, value of hotel accommodation cannot be added to value of its main service which was booking of hotel accommodation - Assessee located in India, even though hotel located outside India, place of supply of service will be India - Assessee liable to pay GST - ‘Tour operators services’ covered under entry (i) of Serial No. 23 of Notification No. 11/2017-C.T. (Rate) and required to pay GST @ 5% (2.5% CGST + 2.5% SGST) (without ITC) subject to fulfilment of conditions - Assessee not covered under entry (ii) of Serial No. 23 of said Notification before 25-1-2018 and entry (iii) of Serial No. 23 of said Notification from 25-1-2018 and hence option to pay GST @ 18% (9% CGST + 9% SGST) (with ITC) not available to assessee - Sections 2(5), 2(105), 2(107), 9, 12(3), 22 and 24 of Central Goods and Services Tax Act, 2017.

Chapter 40

Intermediary Services

Synopsis

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1. Meaning of Intermediary Services

“Intermediary” means someone who acts as an agent, broker, firm, person who a link between the parties to a business transaction and who arranges or facilitates a supply of goods, or a provision of service, or both, between two persons, without alter or further processing. There is less interference between manufacturer and customers to meet their need due to existence of intermediary services. In this background the services of intermediary plays an important role to provide quality goods or services or both in domestic as well as in international market.

2. Intermediary services under GST

The term “intermediary” has been under Section 2(13) of the IGST Act, 2017, “intermediary” means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account”

The key features can be derived from the above definition of “intermediary” are summarized as under:—

- An intermediary can be a broker, an agent or any other person;
- An intermediary is a person, who between two or more persons;
- An intermediary who arranges or facilitates the supply of goods or services or both or securities;
- An intermediary but does not include a person who supplies such goods or services or both or securities on his own account;
- An intermediary cannot alter the nature of supply as provided by his principal.

3. Determination of place of supply of service in case of Intermediary Service

In order to ascertain the levy and identify the tax liability of GST, there is need to determine the place of services, Inter-State supplies are leviable to IGST and Intra-State supplies are leviable to CGST/SGST/UTGST as the case may be.

4. Inter-State provisions

Inter-State provisions are contained under Section 7 of the Integrated Goods and Services Tax Act, 2017 and since none of the specific provisions are applicable, residuary provision contained under Section 7(5) (c) shall be made applicable in the case of intermediary service.

Thus the provisions of Section 7(5)(c) states that inter-State supply of goods or services or both in the taxable territory shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce, however, the same should not be an intra-State supply and should not be covered elsewhere in Section 7 of the Act.

5. Intra-State provisions

Section 8 of the Integrated Goods and Service Tax Act, 2017 deals with the provisions of intra-State. Wherein the provisions of Section 8(2) states that the supply of services where the location of the supplier and the place of supply of services are in the same State or same Union territory shall be treated as intra-State supply, subject to the provision of Section 12.

The above provisions of inter-state supply and intra-state supply has clearly specified the position of supply of services where the recipient and the suppliers of services are located in India or in the taxable territory of India and the provisions of GST law is applicable.

In order to determine the place of supply of services by intermediary in the case the recipient of service being located outside India, it is required to discuss Section 13 of the IGST Act, 2017.

Section 13 of the IGST Act, deals with the place of supply of services where location of supplier or location of recipient is outside India. The provisions of the Section 13(1) shall apply to determine the place of supply of services where the location of the supplier of services or the location of the recipient of services is outside India.

Further, Section 13(8) of the IGST Act, 2017 provides that the place of supply of the following services shall be the location of the supplier of services, namely—

- (a) services supplied by a banking company, or a financial institution, or a non-banking financial company, to account holders;
- (b) intermediary services;
- (c) services consisting of hiring of means of transport, including yachts but excluding aircrafts and vessels, up to a period of one month.

Whereas Section 13(2) provides that the place of supply service except the services specified in sub-section (3) to (13) shall be the location of recipient of service. Provided that where the location of the recipient of services is not available in the ordinary course of business, the place of supply shall be the location of the supplier of services.

Thus as per the above cited provisions, the intermediary service is covered in Section 13(8), whereby the place of supply of intermediary services is location of service provider agent in India and liable to GST.

6. Export of Service vis-a-vis intermediary services

Section 2(6) of the IGST Act, 2017 defines “export of services” means the supply of any service when,—

- (i) the supplier of service is located in India;
- (ii) the recipient of service is located outside India;
- (iii) the place of supply of service is outside India;
- (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange; and
- (v) the supplier of service and the recipient of service are not merely establishments of a distinct person with Explanation 1 of Section 8.

In order to any service to be treated as “export service” must be satisfied the above cited conditions. In case of intermediary services as per Section 13(8) of the IGST Act, 2017, the place of supply of the service shall be the location of the supplier of service is in India. Thus intermediary services or commission agent services does not qualify as “export of services” and liable to GST.

7. Levy on intermediary Services

With the existing provisions of IGST Act, intermediary services such as procurement agents/commission agents acting as intermediaries of export of goods or services in India are not free from tax liability on their commission received from the Exporters on their activities of export promotions is liable to GST.

8. C.B.I & C Circular on Scope of “Intermediary services

C.B. I. & Circular No. 159/15/2021-GST, dated 22.09.2021

Clarification on doubts related to scope of “Intermediary”–Reg.

Representations have been received citing ambiguity caused in interpretation of the scope of “Intermediary services” in the GST Law. The matter has been examined. In view of the difficulties being faced by the trade and industry and to ensure uniformity in the implementation of the provisions of the law across field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”), hereby clarifies the issues in succeeding paragraphs.

2. Scope of Intermediary services:

2.1 ‘Intermediary’ has been defined in the sub-section (13) of section 2 of the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as “IGST” Act) as under—

“Intermediary means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account.”

2.2 The concept of ‘intermediary’ was borrowed in GST from the Service Tax Regime. The definition of ‘intermediary’ in the Service Tax law as given in Rule 2(f) of Place of Provision of Services Rules, 2012 issued vide notification No. 28/2012-ST, dated 20-6-2012 was as follows:

“intermediary” means a broker, an agent or any other person, by whatever name called, who arranges or facilitates a provision of a service (hereinafter called the ‘main’ service) or a supply of goods, between two or more persons, but does not include a person who provides the main service or supplies the goods on his account;”

2.3 From the perusal of the definition of “intermediary” under IGST Act as well as under Service Tax law, it is evident that there is broadly no change in the scope of intermediary services in the GST regime vis-à-vis the Service Tax regime, except addition of supply of securities in the definition of intermediary in the GST Law.

3. Primary Requirements for intermediary services:

The concept of intermediary services, as defined above, requires some basic prerequisites, which are discussed below:

3.1 Minimum of Three Parties: By definition, an intermediary is someone who arranges or facilitates the supplies of goods or services or securities between two or more persons. It is thus a natural corollary that the arrangement requires a minimum of three parties, two of them transacting in the supply of goods or services or securities (the main supply) and one arranging or facilitating (the ancillary supply) the said main supply. An activity between only two parties can, therefore, NOT be considered as an intermediary service. An intermediary essentially “arranges or facilitates” another supply (the “main supply”) between two or more other persons and, does not himself provide the main supply.

3.2 Two distinct supplies: As discussed above, there are two distinct supplies in case of provision of intermediary services;

(1) Main supply, between the two principals, which can be a supply of goods or services or securities;

(2) Ancillary supply, which is the service of facilitating or arranging the main supply between the two principals. This ancillary supply is supply of intermediary service and is clearly identifiable and distinguished from the main supply.

A person involved in supply of main supply on principal to principal basis to another person cannot be considered as supplier of intermediary service.

3.3 Intermediary service provider to have the character of an agent, broker or any other similar person: The definition of “intermediary” itself provides that intermediary service provider means a broker, an agent or any other person, by whatever name called....”. This part of the definition is not inclusive but uses the expression “means” and does not expand the definition by any known expression of expansion such as “and includes”. The use of the expression “arranges or facilitates” in the definition of “intermediary” suggests a subsidiary role for the intermediary. It must arrange or facilitate some other supply, which is the main supply, and does not himself provides the main supply. Thus, the role of intermediary is only supportive.

3.4 Does not include a person who supplies such goods or services or both or securities on his own account: The definition of intermediary services specifically mentions that intermediary “does not include a person who supplies such goods or services or both or securities on his own account”. Use of word “such” in the definition with reference to supply of goods or services refers to the main supply of goods or services or both, or securities, between two or more persons, which are arranged or facilitated by the intermediary. It implies that in cases wherein the person supplies the main supply, either fully or partly, on principal to principal basis, the said supply cannot be covered under the scope of “intermediary”.

3.5 Sub-contracting for a service is not an intermediary service: An important exclusion from intermediary is sub-contracting. The supplier of main service may decide to outsource the supply of the main service, either fully or partly, to one or more sub-contractors. Such sub-contractor provides the main supply, either fully or a part thereof, and does not merely arrange or facilitate the main supply between the principal supplier and his customers, and therefore, clearly is not an intermediary. For instance, ‘A’ and ‘B’ have entered into a contract as per which ‘A’ needs to provide a service of, say, Annual Maintenance of tools and machinery to ‘B’. ‘A’ subcontracts a part or whole of it to ‘C’. Accordingly, ‘C’ provides the service of annual maintenance to ‘A’ as part of such sub-contract, by providing annual maintenance of tools and machinery to the customer of ‘A’, i.e. to ‘B’ on behalf of ‘A’. Though ‘C’ is dealing with the customer of ‘A’, but ‘C’ is providing main supply of Annual Maintenance Service to ‘A’ on his own account, i.e. on principal to principal basis. In this case, ‘A’ is providing supply of Annual Maintenance Service to ‘B’, whereas ‘C’ is supplying the same service to ‘A’. Thus, supply of service by ‘C’ in this case will not be considered as an intermediary.

3.6 The specific provision of place of supply of ‘intermediary services’ under section 13 of the IGST Act shall be invoked only when either the location of supplier of intermediary services or location of the recipient of intermediary services is outside India.

4. Applying the abovementioned guiding principles, the issue of intermediary services is clarified through the following illustrations:

Illustration 1 ‘A’ is a manufacturer and supplier of a machine. ‘C’ helps ‘A’ in selling the machine by identifying client ‘B’ who wants to purchase this machine and helps in finalizing the contract of supply of machine by ‘A’ to ‘B’. ‘C’ charges ‘A’ for his services of locating ‘B’ and helping in finalizing the sale of machine between ‘A’ and ‘B’, for which ‘C’ invoices ‘A’ and is paid by ‘A’ for the same. While ‘A’ and ‘B’ are involved in the main supply of the machinery, ‘C’, is facilitating the supply of machine between ‘A’ and ‘B’. In this arrangement, ‘C’ is providing the ancillary supply of arranging or facilitating the ‘main supply’ of machinery between ‘A’ and ‘B’ and therefore, ‘C’ is an intermediary and is providing intermediary service to ‘A’.

Illustration 2 ‘A’ is a software company which develops software for the clients as per their requirement. ‘A’ has a contract with ‘B’ for providing some customized software for its business operations.

‘A’ outsources the task of design and development of a particular module of the software to ‘C’, for which ‘C’ may have to interact with ‘B’, to know their specific requirements. In this case, ‘C’ is providing main supply of service of design and development of software to ‘A’, and thus, ‘C’ is not an intermediary in this case.

Illustration 3 An insurance company ‘P’, located outside India, requires to process insurance claims of its clients in respect of the insurance service being provided by ‘P’ to the clients. For processing insurance claims, ‘P’ decides to outsource this work to some other firm. For this purpose, he approaches ‘Q’, located in India, for arranging insurance claims processing service from other service providers in India. ‘Q’ contacts ‘R’, who is in business of providing such insurance claims processing service, and arranges supply of insurance claims processing service by ‘R’ to ‘P’. ‘Q’ charges P a commission or service charge of 1% of the contract value of insurance claims processing service provided by ‘R’ to ‘P’. In such a case, main supply of insurance claims processing service is between ‘P’ and ‘R’, while ‘Q’ is merely arranging or facilitating the supply of services between ‘P’ and ‘R’, and not himself providing the main supply of services. Accordingly, in this case, ‘Q’ acts as an intermediary as per definition of sub-section (13) of section 2 of the IGST Act.

Illustration 4 ‘A’ is a manufacturer and supplier of computers based in USA and supplies its goods all over the world. As a part of this supply, ‘A’ is also required to provide customer care service to its customers to address their queries and complains related to the said supply of computers. ‘A’ decides to outsource the task of providing customer care services to a BPO firm, ‘B’. ‘B’ provides customer care service to ‘A’ by interacting with the customers of ‘A’ and addressing/processing their queries/complains. ‘B’ charges ‘A’ for this service. ‘B’ is involved in supply of main service ‘customer care service’ to ‘A’, and therefore, ‘B’ is not an intermediary.

5. The illustrations given in para 4 above are only indicative and not exhaustive. The illustrations are also generic in nature and should not be interpreted to mean that the service categories mentioned therein are inherently either intermediary services or otherwise. Whether or not, a specific service would fall under intermediary services within the meaning of sub-section (13) of section 2 of the IGST Act, would depend upon the facts of the specific case. While examining the facts of the case and the terms of contract, the basic characteristics of intermediary services, as discussed in para 3 above should be kept in consideration.

9. Advance Rulings

In Re: *Fulcrum Global Info Services LLP* 2019 (30) G.S.T.L. 261 (A.A.R. – GST-Karnataka), held that “Support services - Back-end support services provided to client under agreement - Scope of work include trade compliance operations management involving compliance screening relevant to client’s business, as instructed and trained by client, helpdesk support services including providing status of shipment to client’s internal and external customers and certain administrative tasks - Details of works entrusted to assessee by client showing that client outsourced its works to assessee and assessee providing his services either updating in system and if system not able to process work, updating it manually - No interaction between assessee and the third persons, either directly or indirectly and assessee concerned only with work entrusted to it on system - Assessee not involved as an intermediary - Assessee’s activities was support service provided to recipient of services - Services classifiable under SAC 9985 more specifically under Service Accounting Code 998599 as “Other support services nowhere else classified in terms of Notification No. 11/2017-C.T. (Rate) - Section 2(13) of Integrated Goods and Services Tax Act, 2017.

* * *

In Re: *Infinera India Private Limited*, 2020 (33) G.S.T.L. 491 (App. A.A.R. - GST - Kar.), held that “Intermediary Service - Pre-sale and marketing service provided by Appellant of the products of overseas client - Infinera US, in a “liaison capacity” is in the nature of facilitating the supply of the products of overseas client and not supplying such goods on his own account - Appellant’s service not falling within the ambit of exclusion clause but appropriately classifiable as an “intermediary service’ as defined under Section 2(13) of Integrated Goods and Services Tax Act, 2017, there being no difference between the meaning of the term “intermediary” under the GST regime and pre-GST regime.”

Chapter 41

Online Information and Database Access or Retrieval (OIDAR) Services

Synopsis

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1. Meaning of OIDAR Services

Internet Services are best way of modern life to manage home work, office work and business task. Now days internet services are easy way of entertainment in our daily life. An internet service makes our life comfortable and occupies an important place to solve our problem with free access to various website. OIDAR Service is a category of Services provided through the medium of internet and received by the recipient online without having any physical interface with the supplier of such services. OIDAR services implies download of an e-book online for a payment would amount to receipt of OIDAR Services by the consumer.

The GST law makers have incorporated OIDAR services under GST law on the basis of the provision of OIDAR Services was available in erstwhile Service Tax law.

Section 160 of the Finance Act, 2023 – Section 2(16) of the IGST Act: Scope of OIDAR services widened the definition of “non-taxable online recipient” aims to broaden the scope of Online Information and Database Access or Retrieval Services (OIDAR). Any unregistered individual in India’s taxable territory, regardless of the purpose, who receives OIDAR services will be considered as a non-taxable online recipient. Previously, services from OIDAR providers located in non-taxable territories abroad, when received by the central government, state government, government authorities, or individuals for non-business purposes, were exempt from taxation. However, this exemption has been eliminated from October 01, 2023. *Vide* Notification No. 48/2023-CT, dated 29.09.2023.

2. OIDAR Services in the GST regime

Section 2(17) of the IGST Act, 2017 has defined “online information and database access or retrieval services” means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply and impossible to ensure in the absence of information technology and includes electronic services such as,—

- (i) advertising on the internet;
- (ii) providing cloud services;
- (iii) provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;
- (iv) providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;
- (v) online supplies of digital content (movies, television shows, music and the like);
- (vi) digital data storage; and
- (vii) online gaming.

3. Taxability of OIDAR Services under GST

Supply is the taxable event in GST. The place of supply determines the taxability of the person. Section 13(12) of the IGST Act, provides with the “place of supply” in respect of OIDAR Services. The place of supply of OIDAR Services shall be the location of the recipient of services. When both the supplier of OIDAR Service and the recipient of such service is in India the place of supply would be the location of the recipient of service. When the supplier of service is located outside India and the recipient is located in India, the place of supply will be India and transaction would be amenable to tax.

4. Persons liable to pay tax on OIDAR Services under GST

- (i) In case where the supplier of such services is located outside India and the recipient is a business entity (registered person) located in India, the reverse charge mechanism would get triggered and the recipient in India (registered entity under GST) will be liable to pay GST under reverse charge and undertake necessary compliances.
- (ii) If the supplier is located outside India and the recipient in India is an individual consumer, in such cases also, the place of supply would be India and the transaction is amenable to levy of GST.
- (iii) In case on supply of online information and database access or retrieval services by any person located in a non-taxable territory and received by a non-taxable online recipient, the supplier of services located in a non-taxable territory shall be the person liable for paying integrated tax on such supply of services.
- (iv) If an intermediary located outside India arranges or facilities supply of such service to a non-taxable online recipient in India, the intermediary

would be treated as the supplier of the said service, except when the intermediary satisfies the following conditions:

- (a) The invoice or customer's bill or receipt issued by such intermediary taking part in the supply clearly identifies the service in question and its supplier in non-taxable territory.
- (b) The intermediary neither collects or processes payment in any manner nor is responsible for the payment between the non-taxable online recipient and the supplier of such services.
- (c) The intermediary involved in the supply does not authorities delivery.
- (d) The general terms and conditions of the supply are not set by the intermediary involved in the supply but by the supplier of services.

5. Registration of OIDAR Service Provider

Section 24 of the CGST Act, prescribed that every person supplying online information and data base access or retrieval services from a place outside India to a person in India.

Section 14(2) of the IGST Act, prescribed for simplified procedure of registration, the supplier (or intermediary) of online information and database access or retrieval services shall, for payment of integrated tax, take a single registration in **Form GST REG-10**. The supplier shall take registration at principal Commissioner of Central Tax, Bangalore West who has been the designated for grant registration in such cases.

In case there is a person in the taxable territory (India) representing such overseas supplier in the taxable territory for any purpose, such person (representative in India) shall get registered and pay integrated tax on behalf of the supplier.

In case the overseas supplier does not have a physical presence or does not have a representative for any purpose in the taxable territory, he may appoint a person in the taxable territory for the purpose of paying integrated tax and such person shall be liable for payment of such tax.

6. Registration of Overseas OIDAR Service Provider

The Overseas OIDAR services from a place outside India to a non-taxable online recipient can apply for registration in **FORM GST REG-09A** and obtain registration for providing OIDAR services from a place outside India (For the purpose of non-taxable online recipient means any Government, local authority, government authority, an individual or any other person not registered and receiving online information and database access or retrieval services in relation to any purpose other than commerce, industry or any other business or profession, located in taxable territory)

7. Returns Filing by Overseas OIDAR Service Provider

Every registered person providing online information and database access or retrieval services from a place outside India to a person in India other than a

registered person shall file return in **FORM GSTR-5A** on or before the twentieth day of the month succeeding the calendar month or part thereof.

8. Examples of OIDAR Services

1. Website hosting, webpage hosting, automated online distance maintenance of programmes and equipment.
2. Supply of software, accessing or downloading software and updating thereof.
3. Supply of images, accessing or downloading text and information, making available of databases.
4. Supply of music, films, games, accessing or downloading of music on to computers, mobile phones and of political, cultural, artistic, sporting, scientific and entertainment broadcasts and events.
5. Supply of distance teaching dependent on the Internet or similar electronic network is used as a tool simply for communication between the teacher and student. Work-books completed by pupils online and marked automatically, without human intervention.

9. Advance Rulings

In Re: *Amogh Ramesh Bhatawadekar*, reported in 2021 (47) G.S.T.L. 76 (A.A.R. - GST - Mah.) A perusal of the submissions made by the applicant reveals that Digital Goods are purchased by applicant from the suppliers based abroad. Such digital goods, in this case online gaming, are then sent to the applicant by Email or Instant message service. Thus we find that there is a supply of **OIDAR** services to the applicant from suppliers based abroad. The nature of **OIDAR** services are such that it can be provided online from a remote location outside the taxable territory. A similar service provided by an Indian Service Provider, from within the taxable territory, to recipients in India would be taxable. In cases where the supplier of such service is located outside India and the recipient is a business entity (registered person) located in India, the reverse charge mechanism would get triggered and the recipient in India who is a registered entity under GST will be liable to pay GST under reverse charge and undertake necessary compliances. If the supplier is located outside India and the recipient in India is an individual consumer not registered under GST Laws, in such cases also the place of supply would be India and the transaction is amenable to levy of GST. In such case the individual should obtain registration and pay GST under reverse charge. The SAC will be 998439 and GST rate will be 18%.

* * *

In Re: *Informatics Publishing Ltd*, reported in 2020 (40) G.S.T.L. 281 (App. A.A.R. - GST - Kar.) observed that “The lower Authority has held that the transaction of supply of information by the appellant is a supply of service covered under Heading 9984 31 whose description is “Online text based information such as online books, newspapers, periodicals, directories and the like”. It has also been held that the service is taxable to GST at 18% under Entry

No. 22 of Notification No. 11/2017-C.T. (R), dated 28-6-2017. The Appellant has contended that this finding of the lower Authority is beyond the scope of the ruling which has been sought for and is hence not sustainable. We agree on this point. The question before the lower Authority was regarding their eligibility to the exemption notification. There was no question regarding classification and rate of tax of the supply made by the appellant. We hold that the lower Authority has gone beyond the question on which a ruling was sought for and hence we set aside the finding on the classification and rate of tax of the supply.

In view of the above discussion, we pass the following order

ORDER

27. The Advance Ruling Order No. KAR/ADRG 74/2019, dated 23rd Sept., 2019 is set aside *in toto* and the appeal filed by M/s. Informatics Publishing Ltd., No. 194, R.V. Road, Basavanagudi, Bangalore 560004 is allowed. The question on which the ruling has been sought for is answered as below:

The supply of services in the nature of subscription to the J-Gate by the educational institutions is eligible for exemption from GST under sub-item (v) of item (b) of Serial No. 66 of Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017 as amended by Notification No. 2/2018-Central Tax (Rate), dated 25-1-2018.”

Chapter 42

Canteen Services under GST

Synopsis

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| 2. Taxability of canteen services in the GST regime | 880 |
| 3. Classification and Rates of Canteen Services | 881 |
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1. Meaning of Canteen Service

Canteen means the common place for refreshment or eating place for the industrial worker, which is generally situated in the premises of an industrial unit. Canteen Service is one of the welfare activities of any Industrial organisation registered under Factories Act, 1948. The Factories Act, 1948, indicates that a factory having more than 250 workers, shall provide and maintain a canteen for giving subsidized food to the workers and employees. Section 46 of the Factories Act, 1948, deals with the provision of canteen facility in factories. The organization can also deploy canteen contractors for providing subsidized foods.

2. Taxability of canteen services in the GST regime

Canteen service implies supply of subsidized or concessional foods and beverages to the employees or staffs as part of welfare activities of any industrial unit.

Since “Supply” is the taxable event under GST. The nature of supply, time of supply and place of supply of goods and services determines the tax liability under GST.

The moot question arises. Whether such supplies of food and beverage by an industrial canteen to its employees are qualifying for the levy of tax under GST?

Section 7 of CGST Act, 2017 prescribed the Scope of supply, the expression “supply” includes—

- (a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;
- (b) import of services for a consideration whether or not in the course or furtherance of business;
- (c) the activities specified in Schedule I, made or agreed to be made without a consideration; and

- (d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II.

Further, the expanded analysis of sub-section (1)(d) of Section 7 of the CGST Act, “the activities to be treated as supply of goods or supply of services as referred to in schedule II, Clause (6)(b) expressed (Composite supply of goods & services) that the following composite supply is declared as supply of service;

“supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration.”

Therefore, the canteen services viz; supply of food or beverages or any other articles for consumption or any drink to employees and a monthly charge is deducted from their salary towards expenses incurred for subsidized food is qualifying as supply and attracts to levy of tax under GST.

3. Classification and Rates of Canteen Services

The accommodation, food and beverage has been classified under SAC 9963 and rates has been notified vide Notification No. 11/2017-C.T. (Rate), dated 28-6-2017 as amended by Notification No. 46/2017-C.T. (Rate), dated 14-11-2017, the relevant portion is reproduced as under:

TABLE

| Sr. No. | Heading | Description of Services | Rates (per cent) | Condition |
|---------|---|--|------------------------|---|
| (1) | (2) | (3) | (4) | (5) |
| 7 | Heading 9963 (Accommodation, food and beverage services) | (i) Supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or drink, where such supply or service is for cash, deferred payment or other valuable consideration, provided by a restaurant, eating joint including mess, canteen, whether for consumption on or away from the premises where such food or any other article for human consumption or drink is supplied, other than those located in the premises of hotels, inns, guest houses, clubs, campsites or other | CGST 2.5 % + SGST 2.5% | Provided that credit of input tax charged on goods and services used in supplying the service has not been taken [Please refer to Explanation.] |

| Sr. No. | Heading | Description of Services | Rates (per cent) | Condition |
|---------|---------|---|-------------------|-----------------------|
| | | commercial places meant for residential or lodging purposes having declared tariff of any unit of accommodation of seven thousand five hundred rupees and above per unit per day or equivalent. Explanation.- “declared tariff” includes charges for all amenities provided in the unit of accommodation (given on rent for stay) like furniture, air conditioner, refrigerators or any other amenities, but without excluding any discount offered on the published charges for such unit. | | |
| | | (iii) Supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink, where such supply or service is for cash, deferred payment or other valuable consideration, provided by a restaurant, eating joint including mess, canteen, whether for consumption on or away from the premises where such food or any other article for human consumption or drink is supplied, located in the premises of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes having declared | CGST 9% + SGST 9% | ITC Credit is allowed |

| Sr. No. | Heading | Description of Services | Rates (per cent) | Condition |
|---------|---------|--|------------------|-----------|
| | | tariff of any unit of accommodation of seven thousand five hundred rupees and above per unit per day or equivalent. Explanation.—“declared tariff” includes charges for all amenities provided in the unit of accommodation (given on rent for stay) like furniture, air conditioner, refrigerators or any other amenities, but without excluding any discount offered on the published charges for such unit. | | |

Explanation.—For the removal of doubt, it is hereby clarified that, supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or drink, where such supply or service is for cash, deferred payment or other valuable consideration, provided by a restaurant, eating joint including mess, canteen, whether for consumption on or away from the premises where such food or any other article for human consumption or drink is supplied, other than those located in the premises of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes having declared tariff of any unit of accommodation of seven thousand five hundred rupees and above per unit per day or equivalent shall attract central tax @ 2.5% without any input tax credit under item (i) above and shall not be levied at the rate as specified under this entry.”

The above classification and rates for supply of food and beverage services, wherein the employers from its own resources supplying food and other articles to the employees in that case canteen service attracts 5% GST. Thereby, the said employers would not be entitled to avail input tax charged on goods and services used in supplying the canteen services. Prior to this amendment the canteen services was 18% from 1st July'2017 to 13th November'2107. The Government has been reduced tax rate to 5% on food or beverage supplied from mess or canteen.

Wherein the employers engaged third party or canteen contractor for providing food and beverage from the beyond of the factory premises canteen services attracts 18% GST. As the food is not made onsite and supplied by the caterers, it would be considered as outdoor catering.

In view of the dual tax rate (5% & 18%) for the similar canteen services, catering industry and companies are facing difficulties to comply the GST provision of filing returns.

4. Advance Rulings

In Re - Caltech Polymers Limited. (A.A.R. - Kerala)

Brief fact of the case:—

The applicant is a Private Limited Company engaged in the manufacture and sale of footwear. They are providing canteen services exclusively for their employees. They are incurring the certain running expenses and are recovering the same from its employees. The company does not make any profit while recovering the cost of the foods items, from the employees. Only the actual cost incurred for the food items is recovered from the employees.

The company is of the opinion that this activity does not fall within the scope of supply, as the same is not in the course or furtherance of its business. The company is only facilitating the supply of food to the employees, which is a statutory requirement and is recovering only the actual expenditure incurred in connection with the food supply, without making any profit.

The company also referred that in pre-GST period canteen services was exempted vide. Sl. No. 19 and 19A of the Mega Exemption Notification No. 25/2012-S.T., dated 20-6-2012 as amended by Notification No. 14/2013-S.T., dated 22-10-2013 issued by the Government of India.

The applicant in their application dated 30-12-2017, raised the following question to be determined by the authority for Advance Ruling:

“Whether reimbursement of food expenses from employees for the canteen provided by company comes under the definition of outward supplies as taxable under GST Act.”

AAR Ruling

It was clarified that recovery of food expenses from the employees for the canteen services provided by company would come under the definition of “outward supply” as defined in Section 2(83) of the CGST Act,2017 and therefore, taxable as a supply of services under GST.

* * *

In Re: Musashi Auto Parts Pvt. Ltd, reported in 2021(49) G.S.T.L. 185 (A.A.R.-GST-Haryana), held that the conjoint reading of Section 16 and 17(5)(b) of CGST Act suggest that the input tax credit with respect to food and beverages and outdoor catering shall be available only where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply.

In the instant case, the applicant is a registered taxable person who is paying tax (GST) on the inward supply of goods or services or both, food and catering service in this case. But the applicant is engaged in the business of manufacturing

of automobiles and not in the business of provision of food or catering. The mandate of the Factories Act to provide meals to the employees does not mean that such provision is in the course of furtherance of business. Even if the provision of food and catering had been in the course of furtherance of business, the applicant would not have been entitled to the input tax credit in light of the express bar provided under Section 17(5)(b)(i) of the CGST Act, 2017. Hence, the company is not eligible to take input tax credit on GST charged by vendor for canteen services availed by it for its employees.

* * *

In Re: Prism Hospitality Services Pvt. Ltd, reported in 2019(21) GSTL, 289 (AAR-GST-Telangana) held that “Regarding the point raised at Sl. No. (6) of the application, the applicant in addition to the supply of food, is also undertaking transportation of food from the place of preparation of food to the premises where it is served. Here the applicant is undertaking two supplies, one is supply of food and another is transportation service. Two supplies are involved and it is a composite supply where the supply of food is a Principal Supply and providing transportation is ancillary supply.”

Section 8 of CGST Act provides that the tax liability on a composite or a mixed supply shall be determined in the following manner, namely:—(a) a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply; and (b) a mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax.

In the instant case, principal supply being supply of food i.e. outdoor catering service, and transportation is ancillary, the whole transaction attracts 18% GST being highest rate of tax compared to tax on transportation service. Therefore, the applicant needs to discharge GST on the gross amount (cost of Food + cost of Transportation) at the rate of 18% i.e., GST rate of outdoor catering service.”

* * *

In Re: Elior India Catering LLP, reported in 2019 (31) G.S.T.L. 362 (A.A.R. – GST-Karnataka) held that “Here it is seen that the applicant is preparing the food items at the place and is selling the goods to the purchasers. Hence this amounts to sale of food items for consumption either in the premises or away from the premises. There is no condition in the entry that the premises should be own. It only mentions that the premises must be place where the services are supplied. The supply of services is happening in the premises of CISCO and the goods are prepared in the same premises and the services are provided there itself. Hence it would qualify as an eating joint (including mess, canteen) wherein the service is supplied. Explanation 1 is only clarificatory in nature and the applicant’s activity of cash and carry does not fit in the transactions narrated in Explanation 1, but still gets covered under the main Entry 7(i) of the notification. There is no condition as to the ownership of the premises in the said main entry and hence there is no need of going into the ownership of the premises or the contract.”

RULING

(1) The supply of goods being food or any other article for human consumption or any drink provided by the applicant under cash and carry model wherein the items are prepared in the same premises from where it is supplied is covered under amended Entry No. 7(i) of the Notification No. 11/2017-Central Tax, dated 28-6-2017 as amended by Notification No. 13/2018-Central Tax (Rate), dated 26-7-2018.

(2) The rate of tax applicable on the above transaction is 2.5% CGST and 2.5% SGST subject to the proviso that credit of input tax charged on goods and services used in supplying the service has not been taken.”

Chapter 43

Employer-Employee Relationship under GST

Synopsis

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1. Provision of Taxable Service

As per the charging section i.e. Section 9 of the CGST Act, 2017, the taxable event under GST includes “supply” of goods or services or both. For a supply to attract GST, the supply must be taxable. Taxable supply has been broadly defined in terms of Section 2(108) of the CGST Act, 2017, means any supply of goods or services or both which, is leviable to tax under this Act.

2. Meaning and Scope of Supply

As per statutory definition contained in Section 7(1) of the CGST Act, 2017, the expression ‘supply’ includes the following—

- all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;
- import of services for a consideration whether or not in the course or furtherance of business;
- the activities specified in Schedule I, made or agreed to be made without a consideration; and
- the activities to be treated as supply of goods or supply of services as referred to in Schedule II.

3. Scope of Levy on Contract employment

Further, Schedule III of CGST Act, 2017 has specified that the activities or transactions which is to be treated neither as supply of goods nor a supply of services. In this regard Section 7(2)(1) of the CGST Act, 2017 specifies that

Services by an employee to the employer in the course of or in relation to his employment shall be neither a supply of goods nor supply of services. In other words the consideration paid by the employer to the employee under the contract of employment is outside the purview or scope of levy of GST.

4. Consideration paid to the Employee

It is submitted that the consideration paid to the employee by employer in the course of employment is not confined to only monthly salary or monetary consideration. The word consideration has wider meaning it includes other amenities, allowances or reimbursement expenses paid to the employees. Such non-monetary consideration paid to the employees by the employers as per the contractual agreement during the tenure of the employment may be summarized as under:

- Fix allowances as per letter of appointment - travel allowances, uniform allowances, transport allowances, daily allowances etc.,
- Amenities provided to employees - accommodation, first aid or medical checkup at company's dispensary, tea coupon, lunch coupon, car facility for office work, computer or laptop for work,
- Reimbursement of expenses incurred by employees - medical expenses, house rent, driver salary, leave travel expenses, conveyance expenses for office work, lodging and boarding expenses on official tour.

The aforesaid allowances, amenities, perquisites and reimbursement expenses are provided by the employers to employees as per employment contract are out of the scope of GST since these transactions in the course of employment contract are neither supply of services nor supply of goods.

5. Levy of GST on supply of food or beverages or any other articles for consumption to employees

It is pertinent to mention that as per provisions in sub-section (1)(d) of Section 7 of the CGST Act, 2017 "supply" includes "the activities to be treated as supply of goods or supply of services as referred to in schedule II". As regards treatment of "composite supply" as "supply of goods", reference may be made to Clause 6(b) of Schedule-II of CGST Act, 2017, which is reproduced below for ready reference:

"Supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration."

Therefore, the canteen services provided to the employees viz; supply of food or beverages or any other articles for consumption to employees and if monthly charge is deducted from their salary towards expenses incurred for subsidized food etc., such supply of canteen services qualifies for treatment of supply of goods for the purpose of levy GST.

6. Taxability of Employees Gift

There is confusion in GST law about the employer-employee relationship. As per proviso in Schedule I, Entry 2 of the CGST Act, 2017, gifts up to ₹50,000/- in value in a financial year by employer to an employee shall not be treated as supply of goods or services or both. Any gift exceeding ₹50,000/- in value in a financial year shall be treated as supply and taxable under GST.

7. C.B.I & C, Clarification Contractual agreement and payment of perquisites by employer to employee is not subject to GST

Schedule III of the CGST Act, prescribes that ‘services by employee to the employer in the course of contractual agreement or in relation to his employment ‘will not be considered as supply of goods or supply of services and hence not taxable under GST.

But any perquisites provided by the employer to its employee in terms of contractual agreement entered into between the employer and the employee will not be subjected to levy of GST-Circular No. 172/04/2022-GST, dated 6-7-2022.

8. Advance Ruling

Authority for Advance Rulings, Karnataka (AAR - KAR ADRG 15/2018 dated July 27, 2018) reported in 2018 (15) G.S.T.L. 722 (A.A.R.-GST).

In Re: Columbia Asia Hospitals Private Limited.

Facts of the Case: M/s. Columbia Asia Hospitals Private Limited (“the Applicant”) is a private limited company and is an international healthcare group operating a chain of modern hospitals across Asia. The Applicant is currently operating across six different states having eleven hospitals out of which six units are in the state of Karnataka. The Applicant has its India Management Office (“IMO”) i.e. Corporate Office in Karnataka and some of the activities for all the units with respect to accounting, administration and maintenance of IT system are carried out by the employees from IMO which forms part of the registered person in Karnataka.

Issue involved: “Whether the activities performed by the employees at the corporate office in the course of or in relation to employment such as accounting, other administrative and IT system maintenance for the units located in the other states as well i.e. distinct persons as per Section 25(4) of the CGST Act, 2017 shall be treated as supply as per Entry 2 of Schedule 1 of the CGST Act to attract GST or it shall not be treated as supply of services as per Entry 1 of Schedule III of the CGST Act, 2017?”

AAR Observations

- Since the IMO is covered under one registration in the state of Karnataka and the other units are covered under different registrations and the units are controlled by the IMO, they both are related persons. By implication, any supply of goods and services from IMO to the separately registered units would amount to supply of goods and services, even if made without consideration (*As per Entry 2 of Schedule I*);

- The valuation of such services is to be done as per the provisions of Section 15 of the CGST Act and if any consideration is charged by issue of invoice by the IMO to the respective units would amount to transfer and hence supply as it is in the course of business under clause (a) of sub-section (1) of Section 7 of the CGST Act, 2017;
- The employees employed in the Corporate Office are providing services to the Corporate Office and hence there is an employee-employer relationship only in the IMO. The other offices are distinct persons and therefore the employers in the IMO have no employer-employee relationship with other offices. Hence Entry I of Schedule III (i.e. neither a supply of goods nor supply of services) is not applicable;
- Further, the activities made between the related persons are treated as supplies and the valuation includes all costs, the employee cost also needs to be taken into consideration at the time of valuation of goods or services provided by one distinct entity to other distinct entities.

AAR Rulings: The activities performed by the employees at the corporate office in the course of or in relation to employment such as accounting, other administrative and IT system maintenance for the units located in the other states as well i.e. distinct persons as per Section 25(4) of the CGST Act shall be treated as supply as per Entry 2 Schedule I of the CGST Act, 2017.

* * *

Case Law:

The decision of Hon'ble High Court of Madras in the case of *GE T & D India Limited. v Deputy Commissioner of Central Excise*, reported in 2020-VIL-39-MAD-ST, wherein it was held that “a contract of employment qua an employer and employee has to be read as a whole, there are situations within a contract that constitute rendition of service such as breach of a stipulation of non-compete. Notice pay, in lieu of sudden termination however, does not give rise to the rendition of service either by the employer or the employee.”

Thus, the decision of the Hon'ble Madras High has categorically stated that ‘Notice pay’ does not render any service either by the employer or the employee by which the payment of notice not qualify as service and payment service on notice pay does not arise.

In Re: *Clay Craft (India) Pvt. Ltd* 2021 (46) G.S.T.L. 154 (App. A.A.R. - GST-Raj.), “we find that remuneration, if any, paid by the appellant to the independent directors or those directors who are not the employee of the appellant is taxable in hands of the appellant, on reverse charge basis. Further, the part of Director's remuneration which are declared as Salaries in the books of the appellant and subjected to TDS under Section 192 of the IT Act, are not taxable being consideration for services by an employee to the employer in the course of or in relation to his employment in terms of Schedule III of the CGST Act, 2017. The part of employee Director's remuneration which is declared separately other than “salaries” in the appellant's accounts and subjected to TDS

under Section 194J of the IT Act as Fees for professional or Technical Services shall be treated as consideration for providing services which are outside the scope of Schedule III of the CGST Act, and is therefore, taxable and in terms of Notification No. 13/2017-Central Tax (Rate), dated 28-6-2017, the recipient of the said services *i.e.* the appellant, is liable to discharge the applicable GST on it on reverse charge basis.”

Chapter 44

Intellectual Property Right (IPR) under GST

Synopsis

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1. Meaning of Intellectual Property Right

Intellectual Property Right (IPR) is not a new concept in the modern world. Intellectual Property Rights are set of rights associated with creations of the human mind that spontaneously emerges from application of intellect, which may be in the form of an invention, design, trademark, formula, product process, technology, book, goodwill etc. So an output of the human mind may contribute to creation of intellectual property rights. Intellectual property has been recognized as a very important asset for any business in the present scenario of world economy. Intellectual property rights are protected by statutory laws.

2. Protection of Intellectual Property Rights

In India Government has made legislation for the protection of Intellectual Property Rights namely, Patents Act, Copyright Act. Trademarks Act and Designs Act. With regard to protection of Intellectual property rights in other countries, they follow the international legal instruments. The establishment of the World Intellectual Property Organisation (WIPO) is an important milestone in the history of human-kind that recognizes the legitimate rights of the creator of the work and protects him against unfair competition.

3. Taxable event under GST

“Supply” is the taxable event under GST, in place of “taxable goods “and “taxable services” as was prevailed in the earlier tax laws for the purpose of levy of tax. Section 2(108) of the CGST Act, defines “Taxable supply” means a supply of goods or services or both which is leviable to tax under GST. Thus, GST is levied upon the “supplies of goods and services”. Section 9(1) of the

CGST Act, states that tax shall be levied on the transaction value of a supply of goods or services or both.

4. Definition of “Goods”

Section 2(52) of the CGST Act, “goods” means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply;

5. Definition of “Services”

Section 2(102) of the CGST Act, “services” means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;

6. Intellectual Property Rights under GST

Even though, Intellectual Property Rights has not been defined under CGST Act; by plain reading of the definition of “goods” it is clear that Intellectual Property Rights qualifies as goods. Further, section 5(c) of schedule II of the CGST Act, specified that “temporary transfer or permitting the use or enjoyment of any intellectual property right to be considered as supply of services. Accordingly, the Central Government, on the recommendations of the GST Council, have notified the taxable rates of “Intellectual property rights “both under classification of goods as well as classification of services.

7. Classification & rate of Services of IPR

While notifying the taxable rates of services vide Notification No. 11/2017 (Rate), dated 28-6-2017 has classified Intellectual Property Rights at Sl. No. 17 are reproduced as under:

| S. No. | Chapter/Section/ Heading | Description of Service | Rate of Tax @ |
|--------|--|--|----------------------------|
| 17 | Heading 9973 (Leasing or rental services, with or without operator) | (i) Temporary or Permanent transfer or permitting the use or enjoyment of Intellectual Property (IP) right in respect of goods other than Information Technology software. | 12% (6% CGST + 6% SGST) |
| | | (ii) Temporary or permanent transfer or permitting the use or enjoyment of Intellectual Property (IP) right in respect of Information Technology Software. | 18% (9% CGST + 9% SGST) |

The scheme of “classification of services” for the Heading 9973 only provides for licensing services (temporary transfer) for right to use the IPR. Generally, the End User Licence Agreement is the legal contract between a software application author or publisher and the user of that application

governing the usage. The agreement is renewable and/or could be amended from time to time. To find out as to whether there is an element of supply involved when software is delivered to its customer; the terms and conditions of End User Licence Agreement are material. The contract for supply therefore assumes significant in this test to decide whether or not there has been ‘temporary transfer or permitting the use or enjoyment of any intellectual property right.

Thus temporary/permanent transfer a particular intellectual property right would be considered as supply of service and 12% tax would be levied on the transaction value provided such IPR is not in respect of software. The sale/licensing of intellectual property right pertaining to software would be charged 18% tax.

It is pertinent to mention that the Constitutional amendment Act, 2016 did not amend Article 366(29A)(d) which specifies that the transfer of the right to use any goods is to be deemed as a sale of those goods. Further, once IPR is treated as goods, a permanent transfer of such IPR would amount to a sale of goods; will be the same as to a supply of goods. However, the Central Government while notifying the tax rate of services has classified the transfer of the right to use any goods to be treated as service.

8. Classification & rate of goods of IPR

While taxable rates of goods were notified vide Notification No. 1/2017-C.T. (Rate), dated 28-6-2017, unfortunately this notification did not contain any specific entry or rates for taxing Intellectual Property Rights as goods. Subsequently, as per the recommendations made by the GST Council meeting held on 10th November, 2017, rates of Intellectual property rights has been inserted at Sl. No. 243 of amended Notification No. 41/2017-C.T. (Rate), dated 14-11-2017, which is reproduced as under:

| S. No. | Chapter/Heading/ Sub-heading/ Tariff item | Description of Goods | Rate of Tax @ |
|-----------|---|--|-------------------------------|
| 243 | Any Chapter | Permanent transfer of Intellectual Property (IP) right in respect of goods other than Information Technology software. | 12% (6% CGST + 6% SGST) |

The above classification of goods and tax rates relating to permanent transfer of Intellectual Property right in respect of goods other than IT software will attract tax @ 12%, which is equal to service classification notification. It is pertinent to mention that when the rate of “Intellectual property rights “has been inserted under goods notification, corresponding deletion has not been done to the service notification. This amendment has given a confirmation that permanent transfer of intellectual property rights would be taxed as supply of goods where as temporary transfer of intellectual property rights would be taxed as supply of services. This dual classification of tax rates would create

unnecessary procedural problems, relating to time of supply, place of supply, invoicing, accounting of ITC credit and proper availment of ITC credit.

9. Tax Rates of IGST for Goods

Further, the Central Government on the recommendations of the GST Council has notified the tax rates of integrated tax for goods *vide* Notification No. 1/2017-I.T., dated 28-6-2017 and shall be

Charged in respect of inter-State supplies of goods as under:

- (i) 5% in respect of goods specified in Schedule-I.
- (ii) 12% in respect of goods specified in Schedule-II.
- (iii) 18% in respect of goods specified in Schedule-III.
- (iv) 28% in respect of goods specified in Schedule-IV.
- (v) 3% in respect of goods specified in Schedule V and
- (vi) 25% in respect of goods specified in Schedule-VI.

The details of schedules with chapter heading has been annexed to the said Notification, the tax shall be levied on inter-State supplies of goods, the description of which is specified in the corresponding entry in column (3) of the said schedules, falling under the Heading/sub-heading/Tariff item or chapter, as the case may be, as specified in the corresponding entry in column (2) of the said Schedules. The chapter heading/sub-heading which is specified in the First Schedule to the Customs Tariff Act, 1975. In order to tax goods both column 2 and column 3 have to read conjunctively.

On perusal of all schedules and chapter headings annexed to the said Notification, unfortunately there is no chapter covering of IPR under the Customs Tariff Act, 1975. The Central Government as well as GST Council has failed to take note of the same to declare tax rates for IPR to be charged tax rate for inter-State supplies of IPR.

Later, the Central Government with recommendation of GST Council has brought amendment to the said tax rates *vide* Notification No. 43/2017-I.T. (Rate), dated 14-11-2017, which is extracted as under:

| S. No. | Chapter/ Heading/ sub-heading/ Tariff item | Description of Goods | Rate of Tax @ |
|-----------|---|--|-------------------------------|
| 243 | Any Chapter | Permanent transfer of Intellectual Property (IP) right in respect of goods other than Information Technology software. | 12% (6% CGST + 6% IGST) |

The above table is showing tax rate has been inserted *vide* said Notification dated 14th November, 2017 for IPR, wherein it is specified that a permanent transfer of Intellectual Property Right (IPR) is to be taxed @12% (6% CGST + 6% IGST) (in Schedule II) for inter-State supplies. It is pertinent to mention there

are no chapter heading/tariff heading of Customs rather it has been mentioned as “any chapter” then is it proper to charge IGST without any chapter heading or sub-heading of Customs. It may be questioned by the taxpayers whether to pay IGST or not in the absence of chapter heading.

The tax rate for services under Heading 9973 as classified under GST will create confusion as well as litigation. There is need of proper classification of IPR/tax rates of CGST, SGST & IGST for goods. It is pertinent to mention that there is no rate of tax on IPR as goods during the period 1st July'2017 to 13th November'2017. The Central Government as well as GST Council even though has notified tax rate of IPR as goods by inserting necessary entry in CGST rate and IGST rate but both the Notifications have been declared as prospective. Since the imposition of rate is not retrospective to cover the tax rate period from 1st July'2017 to 13th November'2017, demands raised on permanent transfer of IPR will create litigations in the coming days.

Thus, It is observed that, under GST is the dual Classification of rate of tax on IPR needs to be reviewed by the GST Council and necessary clarification may be issued for smooth tax collection and reduction of probable litigation on account of interpretation of taxability on IPR in the coming days.

10. FAQ for GST on IT/ITES

Question 1: Whether software is regarded as goods or services in GST?

Answer: In terms of Schedule II of the CGST Act, 2017, development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software and temporary transfer or permitting the use or enjoyment of any intellectual property right are treated as services.

But, if a pre-developed or pre-designed software is supplied in any medium/storage (commonly bought off-the-shelf) or made available through the use of encryption keys, the same is treated as a supply of goods classifiable under heading 8523.

Question 2: What are the implications of recognising the development, design, programming, customisation, adaptation, upgradation, enhancement, and implementation of information technology software as a service?

Answer: The primary implication is that the place of supply rules applicable to services would apply in determining taxability of the supply of software services. The same would be applicable in situations of supply of services involving a temporary transfer or permitting the use or enjoyment of any intellectual property right. The other implication is that the supplier of software services would not be eligible for the composition scheme.

Question 3: 'A' is a dealer in Computers and Computer parts having turnover of Rs. 8 lakh in a year; does 'A' have to register under GST?

Answer: Every supplier located in a State or Union territory, whose “aggregate turnover” in a financial year exceeds twenty lakh rupees, is liable to be registered under GST. This limit of turnover for a special category State is ten

lakh rupees. ‘A’, whose aggregate turnover is only Rs. 8 lakh in a year, is therefore not liable to registration.

Question 4: *The registered person ‘B’ receives small portions of software code from individuals which he then integrates and supply as a package to clients. These individuals are having small turnover of Rs. 5 to 10 lakh, and therefore are not registered in GST. Whether there is any liability on ‘B’ in respect of services provided by such individuals?*

Answer: If the supplies are made by unregistered suppliers, GST is liable to be paid by the recipient, who is a registered person, under section 9(4) of the CGST Act, 2017. Therefore, in this case ‘B’ is liable to pay GST on services provided by these individuals. ‘B’ can claim credit of this tax paid by him on reverse charge.

Question 5: *What is the rate of tax on IT services?*

Answer: The rate of GST on IT services is 18%.

Question 6: *Whether exports of software services attract GST?*

Answer: Exports and supplies to SEZ units and SEZ developers are zero-rated in GST. Zero-rating effectively means that no tax is payable on exports but the exporter/supplier is entitled to the input tax credit on inputs/input services used in relation to exports. The exporters have two options for zero rating, which are as follows:

- (1) To pay integrated tax on supplies meant to be exported and get refund of tax so paid after the supply is exported.
- (2) To make export supplies under a bond or letter of undertaking and claim refund of taxes suffered on inputs and input services in relation to such exports.

Question 7: *How do I determine whether IT services provided by me constitute export of service?*

Answer: The supply of any service is considered an export of service, where the following conditions are met:

- (1) the supplier of service is located in India;
- (2) the recipient of service is located outside India;
- (3) the place of supply of service is outside India;
- (4) the payment for such service has been received by the supplier of service in convertible foreign exchange; and
- (5) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with explanation 1 of section 8 of the IGST Act, 2017.

Question 8: *How do I determine the place of supply of IT/ITES services?*

Answer: Place of supply of IT/ITES services is the location of the recipient in terms of section 12 and 13 of the IGST Act, 2017. However, if the recipient is

not registered and his address is not available on the records of the supplier, the place of supply would be the location of the supplier.

Question 9: How to determine the location of the recipient?

Answer: Location of the recipient of service is defined in section 2(14) of the IGST Act. A recipient of services is treated as located outside India if his place of business where he receives services is outside India or, if he does not have a place of business, his usual place of residence is outside India.

Question 10: Would I be liable to pay GST on reverse charge even if the foreign supplier of software from whom I buy for use in my firm registered under GST was to accept the payment in Indian Rupees?

Answer: Yes, you would be liable to pay GST. A supply is treated as an import of service if the following conditions are satisfied:

- (1) the supplier of service is located outside India;
- (2) the recipient of service is located in India; and
- (3) the place of supply of service is in India.

The place of such supply would be taken to be the location where the firm is registered (in GST) and the supplies would attract integrated tax (IGST). The factum of which currency was used to pay the consideration is immaterial.

Question 11: I am an Indian Company who makes software and sells it outside the country. I have hired a firm (not a related party) ‘C’ located abroad to facilitate the supply of software in Europe and the USA; would I be liable to pay GST on the payments that I make to this entity abroad?

Answer: No. In this case, ‘C’ is covered by the definition of ‘intermediary’ [section 2(13) of the IGST Act, 2017]. The place of supply of such intermediary service is location of the supplier in terms of section 13(8) of the IGST Act, 2017. As ‘C’ is located outside India, GST is not payable in this case.

Question 12: What factors determine the location of ‘C’ (in question 11) as being outside India?

Answer: In terms of section 2(15) of the IGST Act, 2017, the location of a service provider is to be determined by applying the following steps sequentially:

- (1) where a supply is made from a place of business for which the registration has been obtained, the location of such place of business;
- (2) where a supply is made from a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;
- (3) where a supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the provision of the supply; and
- (4) in absence of such places, the location of the usual place of residence of the supplier.

The location of 'C' is to be determined by applying the criterion from (2), or (3), or as the case may be, (4).

Question 13: *I am an agent in India of a foreign IT/ITES provider (principal located outside India). For agency services, I bill the principal in convertible foreign exchange. Whether GST liability arises in this case?*

Answer: You are an intermediary and the place of supply of the service provided by you to the principal is in India irrespective of the mode of payment. Hence, GST is payable on the services provided by you as an intermediary to the principal.

Question 14: *I have more than one SEZ unit in different States; do I need to take separate registrations? Also, I have two SEZ units in one State. Can I take a single registration?*

Answer: (1) Yes. Under GST, every entity shall take GST registration in each State from which it makes taxable supplies. However, a single registration can be taken for all your SEZ units within a State, whether located in one SEZ or more than one SEZ.

(2) A person having unit(s) in a Special Economic Zone as well as outside the SEZ in a State shall make a separate application for registration for SEZ unit(s) as a business vertical distinct from his other units located outside the Special Economic Zone in that State (Refer Rule 8(1) of CGST Rules, 2017).

Question 15: *I have a unit in the DTA and another in the SEZ; can I take a common registration?*

Answer: No. A person having unit(s) in a Special Economic Zone as well as outside the SEZ in a State, shall make a separate application for registration for SEZ unit(s) as a business vertical distinct from his other units located outside the Special Economic Zone in that State (Refer Rule 8(1) of CGST Rules, 2017).

Question 16: *If I supply a laptop bag along with the laptop to my customer, what would be the rate of tax leviable?*

Answer: If the laptop bag is supplied along with the laptop in the ordinary course of business, the principal supply is that of the laptop and the bag is an ancillary. Therefore, it is a composite supply and the rate of tax would be applicable to the laptop.

Question 17: *I am obtaining online database access services from a company abroad over the net, would I have to pay tax on reverse charge?*

Answer: The recipient, if registered, has to pay the applicable IGST on reverse charge basis. If the recipient is not registered, the matter is treated as an online information and database access or retrieval service (OIDAR) and the OIDAR service provider is liable to take registration and pay tax.

Question 18: When would it be construed that I have made a supply of services involving temporary transfer or permitting the use or enjoyment of any intellectual property right?

Answer: Generally, the **End User Licence Agreement (EULA)** is the legal contract between a software application author or publisher and the user of that application governing the usage. The agreement is renewable and/or could be amended from time to time. To find out as to whether there is an element of supply involved when software is delivered to its customer, the terms and conditions of EULA are material.

The contract for supply therefore assumes significance in this test to decide whether or not there has been '*temporary transfer or permitting the use or enjoyment of any intellectual property right*'.

Question 19: What special provisions are attracted in GST with regard to associated enterprises?

Answer: An enterprise which participates, either directly or indirectly, through one or more intermediaries, in the management, or control or capital of the other enterprise is an associated enterprise. In the context of GST, associated enterprise is particularly relevant in the case of supply of services, where the supplier is located outside India. In such cases, the time of supply will be the earlier of date of entry in the books of account of the recipient of supply or the date of payment - thus, within 'associated enterprises', the levy under GST is attracted once such book entries are made even if no actual payment takes place or no invoice is issued.

Question 20: What would be the tax liability on replacement of parts (no consideration is charged from a customer) under a warranty and whether the supplier is required to reverse the input tax credit?

Answer: As parts are provided to the customer without a consideration under warranty, no GST is chargeable on such replacement. The value of supply made earlier includes the charges to be incurred during the warranty period. Therefore, the supplier who has undertaken the warranty replacement is not required to reverse the input tax credit on the parts/components replaced.

Question 21: An Original Equipment Manufacturer (OEM) has an obligation to provide repair services to their customers in the warranty period. This activity is outsourced by OEM to 'D', who bills the OEM for the services he provides to the customer. What is the tax liability of 'D'?

Answer: 'D' is providing service to the OEM. GST is payable on the value of any supplies made by 'D' to OEM i.e. in respect of bills raised by 'D' on the OEM.

Question 22: How will the defective parts be sent to the mother warehouse/ repairing centre for repair by the downstream repairing centres? What is the tax liability?

Answer: The defective parts shall be sent for repair on a delivery challan accompanied by such e-way bill as may be prescribed. GST shall be chargeable on the repair amount, including the cost of parts, charged by the repairing centre.

Question 23: What is the tax liability in a scenario where supplies are made from multiple locations (in different States) of the supplier to the recipient under a single contract?

Answer: Delivering services from various locations and integrated pricing for the contract as a whole is the norm in IT/ITES industry. Normally the contract or agreement with the recipient is entered into by one of the branches (let us say "Main Branch"). Therefore, in such cases of service delivery from multiple locations of the supplier to the recipient, the supply could be visualized as consisting of two distinct supplies. First supply - the different branches of the supplier located across different States are making the supply to the main branch which entered into a contact or an agreement with the recipient for the supply of such service. Second supply - main branch is making a supply to the customer. GST is to be levied accordingly. In such a scenario, the main branch would get input tax credit of GST paid by the other branches on supplies made by them to the main branch.

Question 24: In the scenario envisaged in previous question, the main branch is said to be entitled to ITC of the GST paid by the other branches. Thus, it is a revenue neutral situation. What are the valuation guidelines for such services?

Answer: The second proviso to rule 28 of the CGST Rules, 2017 provides that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of goods and services.

Question 25: Can payment of IGST on reverse charge basis on import of goods/services be done through book entry or ITC?

Answer: No. GST payable on reverse charge basis is to be discharged through cash only. Rule 85(4) of the CGST Rules, 2017 refers.

Question 26: Is the requirement of transferring of credit through ISD mechanism mandatory?

Answer: The ISD provision under the CGST Act, 2017 is not mandatory. It only provides the manner of distribution of ITC wherever the business entity wishes to distribute the ITC as an Input Service Distributor.

Question 27: What is the format for invoices to be issued in the case of reverse charge payment of GST?

Answer: No separate format for any type of invoicing including self-invoicing has been prescribed. The contents of the invoice have been prescribed in Rule 46 of the CGST Rules, 2017.

Question 28: I am a software provider, registered at Mumbai. I supply software to my clients in Bangalore - would I be required to take a registration in Karnataka?

Answer: No. The supplies would be treated as inter-State supplies and IGST is chargeable on the same.

Question 29: I am an exporter of services. Would I be entitled to refund after the 1st of July (appointed day)?

Answer: For exports upto 30th June, 2017 refund may be claimed under the provisions of the Chapter V of the Finance Act, 1994. Exports made on and after 1st July would be eligible for refund under the GST law.

Note: Reference to CGST Act, 2017 includes reference to SGST Act, 2017 and UTGST Act, 2017 also.

[Source: C.B.E. & C. website, dated 18-8-2017]

11. Advance Ruling

In Re: *Penguin Trading and Agencies Limited* reported in 2020 (32) G.S.T.L. 228 (App. A.A.R. - GST - Odisha), held that Notification No. 27/2018-C.T. (Rate), dated 31-12-2018 issued on recommendation of 31st GST Council amending Notification No. 11/2017-C.T. (Rate), dated 28-6-2017 merely clarifying the GST rate applicable to the right to use **Intellectual Property** and similar products other than IPR covered under Group 99733, rate of tax being neither enhanced nor reduced. Hence, impugned service to be covered under revised Entry No. (viii) of Notification No. 11/2017-C.T. (Rate) attracting GST @ 18% [9% CGST and 9% OGST] during 1-7-2017 to 31-12-2018.

Chapter 45

Actionable Claims under GST

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1. Meaning of Actionable Claim

The concept of “actionable claim” owes its roots from erstwhile Service Tax law, CST, VAT law of the most of the States and Transfer of property Act, 1882. GST law makers while explaining the meaning of “goods” under Section 2(52) of the Central Goods and Services Tax Act, 2017 defines “goods” means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be served before supply or under a contract of supply”. With the legacy of the past, GST law makers have rightly incorporated the concept of actionable claim as goods under GST.

2. Scope of Actionable Claims under GST

GST law makers have incorporated “actionable claims” under scope of supply in order to levy and collect GST. The expression supply includes Actionable Claims other than lottery; betting and gambling Section 7(2)(a) read with Sl.No. 6 of Schedule III to the CGST Act, 2017 wherein it has been specified that actionable claims other than lottery, betting and gambling shall be neither a supply of goods nor a supply of services. By this specific provision only actionable claims of lottery, betting and gambling are subjected to GST.

It is pertinent to mention that the definition of Service Tax law as excluded “actionable claims” and lottery, betting and gambling were included in the negative list of Service Tax. However, under Service tax for the expression “transaction in money or actionable claim” shall not include any activity carried out, for a consideration, in relation to, or for facilitation of, including the activity carried out by a lottery distributor or selling agent on behalf of the State Government, in relation to promotion, marketing, organizing, selling of lottery or facilitating in organizing lottery of any kind, in any other manner, in accordance with the provisions of the lotteries (Regulation) Act, 1998. (Section 65B(44) of the Finance Act, 1994) and Clause 31A in section 65B defines “lottery distributor or selling agent”.

3. Meaning of Lottery

The meaning of lottery has not been defined under CGST Act, but Section 2(b) of the Lotteries (Regulation) Act, 1998 defines lottery, means a scheme, in whatever form and by whatever name called, for distribution of prizes by lot or chance to those persons participating in the chances of a prize by purchasing tickets.”

“Online lottery “has been defined in rule 2(e) of the Lotteries (Regulation) Rules, 2010, means a system created to permit players to purchase lottery tickets generated by the computer or online machine at the lottery terminals where the information about the sale of a ticket and the player’s choice of any particular number or combination of numbers is simultaneously registered with the central computer server.”

Section 2(24)(ix) of the Income-tax Act, 1961, defines lottery includes winnings from prizes awarded to any person by draw of lots or by chance or in any other manner whatsoever; under any scheme or arrangement by whatever name called.”

4. Meaning of betting and gambling

“In India the State Legislature has been entrusted with the power to frame state specific laws on “betting and gambling” as provided under Seventh Schedule, list II, Entry No. 34 of the Constitution. Every state has their own legislation to regulate gaming/gambling activities within its territory.

Betting and gambling has not been defined under GST but it was defined under Section 65B(15) of the Finance Act, 1994, Betting or gambling means putting on stake something of value, particularly money, with consciousness of risk and hope of gain on the outcome of a game or a contest, whose result may be determined by chance or accident, or on the likelihood of anything occurring or not occurring”.

5. Taxability of Actionable Claims under GST

Actionable claims, other than lottery, betting and gambling shall be treated neither as a supply of goods nor a supply of services, auxiliary services for all actionable claims are independent service liable for GST. Supply of lottery has been treated as supply of goods under the GST law. Accordingly, rate for supply of lottery has been notified under relevant GST rate notifications. Lottery services have been allotted Service Code (Tariff) as 999694.

Entry 62 in the State List in the Seventh Schedule to the Constitution has been substituted. Taxes on betting and gambling are not part of substituted entry 62. However, the States were empowered to impose tax on Services relating betting and gambling. Entry 34 in Notification No. 11/2017-C.T. (Rate), dated 28-6-2017 read with Circular No. 27/01/2018-GST, dated 4th January,2018 provides tax rate for Heading 9996, sub-entry (iii) services by way of admission to an entertainment events or access to amusement facilities including exhibition of cinematograph films, theme parks, water parks, joy rides, merry-go rounds, go-carting, casinos, race-course, ballet, any sporting event such as Indian Premier

league and the like, sub-entry (iv) is for services provided by a race club by way of totalisator or a license to bookmaker in such club, sub-entry (v) is for gambling. All these three sub-entries attract tax @14%. As is evident from the notification, “entry to casinos” and “gambling” are two different services, and GST is leviable at 28% on both these services (14% CGST and 14% SGST) on the value determined as per Section 15 of the CGST Act. Thus, GST@28% would apply on entry to casinos as well as on betting/gambling services being provided by casinos on the transaction value of betting, i.e. the total bet value, in addition to GST levy on any other services being provided by the casinos (such as services by way of supply of food/drinks etc. at the casinos). GST on horse racing has clarified and GST would be leviable on the entire bet value i.e. total of face value of any or all bets paid into the [totalisator or placed with licensed book makers, as the case may be. If entire value is ₹100/-, GST leviable will be ₹ 28/-.

The GST law makers have incorporated the clear position under GST and have been included “actionable claims” in the definition of “goods” But while charging GST have included the services of admission into casino under Heading No. 9996 vide Notification No. 11/2017-CT (Rate) dated 28th June, 2017 and the value of services relating to casinos and gambling has been clarified vide Circular No. 27/01/2018-GST, dated 4th January, 2018. The entry to casinos and gambling are two different services and GST is leviable at 28% on the both these services on the value determined as per Section 15 of the CGST Act.

6. Advance Ruling

In Re: *Venkatasamy Jagannathan, reported in 2019 (027) G.S.T.L. 32* (A.A.R.-GST-Tamil Nadu), held that actionable claims other than lottery, betting, gambling are *activities or transactions which shall be treated neither as a supply of goods nor a supply of services and hence do not attract GST as per CGST or SGST Act*. The Profit Sharing Agreement between the applicant and various shareholders of SHA is an actionable claim and is not relating to lottery, betting and gambling and hence, is covered under Schedule III to CGST Act and SGST Act as neither a supply of goods nor a supply of services and hence is not taxable to CGST or SGST.”

Chapter 46

Liquidated Damages under GST

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1. Meaning of Liquidated Damages

The provision for “Liquidated damages” is a vital clause of any contract or agreement between two parties to ensure certain performance within the given time period. It is an advance documented commitment stipulated under contact that in case of any breach of contract or non-performance by the party who agreed upon to perform is liable to pay a fixed sum of money and the amount so agreed upon and paid by the non-performer or delayed performer is called liquidated damages. Sections 73 & 74 of the Indian Contract Act, 1872 provides for the consequences of breach of contract and compensation of loss or damages caused by breach of contract.

2. Liquidated damages vs. unliquidated damages

Where the amount of damages can be mathematically calculated as per terms and conditions provided in the contract for breach of contract, such amount is called liquidated damages. In other words where the amount of damages are identified contractually stipulated in the contract for compensation paid to the party, who suffered loss, is called liquidated damages.

Where the amount of damages for breach of contract are not identified or amount is uncertain at the time of contract and does not provide exact amount in the contract for breach by other party is called unliquidated damages. In that case the appropriate court is at discretion to decide the actual compensation with regard to the loss suffered.

3. Liquidated damages in the GST regime

“Supply” is the taxable event under GST; the levy of tax is based on the supply of goods and services or both. All forms of supply of goods and services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course of business or furtherance of business.

Further, it includes the activities to be treated as supply of goods or supply of services as specified in Schedule-II, Entry No.5, Clause (e) of the CGST Act, 2017, the relevant portion is reproduced as under:

“agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act;”

The cited schedule II of the CGST Act, 2017 has been borrowed from the provision of the erstwhile Service Tax Law. Like earlier regime, it is also disputed issue whether mere agreeing to tolerate such an act or situation or amount imposed for non-performance, which is liquidated damages, is liable to levy of GST?

4. Tax rates for liquidated damages (Government Services)

The Government has notified the tax liability for Liquidated damages vides Notification No. 12/2017-C.T. (Rate), dated 28-06-2017 at Sl. No. 62 under Heading No. 9991 or 9997 is reproduced as under:

“Services provided by the Central Government, State Government, Union territory or local authority by way of tolerating non-performance of a contract for which consideration in the form of fines or liquidated damages is payable to the Central Government, State Government, Union territory or local authority under such contract”.

Therefore, as per terms of the above Notification, in case liquidated damages payable to the Central Government, State Government, Union territory or local authority under a contract, the rate of tax is NIL, i.e., not liable for any tax and exempted from GST.

In view of the above exemption notification, it appears that liquidated damages payable to the party other than Governments or local authorities will attract GST and since no schedule entry is there under the Notification No. 11/2017-C.T. (Rate) for taxable services of liquidated damages, it would be covered at Sl. No. 35, under Heading 9997 (other services, nowhere else classified) of the said Notification attracting levy of GST @ 18% (9% + 9%).

5. C.B.I & C Clarification GST applicability on liquidated damages, compensation and penalty arising out of breach of contract or other provisions of law

In certain cases/instances, questions have been raised regarding taxability of an activity or transaction as the supply of service of agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act. Applicability of GST on payments in the nature of liquidated damage, compensation, penalty, cancellation charges, late payment surcharge etc. arising out of breach of contract or otherwise and scope of the entry at para 5(e) of Schedule II of Central Goods and Services Tax Act, 2017 (hereinafter referred to as, “CGST Act”) in this context has been examined in the following paragraphs.

2. “Agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act” has been specifically declared to be a supply of service in para 5 (e) of Schedule II of CGST Act if the same constitutes a “supply” within the meaning of the Act. The said expression has following three limbs:

- (a) *Agreeing to the obligation to refrain from an act.*—Example of activities that would be covered by this part of the expression would include non-compete agreements, where one party agrees not to compete with the other party in a product, service or geographical area against a consideration paid by the other party. Another example of such activities would be a builder refraining from constructing more than a certain number of floors, even though permitted to do so by the municipal authorities, against a compensation paid by the neighbouring housing project, which wants to protect its sunlight, or an industrial unit refraining from manufacturing activity during certain hours against an agreed compensation paid by a neighbouring school, which wants to avoid noise during those hours.
- (b) *Agreeing to the obligation to tolerate an act or a situation.*—This would include activities such a shopkeeper allowing a hawker to operate from the common pavement in front of his shop against a monthly payment by the hawker, or an RWA tolerating the use of loud speakers for early morning prayers by a school located in the colony subject to the school paying an agreed sum to the RWA as compensation
- (c) *Agreeing to the obligation to tolerate an act or a situation.*—This would include activities such a shopkeeper allowing a hawker to operate from the common pavement in front of his shop against a monthly payment by the hawker, or an RWA tolerating the use of loud speakers for early morning prayers by a school located in the colony subject to the school paying an agreed sum to the RWA as compensation.

3. The description “agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act” was intended to cover services such as described above. However, over the years doubts have persisted regarding various transactions being classified under the said description.

3.1. Some of the important examples of such cases are Service Tax/GST demands on

- (i) Liquidated damages paid for breach of contract;
- (ii) Compensation given to previous allottees of coal blocks for cancellation of their licenses pursuant to Supreme Court Order;
- (iii) Cheque dishonour fine/penalty charged by a power distribution company from the customers;
- (iv) Penalty paid by a mining company to State Government for unaccounted stock of river bed material;
- (v) Bond amount recovered from an employee leaving the employment before the agreed period;
- (vi) Late payment charges collected by any service provider for late payment of bills;
- (vii) Fixed charges collected by a power generating company from State Electricity Boards (SEBs) or by SEBs/DISCOMs from individual customer for supply of electricity;
- (viii) Cancellation charges recovered by railways for cancellation of tickets, etc.

In some of these cases, tax authorities have initiated investigation and in some advance ruling authorities have upheld taxability.

4. In Service Tax law, ‘Service’ was defined as any activity carried out by a person for another for consideration. As discussed in service tax education guide, the concept ‘activity for a consideration’ involves an element of contractual relationship wherein the person doing an activity does so at the desire of the person for whom the activity is done in exchange for a consideration. An activity done without such a relationship i.e., without the express or implied contractual reciprocity of a consideration would not be an ‘activity for consideration’. The element of contractual relationship, where one supplies goods or services at the desire of another, is an essential element of supply.

5. The description of the declared service in question, namely, agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act in para 5(e) of Schedule II of CGST Act is strikingly similar to the definition of contract in the Contract Act, 1872. The Contract Act defines ‘Contract’ as a set of promises, forming consideration for each other. ‘Promise’ has been defined as willingness of the ‘promisor’ to do or to abstain from doing anything. ‘Consideration’ has been defined in the Contract Act as what the ‘promisee’ does or abstains from doing for the promises made to him.

6. This goes to show that the service of agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act is nothing but a contractual agreement. A contract to do something or to abstain from doing something cannot be said to have taken place unless there are two parties, one of which expressly or impliedly agrees to do or abstain from doing something and

the other agrees to pay consideration to the first party for doing or abstaining from such an act. There must be a necessary and sufficient nexus between the supply (i.e. agreement to do or to abstain from doing something) and the consideration.

6.1 A perusal of the entry at serial 5(e) of Schedule II would reveal that it comprises the aforementioned three different sets of activities viz. (a) the obligation to refrain from an act, (b) obligation to tolerate an act or a situation and (c) obligation to do an act. All the three activities must be under an “agreement” or a “contract” (whether express or implied) to fall within the ambit of the said entry. In other words, one of the parties to such agreement/contract (the first party) must be under a contractual obligation to either (a) refrain from an act, or (b) to tolerate an act or a situation or (c) to do an act. Further some “consideration” must flow in return from the other party to this contract/agreement (the second party) to the first party for such (a) refraining or (b) tolerating or (c) doing. Such contractual arrangement must be an independent arrangement in its own right. Such arrangement or agreement can take the form of an independent stand-alone contract or may form part of another contract. Thus, a person (the first person) can be said to be making a supply by way of refraining from doing something or tolerating some act or situation to another person (the second person) if the first person was under an obligation to do so and then performed accordingly.

5.1 Agreement to do or refrain from an act should not be presumed to exist

7. There has to be an express or implied agreement; oral or written, to do or abstain from doing something against payment of consideration for doing or abstaining from such act, for a taxable supply to exist. An agreement to do an act or abstain from doing an act or to tolerate an act or a situation cannot be imagined or presumed to exist just because there is a flow of money from one party to another. Unless there is an express or implied promise by the recipient of money to agree to do or abstain from doing something in return for the money paid to him, it cannot be assumed that such payment was for doing an act or for refraining from an act or for tolerating an act or situation. Payments such as liquidated damages for breach of contract, penalties under the mining act for excess stock found with the mining company, forfeiture of salary or payment of amount as per the employment bond for leaving the employment before the minimum agreed period, penalty for cheque dishonour etc. are not a consideration for tolerating an act or situation. They are rather amounts recovered for not tolerating an act or situation and to deter such acts; such amounts are for preventing breach of contract or non-performance and are thus mere ‘events’ in a contract. Further, such amounts do not constitute payment (or consideration) for tolerating an act, because there cannot be any contract: (a) for breach thereof, or (b) for holding more stock than permitted under the mining contract, or (c) for leaving the employment before the agreed minimum period or (d) for doing something leading to the dishonour of a cheque. As has already been stated, unless payment has been made for an independent activity of tolerating an act

under an independent arrangement entered into for such activity of tolerating an act, such payments will not constitute ‘consideration’ and hence such activities will not constitute “supply” within the meaning of the Act. Taxability of these transactions is discussed in greater detail in the following paragraphs.

5.2 Liquidated Damages

7.1 Breach or non-performance of contract by one party results in loss and damages to the other party. Therefore, the law provides in Section 73 of the Contract Act, 1972 that when a contract has been broken, the party which suffers by such breach is entitled to receive from the other party compensation for any loss or damage caused to him by such breach. The compensation is not by way of consideration for any other independent activity; it is just an event in the course of performance of that contract.

7.1.1.1 It is common for the parties entering into a contract, to specify in the contract itself, the compensation that would be payable in the event of the breach of the contract. Such compensation specified in a written contract for breach of non-performance of the contract or parties of the contract is referred to as liquidated damages. Black’s Law Dictionary defines ‘Liquidated Damages’ as cash compensation agreed to by a signed, written contract for breach of contract, payable to the aggrieved party.

7.1.2 Section 74 of the Contract Act, 1972 provides that when a contract is broken, if a sum has been named or a penalty stipulated in the contract as the amount or penalty to be paid in case of breach, the aggrieved party shall be entitled to receive reasonable compensation not exceeding the amount so named or the penalty so stipulated.

7.1.3 It is argued that performance is the essence of a contract. Liquidated damages cannot be said to be a consideration received for tolerating the breach or non-performance of contract. They are rather payments for not tolerating the breach of contract. Payment of liquidated damages is stipulated in a contract to ensure performance and to deter non-performance, unsatisfactory performance or delayed performance. Liquidated damages are a measure of loss and damage that the parties agree would arise due to breach of contract. They do not act as a remedy for the breach of contract. They do not restore the aggrieved person. It is further argued that a contract is entered into for execution and not for its breach. The liquidated damages or penalty are not the desired outcome of the contract. By accepting the liquidated damages, the party aggrieved by breach of contract cannot be said to have permitted or tolerated the deviation or non-fulfilment of the promise by the other party.

7.1.4 In this background a reasonable view that can be taken with regard to taxability of liquidated damages is that where the amount paid as ‘liquidated damages’ is an amount paid only to compensate for injury, loss or damage suffered by the aggrieved party due to breach of the contract and there is no agreement, express or implied, by the aggrieved party receiving the liquidated damages, to refrain from or tolerate an act or to do anything for the party paying the liquidated damages, in such cases liquidated damages are mere a flow of

money from the party who causes breach of the contract to the party who suffers loss or damage due to such breach. Such payments do not constitute consideration for a supply and are not taxable.

7.1.5 Examples of such cases are damages resulting from damage to property, negligence, piracy, unauthorized use of trade name, copyright, etc. Other examples that may be covered here are the penalty stipulated in a contract for delayed construction of houses. It is a penalty paid by the builder to the buyers to compensate them for the loss that they suffer due to such delayed construction and not for getting anything in return from the buyers. Similarly, forfeiture of earnest money by a seller in case of breach of ‘an agreement to sell’ an immovable property by the buyer or by Government or local authority in the event of a successful bidder failing to act after winning the bid, for allotment of natural resources, is a mere flow of money, as the buyer or the successful bidder does not get anything in return for such forfeiture of earnest money. Forfeiture of Earnest money is stipulated in such cases not as a consideration for tolerating the breach of contract but as a compensation for the losses suffered and as a penalty for discouraging the non-serious buyers or bidders. Such payments being merely flow of money are not a consideration for any supply and are not taxable. The key in such cases is to consider whether the impugned payments constitute consideration for another independent contract envisaging tolerating an act or situation or refraining from doing any act or situation or simply doing an act. If the answer is yes, then it constitutes a ‘supply’ within the meaning of the Act, otherwise it is not a “supply”.

7.1.6 If a payment constitutes a consideration for a supply, then it is taxable irrespective of by what name it is called; it must be remembered that a “consideration” cannot be considered de hors an agreement/contract between two persons wherein one person does something for another and that other pays the first in return. If the payment is merely an event in the course of the performance of the agreement and it does not represent the ‘object’, as such, of the contract then it cannot be considered ‘consideration’. For example, a contract may provide that payment by the recipient of goods or services shall be made before a certain date and failure to make payment by the due date shall attract late fee or penalty. A contract for transport of passengers may stipulate that the ticket amount shall be partly or wholly forfeited if the passenger does not show up. A contract for package tour may stipulate forfeiture of security deposit in the event of cancellation of tour by the customer. Similarly, a contract for lease of movable or immovable property may stipulate that the lessee shall not terminate the lease before a certain period and if he does so he will have to pay certain amount as early termination fee or penalty. Some banks similarly charge pre-payment penalty if the borrower wishes to repay the loan before the maturity of the loan period. Such amounts paid for acceptance of late payment, early termination of lease or for pre-payment of loan or the amounts forfeited on cancellation of service by the customer as contemplated by the contract as part of commercial terms agreed to by the parties, constitute consideration for the supply of a facility, namely, of acceptance of late payment, early termination of a lease

agreement, of pre-payment of loan and of making arrangements for the intended supply by the tour operator respectively. Therefore, such payments, even though they may be referred to as fine or penalty, are actually payments that amount to consideration for supply, and are subject to GST, in cases where such supply is taxable. Since these supplies are ancillary to the principal supply for which the contract is signed, they shall be eligible to be assessed as the principal supply, as discussed in detail in the later paragraphs. Naturally, such payments will not be taxable if the principal supply is exempt.

5.3 Compensation for cancellation of coal blocks

7.2 In the year 2014, coal block/mine allocations were cancelled by the Hon'ble Supreme Court vide order dated 24.09.2014. Subsequently, Coal Mines (Special Provisions) Act, 2015 was enacted to provide for allocation of coal mines and vesting of rights, title and interest in and over the land and mines infrastructure together with mining leases to successful bidders and allottees. In accordance with section 16 of the said Act, prior (old) allottee of mines were given compensation in the year 2016 towards the transfer of their rights/titles in the land, mine infrastructure, geological reports, consents, approvals etc. to the new entity (successful bidder) as per the directions of Hon'ble Supreme Court.

7.2.1 There was no agreement between the prior allottees of coal blocks and the Government that the previous allottees shall agree to or tolerate cancellation of the coal blocks allocated to them if the Government pays compensation to them. No such promise or offer was made by the prior allottees to the Government. The allottees had no option but to accept the cancellation. The compensation was given to them for such cancellation, not under a contract between the allottees and the Government, but under the provisions of the statute and in pursuance of the Supreme Court Order. Therefore, it would be incorrect to say that the prior allottees of the coal blocks supplied a service to the Government by way of agreeing to tolerate the cancellation of the allocations made to them by the Government or that the compensation paid by the Government for such cancellation in pursuance to the order of the Supreme Court was a consideration for such service. Therefore, the compensation paid for cancellation of coal blocks pursuant to the order of the Supreme Court in the above case was not taxable.

5.4 Cheque dishonour fine/penalty

7.3 No supplier wants a cheque given to him to be dis honoured. It entails extra administrative cost to him and disruption of his routine activities and cash flow. The promise made by any supplier of goods or services is to make supply against payment within an agreed time (including the agreed permissible time with late payment) through a valid instrument. There is never an implied or express offer or willingness on part of the supplier that he would tolerate deposit of an invalid, fake or unworthy instrument of payment against consideration in the form of cheque dishonour fine or penalty. The fine or penalty that the supplier or a banker imposes, for dishonour of a cheque, is a penalty imposed not for tolerating the act or situation but a fine, or penalty imposed for not tolerating,

penalizing and thereby deterring and discouraging such an act or situation. Therefore, cheque dishonour fine or penalty is not a consideration for any service and not taxable.

5.5 Penalty imposed for violation of laws

7.4 Penalty imposed for violation of laws such as traffic violations, or for violation of pollution norms or other laws are also not consideration for any supply received and are not taxable, which are also not taxable. Same is the case with fines, penalties imposed by the mining Department of a Central or State Government or a local authority on discovering mining of excess mineral beyond the permissible limit or of mining activities in violation of the mining permit. Such penalties imposed for violation of laws cannot be regarded as consideration charged by Government or a Local Authority for tolerating violation of laws. Laws are not framed for tolerating their violation. They stipulate penalty not for tolerating violation but for not tolerating, penalizing and deterring such violations. There is no agreement between the Government and the violator specifying that violation would be allowed or permitted against payment of fine or penalty. There cannot be such an agreement as violation of law is never a lawful object or consideration. The service tax education guide issued in 2012 on advent of negative list regime of services explained that fines and penalties paid for violation of provisions of law are not considerations as no service is received in lieu of payment of such fines and penalties.

7.4.1 It was also clarified vide Circular No. 192/02/2016-Service Tax, dated 13.04.2016 that fines and penalty chargeable by Government or a local authority imposed for violation of a statute, bye-laws, rules or regulations are not leviable to Service Tax. The same holds true for GST also

5.6 Forfeiture of salary or payment of bond amount in the event of the employee leaving the employment before the minimum agreed period

7.5 An employer carries out an elaborate selection process and incurs expenditure in recruiting an employee, invests in his training and makes him a part of the organization, privy to its processes and business secrets in the expectation that the recruited employee would work for the organization for a certain minimum period. Premature leaving of the employment results in disruption of work and an undesirable situation. The provisions for forfeiture of salary or recovery of bond amount in the event of the employee leaving the employment before the minimum agreed period are incorporated in the employment contract to discourage non-serious candidates from taking up employment. The said amounts are recovered by the employer not as a consideration for tolerating the act of such premature quitting of employment but as penalties for dissuading the non-serious employees from taking up employment and to discourage and deter such a situation. Further, the employee does not get anything in return from the employer against payment of such amounts. Therefore, such amounts recovered by the employer are not taxable as consideration for the service of agreeing to tolerate an act or a situation.

5.7 Compensation for not collecting toll charges

8. In the wake of demonetization, NHAI directed the concessionaires (toll operators) to allow free access of toll roads to the users from 8.11.2016 to 1.12.2016 for which the loss of toll charge was paid as compensation by NHAI as per the instructions of Ministry of Road Transportation and Highways. The toll reimbursements were calculated based on the average monthly collection of toll. A question arose whether the compensation paid to the concessionaire by project authorities (NHAI) in lieu of suspension of toll collection during the demonetization period (from 8.11.2016 to 1.12.2016) was taxable as a service by way of agreeing to refrain from collection of toll from users.

8.1 It has been clarified vide Circular No. 212/2/2019-ST, dated 21.05.2019 that the service that is provided by toll operators is that of access to a road or bridge, toll charges being merely a consideration for that service. During the period from 8.11.2016 to 1.12.2016, the service of access to a road or bridge continued to be provided without collection of toll from users. Consideration came from the project authority. The fact that for this period, for the same service, consideration came from a person other than the actual user of service does not mean that the service has changed.

5.8 Late payment surcharge or fee

9. The facility of accepting late payments with interest or late payment fee, fine or penalty is a facility granted by supplier naturally bundled with the main supply. It is not uncommon or unnatural for customers to sometimes miss the last date of payment of electricity, water, telecommunication services etc. Almost all service providers across the world provide the facility of accepting late payments with late fine or penalty. Even if this service is described as a service of tolerating the act of late payment, it is an ancillary supply naturally bundled and supplied in conjunction with the principal supply, and therefore should be assessed as the principal supply. Since it is ancillary to and naturally bundled with the principal supply such as of electricity, water, telecommunication, cooking gas, insurance etc. it should be assessed at the same rate as the principal supply. However, the same cannot be said of cheque dishonor fine or penalty as discussed in the preceding paragraphs.

5.9 Fixed Capacity charges for Power

10. The price charged for electricity by the power generating companies from the State Electricity Boards (SEBs)/DISCOMS or by SEBs/DISCOMs from individual customers has two components, namely, a minimum fixed charge (or capacity charge) and variable per unit charge. The minimum fixed charges have to be paid by the SEBs/DISCOMS/individual customers irrespective of the quantity of electricity scheduled or purchased by them during a month. They take care of the fixed cost of generating/supplying electricity. The variable charges are charged per unit of electricity purchased and increase or decrease every month depending on the quantity of electricity consumed.

10.1 The fact that the minimum fixed charges remain the same whether electricity is consumed or not or it is scheduled/consumed below the contracted or available capacity or a minimum threshold, does not mean that minimum fixed charge or part of it is a charge for tolerating the act of not scheduling or consuming the minimum the contracted or available capacity or a minimum threshold.

10.2 Both the components of the price, the minimum fixed charges/capacity charges and the variable/energy charges are charged for sale of electricity and are thus not taxable as electricity is exempt from GST. Power purchase agreements may have provisions that the power producer shall not supply electricity to a third party without approval of buyer. Such agreements which ensure assured supply of power to State Electricity Boards/DISCOMS are ancillary arrangements; the contract is essentially for supply of electricity.

5.10 Cancellation charges

11. A supply contracted for, such as booking of hotel accommodation, an entertainment event or a journey, may be cancelled by a customer or may not proceed as intended due to his failure to show up for availing the same at the designated place and time. The supplier may allow cancellation of supply by the customer within a certain specified time period on payment of cancellation fee as per commercial terms of the contract. In case the customer does not show up for availing the service, the supplier may retain or forfeit part of the consideration or security deposit or earnest money paid by the customer for the intended supply.

11.1 It is a common business practice for suppliers of services such as hotel accommodation, tour and travel, transportation etc. to provide the facility of cancellation of the intended supplies within a certain time period on payment of cancellation fee. Cancellation fee can be considered as the charges for the costs involved in making arrangements for the intended supply and the costs involved in cancellation of the supply, such as in cancellation of reserved tickets by the Indian Railways.

11.2 Services such as transportation travel and tour constitute a bundle of services. The transportation service, for instance, starts with booking of the ticket for travel and lasts at least till exit of the passenger from the destination terminal. All services such as making available an online portal or convenient booking counters with basic facilities at the transportation terminal or in the city, to reserve the seats and issue tickets for reserved seats much in advance of the travel, giving preferred seats with or without extra cost, lounge and waiting room facilities at airports, railway stations and bus terminals, provision of basic necessities such as soap and other toiletries in the wash rooms, clean drinking water in the waiting area etc. form part and parcel of the transportation service; they constitute the various elements of passenger transportation service, a composite supply. The facilitation service of allowing cancellation against payment of cancellation charges is also a natural part of this bundle. It is invariably supplied by all suppliers of passenger transportation service as

naturally bundled and in conjunction with the principal supply of transportation in the ordinary course of business.

11.3 Therefore, facilitation supply of allowing cancellation of an intended supply against payment of cancellation fee or retention or forfeiture of a part or whole of the consideration or security deposit in such cases should be assessed as the principal supply. For example, cancellation charges of railway tickets for a class would attract GST at the same rate as applicable to the class of travel (i.e., 5% GST on first class or air-conditioned coach ticket and nil for other classes such as second sleeper class). Same is the case for air travel.

11.4 Accordingly, the amount forfeited in the case of non-refundable ticket for air travel or security deposit or earnest money forfeited in case of the customer failing to avail the travel, tour operator or hotel accommodation service or such other intended supplies should be assessed at the same rate as applicable to the service contract, say air transport or tour operator service, or other such services.

11.5 However, as discussed above, forfeiture of earnest money by a seller in case of breach of ‘an agreement to sell’ an immovable property by the buyer or such forfeiture by Government or local authority in the event of a successful bidder failing to act after winning the bid for allotment of natural resources, is a mere flow of money, as the buyer or the successful bidder does not get anything in return for such forfeiture of earnest money. Forfeiture of earnest money is stipulated in such cases not as a consideration for tolerating the breach of contract but as a compensation for the losses suffered and as a penalty for discouraging the non-serious buyers or bidders. Such payments being merely flow of money are not a consideration for any supply and are not taxable.

12. Field formations are advised that while the taxability in each case shall depend on facts of that case, the above guidelines may be followed in determining whether tax on an activity or transaction needs to be paid treating the same as service by way of agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act.

Vide Circular No. 178/10/2022-GST, dated 03.08.2022

6. Advance Ruling

In Re: Maharashtra State Power Generation Company Limited, reported in 2018 (13) G.S.T.L. 177 (A.A.R. - GST), the Authority for Advance Ruling has held that levy of GST is attracted on the amount of liquidated damages and has also ruled that Serial No. 35 in Schedule under Notification No. 11/2017 would cover levy of liquidated damages under HSN Code 9997 chargeable @ 18% (9% + 9%). The Authority has chosen not to follow the judgments rendered in this regard under Service Tax regime.

The taxing provision of liquidated damages in pre-GST regime was a matter of litigation and the issue continued to be under dispute for a long period of time in absence of clarification by the Board under Service Tax regime. It may be pointed out that in common parlance and also in the light of the provisions

contained in Sections 73 & 74 of the Indian Contract Act, 1872, ‘liquidated damages’ is treated as compensation and not as consideration. Hon’ble AAR’s Order is specific to the particular applicant and has no universal application. Thus, it is felt that there is need of clarification by the Government on the issue so that litigation on account of taxability on liquidated damages can be avoided. It will be appreciated if the provisions of Contract Act, 1872, are also kept in mind while treating liquidated damages as consideration for taxable supplies.

This view has been affirmed by Appellate Authority for Advance Ruling under GST-Maharashtra vide in Appeal No. MAH/GST-AAAR-09/2018-19 reported in 2018 (17) G.S.T.L.451 (App. A.A.R.-GST).

* * *

In Re : *Bajaj Finance Limited*, reported in 2018 (19) G.S.T.L. 298 (A.A.R.-GST), the authority for advance ruling held that there is a clear understanding or agreement between the parties to foresee and tolerate an act or a situation of default on the part of loanees for a monetary consideration which is actually a consideration received by the applicant, though in the agreement they may be giving this consideration, other names such as ‘penal interest’, penal charges, penalty, etc. as thought proper by them, but these different nomenclatures in their Agreement would in no way change the actual nature of monetary “consideration” which would clearly be taxable for the supply of services as per Sr. No. 5(e) of Schedule II of the CGST Act, 2018 and therefore such amounts received, would attract tax liability under GST laws.

This view has been affirmed by Appellate Authority for Advance Ruling under GST- Maharashtra vide Appeal No. MAH/GST-AAAR-24/2018-19, reported in 2019 (27) G.S.T.L. 628 (App. A.A.R.-GST).

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In Re: *Rashtriya Ispat Nigam Ltd*, reported in 2020 (32) G.S.T.L. 492 (A.A.R.-GST-A.P), held that “In Accounting, LD/milestone penalties imposed are treated as other miscellaneous income. This would be taking place after completion of delay analysis. In the present case, Agreement provided that the liability of payment of these Liquidated Damages by the contractor will be established, once the delay in successful execution of work is established on the part of the contractor. Thus, the act of delayed supply has happened. The same was being tolerated by an additional levy in the nature of liquidated damages. The agreement had also provided that the payment by contractor or deduction by owner of any sums under the provision of this clause shall not relieve the contractor from his obligations to complete the works or from his other obligations under the contract. This provision just ensured that the obligations under the contract are fulfilled. The facts are much obvious that the empowerment to levy liquidated damages is for the reason that there had been a delay and the same would be tolerated, but for a price or damages. The income though presented in the form of a deduction from the payments to be made to the contractor was the income of the applicant and would be a supply of ‘service’ by the applicant in terms of clause (e) of Para 5 of Schedule II appended to the

Central Goods and Services Tax Act, 2017. GST on Liquidated Damages, and other penalties is covered under Schedule II Entry No. 5(2)(e) vide HSN Code 9997 - Other services and schedule Entry No. 35 of the Notification No. 11/2017-Central/State Tax (Rate) [as amended from time to time] for taxable services would cover the impugned levy of liquidated damages.”

* * *

In Re: *Haryana State Warehousing Corporation*, reported in 2021 (48) G.S.T.L. 399 (A.A.R.-GST-Haryana), held that On perusal of Para 5(e) of Schedule II of Central Goods and Services [Tax] Act, 2017; it is observed that for an activity to be supply of service there must be an agreement; that there must be benefit and obligation; that there must be a toleration of act.

As submitted by the applicant (a) there is a written contract between the applicant and the rice millers; (b) the rice miller is availing benefit of enhanced period for the delivery of milled rice and it had an obligation under contract to provide the milled goods within specified period and to pay interest in case of delay in delivery of goods; and (c) the applicant is tolerating an act of delay in delivery of milled rice by the rice millers and is charging interest (holding charges) on the same and not taking any legal recourse for the specific performance of the contract. We agree with the contention of the party. The interest charged by the applicant for delay in delivery of milled rice as per the time prescribed in the contract is a supply of service under Para 5(e) of Schedule II of Central Goods and Services [Tax] Act, 2017.

The service “agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act” falls under the HSN Classification 9997 94 and is a taxable supply.”

Chapter 47

Services Supplies to SEZ Unit/ Developer of SEZ under GST

Synopsis

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1. Exemption of Services under SEZ Act and Rules

Since introduction of Special Economic Zone (SEZ) scheme in India in the year 2000, SEZ units were always facing difficulties to avail benefit as provided under SEZ Acts & SEZ Rules. For instance the specified taxable services provided to SEZ Unit for its authorized operation are exempted as per section 26(1)(e) of the SEZ Act, 2005 and Rule 31 of the SEZ Rules, 2006. The Government also had issued series of Notifications/Circulars on Service Tax exemptions to SEZ Units or Developers of SEZ. But the said exemptions were not allowed by way of Service Tax refund claim by the field formations officers on illogical grounds.

2. Services Supplies to SEZ in pre-GST Regime

The exemption from payment of Service Tax by way of refund claim or availing *ab initio* exemption to SEZ Units or the Developers of SEZ was a burning issue in the earlier tax regime but finally the litigation of Service tax refund claim had decided in the favour of SEZ units by the appellate authority or higher judicial forum, Viz. in the case of *Wardha Power Company Limited v Commissioner of Central Excise, Nagpur* reported at 2013 (30) S.T.R. 520 (Tri. - Mumbai), in the case of *Tata Consultancy Services Ltd. v Commissioner of Central Excise & S.T. (LTU), Mumbai*, reported at 2013 (29) S.T.R. 393 (Tri. - Mumbai) and in the case of *Reliance Ports and Terminals Ltd. v Commissioner of Central Excise & Service Tax, Rajkot* reported at 2015 (40) S.T.R. 200 (Tri. - Ahmd).

The cited case laws are in the favour of SEZ units, by which higher judicial forum had delivered justice to SEZ units/developers of SEZ to avail legitimate benefit of Service Tax exemption by way refund claim in the earlier Tax regime.

3. Supplies to SEZ units/Developer in the GST regime

Supplies to SEZ units/Developer are Zero rated supply in terms of section 16 of the IGST Act and Section 16 of the IGST Act, 2017 provides the scope of Zero rated supply; the relevant portion of IGST Act, 2017 is reproduced as under:

“16. (1) “zero rated supply” means any of the following supplies of goods or services or both, namely:—

- (a) export of goods or services or both; or
- (b) supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit.

(2) Subject to the provisions of sub-section (5) of section 17 of the Central Goods and Services Tax Act, credit of input tax may be availed for making zero-rated supplies; notwithstanding that such supply may be an exempt supply.

(3) A registered person making zero rated supply shall be eligible to claim refund under either of the following options, namely:—

- (a) he may supply goods or services or both under bond or Letter of Undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilized input tax credit; or
- (b) he may supply goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder”.

The above cited statutory provision of GST, has clarified that Supplies of goods or services or both to SEZ unit or developer is Zero rated, in other words such supplies shall be considered as exempted supply. Further, it is stated that in case of any supplier supplies goods or services or both on payment of integrated tax to SEZ or developer in that case the supplier is eligible to claim refund of such tax as per the provisions of Section 54 of the CGST Act, 2017.

Relevant date prescribed for refund of supplies to SEZ without payment of tax:
Section 113(d) of the Finance Act, 2022 vide Notification No. 18/2022-Central Tax, dated 28.09.2022-w.e.f. 1st October, 2022.

New provision i.e. sub-clause “ba” in clause (2) of Explanation of Section 54 has been inserted.

“in case of zero-rated supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit where a refund of tax paid is available in respect of such supplies themselves, or as the case may be, the inputs or input services used in such supplies, the due date for furnishing of return under section 39 in respect of such supplies.”

Effect of the Amendment: Refund is allowed to be claimed only within 2 years from the relevant date. In case of refund of any unutilized ITC on account of supplies to SEZ unit/developer without payment of tax, no relevant date had been prescribed by the GST law. The said loophole is now plugged by providing relevant date for such supplies as the due date of furnishing GSTR-3B (U/s 39 of the CGST Act, 2017) of the applicable month for which refund is claimed.

4. Advance Ruling

In the case of the applicant *M/s. GOGTE Infrastructure Development Corporation Limited*, Ruling No. KAR ADRG 2/2018, dated 21-3-2018 - reported in 2018 (13) G.S.T.L. 114 (A.A.R. - GST).

Question of law – “Whether the Hotel accommodation & restaurant services rendered to the employees of SEZ units within premises of Hotel, to employees & guests of SEZ units, be treated as supply of goods and services to SEZ units in Karnataka or not?”

According to AAR, on reading Section 16(1)(b) of IGST Act, 2017 and Rule 46 of CGST Rules, 2017 together, it is clearly evident that supplies of goods or services or both towards authorized operations only shall be treated as supplies to SEZ Developer/unit. The place of supply of services by way of lodging, accommodation by a hotel, shall be location at which the immovable property i.e. hotel as per Section 12(3)(b) of IGST Act, 2017, Also the place of supply in case of restaurant and catering services is the location where services are actually performed in terms of Section 12(4) of IGST Act, 2017;

In the instant case, admittedly, the applicant is located outside the SEZ. Therefore the services rendered by the applicant are neither the part of authorized operations nor consumed inside SEZ unit. Since place of provision of services in case of Hotel is ‘location of the Hotel’ the rendition of services of restaurant, short term accommodation and Banqueting/conferencing cannot be said to have been ‘imported or procured’ into SEZ unit/developer. Consequently, the Hotel accommodation and restaurant services being provided by the applicant, within the premises of the Hotel, to the employees and guests of SEZ units, cannot be treated as supply of goods and services to SEZ units in Karnataka and hence the intra- State supply and are taxable accordingly.

The above cited Order of Authority of Advance Ruling of Karnataka has categorically held that the benefit of Service Tax exemption on account of supplies to SEZ unit or as export Zero Rated is not available to Service providers if the said Services have not been consumed for the authorised operation and not consumed inside the premises of SEZ unit/developer and these Services taxable under GST in terms of Section 12(3)(b), 12(4) and 16(1)(b) of IGST Act, 2017.

5. C.B.I. & C Clarification on supply of Services to SEZ

In view of the AAR order of Karnataka, [2018 (13) G.S.T.L. 114 (AAR-GST)] C.B.I. & C has issued clarificatory circular to overcome the illegal discrepancy which has been created vide the said order of Karnataka AAR. The

relevant portion of C.B.I. & C., Circular No. 48/22/2018-GST, dated 14-6-2018 [2018 (13) G.S.T.L. 153 (C58)] is reproduced as below:

| Sl. No. | Issue | Clarification |
|--------------------|---|---|
| 1. | Whether services of short-term accommodation, conferencing, banqueting etc. provided to a Special Economic Zone (SEZ) developer or a SEZ unit should be treated as an inter-State supply (under Section 7(5)(b) of the IGST Act, 2017) or an intra-State supply (under Section 12(3)(c) of the IGST Act, 2017)? | <p>As per section 7(5)(b) of the Integrated Goods and Services Tax Act, 2017 (IGST Act in short), the supply of goods or services or both to a SEZ developer or a SEZ unit shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce. Whereas, as per Section 12(3)(c) of the IGST Act, the place of supply of services by way of accommodation in any immovable property for organizing any functions shall be the location at which the immovable property is located. Thus, in such cases, if the location of the supplier and the place of supply is in the same State/Union territory, it would be treated as an intra-State supply.</p> <p>1.2 It is an established principle of interpretation of statutes that in case of an apparent conflict between two provisions, the specific provision shall prevail over the general provision.</p> <p>1.3 In the instant case, Section 7(5)(b) of the IGST Act is a specific provision relating to supplies of goods or services or both made to a SEZ developer or a SEZ unit, which states that such supplies shall be treated as inter-State supplies.</p> <p>1.4 It is therefore, clarified that services of short term accommodation, conferencing, banqueting etc., provided to a SEZ developer or a SEZ unit shall be treated as an inter-State supply.</p> |

| Sl. No. | Issue | Clarification |
|---------|--|---|
| 2. | Whether the benefit of zero rated supply can be allowed to all procurements by a SEZ developer or a SEZ unit such as event management services, hotel and accommodation services, consumables etc? | <p>2.1 As per Section 16(1) of the IGST Act, “zero rated supplies” means supplies of goods or services or both to a SEZ developer or a SEZ unit. Whereas, Section 16(3) of the IGST Act provides for refund to a registered person making zero rated supplies under bond/LUT or on payment of integrated tax, subject to such conditions, safeguards and procedure as may be prescribed. Further, as per the second proviso to rule 89(1) of the Central Goods and Services Tax Rules, 2017 (CGST Rules in short), in respect of supplies to a SEZ developer or a SEZ unit, the application for refund shall be filed by the: (a) supplier of goods after such goods have been admitted in full in the SEZ for authorised operations, as endorsed by the specified officer of the Zone; (b) supplier of services along with such evidences regarding receipt of services for authorised operations as endorsed by the specified officer of the Zone.</p> <p>2.2 A conjoint reading of the above legal provisions reveals that the supplies to a SEZ developer or a SEZ unit shall be zero rated and the supplier shall be eligible for refund of unutilized input tax credit or integrated tax paid, as the case may be, only if such supplies have been received by the SEZ developer or SEZ unit for authorized operations. An endorsement to this effect shall have to be issued by the specified officer of the Zone.</p> <p>2.3 Therefore, subject to the provisions of Section 17(5) of the</p> |

| Sl. No. | Issue | Clarification |
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| | | CGST Act, if event management services, hotel, accommodation services, consumables etc. are received by a SEZ developer or a SEZ unit for authorised operations, as endorsed by the specified officer of the Zone, the benefit of zero rated supply shall be available in such cases to the supplier. |

The above cited circular of C.B.I. & C, is very clear and has clarified that Services of short-term accommodation, conferencing, banqueting, etc., provided to a SEZ developer or a SEZ unit shall be treated as an **inter-State supply**. If event management services, hotel, accommodation services, consumables, etc. are received by a SEZ developer or a SEZ unit for authorised operations, as endorsed by the specified officer of the Zone, the benefit of zero-rated supply shall be available in such cases to the supplier.

It is rightly mention that C.B.I. & C, Circular is contradictory to what the Authority of Advance Ruling has passed order in case of *GOGTE Infrastructure Development Corporation Ltd.*, But this AAR order is only applicable to the said party. Therefore, C.B.I. & C circular will help other SEZ units to avail the benefit in respect of services supplies from the outside premises to SEZ unit/developer of SEZ, which can be rightly treated as inter-State supply and Zero-rated supply as per Section 16 of the IGST Act, 2017.

6. Advance Ruling

The Authority for Advance Ruling Under GST, Karnataka, IN RE: Poppy Dorothy Noel, reported in 2019 (30) G.S.T.L. 129 (A.A.R. - GST)

Accommodation services - Services to SEZ units but rendered outside SEZ Zone - Provisions in Section 7(5)(b) of Integrated Goods and Services Tax Act, 2017 overrides provisions in Section 12(3)(c) ibid - Transaction an inter-State supply of services, provided that supply of services made to SEZ unit was an authorized operation under Special Economic Zones Act, 2005 - In terms of Circular No. 2/2014, dated 25-7-2014 issued by Development Commissioner, Office of Zonal Development Commissioner, Kerala and Karnataka Special Economic Zones accommodation services added to list of services to enable SEZ units to avail Service Tax benefits for their authorized operation - If authorized operations, then it is covered under “zero-rated supplies” and if not authorised operations, then it would be not covered under “zero-rated supplies” and liable to tax at 18% IGST with place of supply being provision of such services - Sections 7(5)(b) and 16(1) of Integrated Goods and Services Tax Act, 2017. [Paras 5.6, 5.7, 5.8, 5.9, 7]

The Authority for Advance Ruling, Gujarat, IN RE: *Sapthagiri Hospitality Pvt. Ltd.*, reported in 2018 (18) G.S.T.L. 91 (A.A.R. - GST), held that as per Section 7(5)(b) of IGST Act, 2017, observed that "As per Section 7(5)(b) of IGST Act, 2017 supply of goods and services or both to or by a SEZ developer or SEZ unit would be treated to be a supply in the course of inter-State trade or commerce. As per Section 8 of the IGST Act, supply of goods or services to or by SEZ developer or unit would not be considered as intra-State supply. Hence the provisions of Section 7 and Section 8 of IGST Act, 2017 read with the definition of SEZ developer given at Section 2(20) of IGST Act, mandate that all the supply of goods or services made by or to SEZ Co-developer would be considered as inter-State supply and the levy of IGST is attracted at the applicable rate. But the IGST law allows the benefit of zero rating to supplies made to an SEZ unit. As per Section 16(1) of IGST Act 'zero rated supply' means any of the following supply of goods or services or both namely (a) export of goods or services or both; or (b) supply of goods or services or both to a SEZ developer or SEZ Unit. Section 2(m)(iii) of SEZ Act, 2005 defines export means supplying goods, or providing services, from one unit to another unit or developer, in the same or different special economic zone. A combined reading of Section 16(1) of IGST Act and Section 2(m)(iii) of SEZ Act indicate that supply of services made by the applicant to other units or developers of SEZ would be zero rated supply. Rendering of services from SEZ to DTA does not qualify as zero rated supply in terms of Section 16 of IGST Act, 2017. Therefore, SEZ Unit/developer making inter-State supply to DTA would be liable to pay IGST under IGST Act. Therefore, supply of services by the SEZ unit or Developer from SEZ to DTA would be covered under the normal course of supply. Accordingly the applicant will be liable to pay GST at the prescribed rates for supplies made to the clients located outside the territory of SEZ.

Ruling:

- (i) The supplies made by M/s. Sapthagiri Hospitality Private Limited, 17-18, Sapthagiri Complex, Opp. The Gateway Hotel, Near Akota Garden, Akota, Vadodara - 390 002 (GSTIN 24AAMCS8870KIZN), a SEZ Co-developer, from their hotel located in non-processing zone of Dahez Special Economic Zone to the clients located in Special Economic Zone for authorized operations will be treated as zero rated supplies under the provisions of Section 16(1) of Integrated Goods and Services Tax Act, 2017 read with Section 2(m) of SEZ Act, 2005
- (ii) The applicant is liable to pay GST on the services from their hotel located in non-processing zone of Dahez Special Economic Zone to the clients located outside the territory of Special Economic Zone under the provisions of Section 5(1) of Integrated Goods and Services Tax Act, 2017.

Chapter 48

Refund of IGST on Supplies to SEZ Unit/Developer of SEZ on Payment of IGST

Synopsis

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1. Statutory provisions of supply to SEZ

The supplies to an SEZ Unit/to a developer of an SEZ are governed under IGST Act, 2017 in the GST regime. Any supply of goods or services or both to an SEZ Unit/Developer of an SEZ by a registered person is treated as an export. Supplies from DTA to a SEZ Unit/Developer of SEZ qualify for Zero Rated in terms of section 16 of the IGST Act, 2017. According to this provision zero-rated supply means goods or services or both supplying to a SEZ Unit/developer of SEZ as no levy of tax on these supplies.

2. Important definitions

“SEZ” means Special Economic Zone deemed to be a territory outside the customs territory of India for the purpose of undertaking the authorised operations in terms of Section 53(1) of the Special Economic Zone Act, 2005.

“Export goods” means any goods which are to be taken out of India to a place outside India in terms of Section 2(19) of the Customs Act, 1962 and Section 2(5) of the IGST Act, 2017 defines “export of goods” with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India;

Section 2(6) of the IGST Act, 2017 defines “Export of Services “means the supply of any services when,—

- (i) the supplier of service is located in India;

- (ii) the recipient of service is located outside India;
- (iii) the place of supply of service is outside India;
- (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange; and
- (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in Section 8.

(In case of export of services particularly in the case of exports to Nepal and Bhutan, the payment is received in Indian rupees as per RBI regulations. Accordingly, Section 2(6)(iv) of the IGST Act in this regard amended).

In light of the above definitions, supplies of goods or services or both to SEZ Unit/Developer of SEZ are considered as export and will be treated as Zero-Rated supplies". Accordingly, while no tax would be payable on such supplies, the exporter will be eligible to claim the corresponding input tax credits. It is relevant to note that the input tax credits would be available to an exporter even if supplies were exempt supplies as long as the eligibility of the input taxes as input tax credits is established.

The exporter may utilize such credits for discharge of other output taxes or alternatively, the exporter may claim a refund of such taxes.

3. Refund on zero-rated supplies

A registered person making zero rated supply shall be eligible to claim refund under either of the following options, namely:—

- (a) he may supply goods or services or both under bond or Letter of Undertaking, without payment of integrated tax and claim refund of unutilized input tax credit; or
- (b) he may supply goods or services or both, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied, in accordance with the provisions of Section 54 of the Central Goods and Services Tax Act or the rules made thereunder".

Therefore, a registered person has to choose one of the above cited two options as per the convenience. Hence, if the second option is chosen by a registered person then the refund of such tax i.e. IGST shall be refunded by the jurisdictional office as per the following procedure.

4. Refund procedures for export of goods or services on payment of IGST

As per Section 54 of the CGST Act and read with Rule 89(1) of the CGST Rules, provides refund of IGST in respect of export of goods or services on payment of tax by a registered person or in respect of supplies to a Special Economic Zone unit or a SEZ developer, the application for refund shall be filed by the—

- (e) supplier of goods after such goods have been admitted in full in the SEZ for authorized operations, as endorsed by the specified officer of the Zone;

- (f) supplier of services along with such evidence regarding receipt of services for authorized operations as endorsed by the specified officer of the Zone;

5. Pre-conditions for filing a Refund application

The following conditions must be met for being eligible to file **Form RFD-01A** to claim refund on account of supplies made to SEZ Unit/SEZ developer (with payment of tax).

(1) The taxpayer is registered with GST Portal and holds an active GSTIN during the period for which refund is being applied for.

(2) **Form GSTR-1** and a valid **GSTR-3B** Return must have been filed for the relevant tax period.

(3) In Table-6B of the GSTR-1 filed for the relevant period, the details of supplies made to SEZ units or SEZ developer should have been mentioned by the taxpayer.

(4) It is to be declared by the refund claimant that the SEZ Unit/Developer has not availed Input Tax Credit of the tax paid, which has been claimed as refund.

(5) It is to be declared by refund claimant that such goods have been admitted in full in the SEZ for authorised operations/services has been received by SEZ for authorised operations.

6. Documents are required for filing refund Claim

Once Application Reference Number (ARN) is generated, copy of the same with print of Application shall be submitted to the jurisdictional GST officer along with other following relied upon documents as required under RFD-01A.

(1) a statement containing the number and date of invoices as prescribed in rule Invoice and along with the evidence regarding endorsement in case of supply of goods made to a Special Economic Zone unit or a Special Economic Zone developer;

(2) a statement containing the number and date of invoices, the evidence regarding endorsement and the details of payment, along with proof thereof, made by the recipient to the supplier for authorized operations as defined under the SEZ Act, 2005, in a case where the refund is on account of supply of services made to a SEZ unit or a SEZ developer;

(3) Copy of **FORM GST RFD-01A** filed on common portal and acknowledgement generated;

(4) Copy of filed GSTR-1;

(5) Copy of filed GSTR-3B;

(6) Copy of Export Invoices;

(7) Copy of BRC or FIRC for export of services;

(8) Undertaking/declaration to the effect that SEZ Unit or the SEZ developer has not availed the input tax credit of the tax paid by the supplier of goods or services or both;

(9) Cancelled Cheque.

7. Acknowledgement of Refund Application

(1) An acknowledgement in **FORM GST RFD-02** shall be made available to the applicant through the Common Portal electronically.

(2) The application for refund, other than from electronic mode, an acknowledgement in **FORM GST RFD-02** shall be made available to the applicant through the Common Portal electronically within 15 days duly verified by the proper officer.

(3) In case any deficiencies, the proper officer shall communicate the same to the applicant in **FORM GST RFD-03** through the Common Portal electronically.

(4) The deficiencies have to be communicated under the CGST Rules/SGST Rules, separately for compliance.

8. Grant of provisional refund

(1) The provisional refund shall be granted subject to the following conditions:

- (a) the claimant has no dispute or prosecution under any offence, during any period of 5 years immediately preceding the tax period or under an existing law where the amount of tax evaded exceeds ₹ 250 lakh.
- (b) the GST compliance rating, where available, of the applicant is not less than five on a scale of ten;
- (c) no proceedings of any appeal, review or revision is pending on any of the issues which form the basis of the refund and if pending, the same has not been stayed by the appropriate authority or court.

(2) The proper officer, after due scrutiny of the claim, shall make an order in **FORM GST RFD-04**, sanctioning the 90% amount of refund due to the said applicant on a provisional basis within a period not exceeding 7 days from the date of acknowledgement of **RFD-02**.

(3) The proper officer shall issue a payment advice in **FORM GST RFD-05** for the amount sanctioned and the same shall be electronically credited to any of the bank accounts of the applicant.

9. Order sanctioning of refund

(1) Where, upon examination of the application, the proper officer is satisfied that a refund due and payable to the applicant, he shall make an order in **FORM GST RFD-06**, sanctioning the amount of refund to which the applicant is entitled.

Provided that in cases where the amount of refund is completely adjusted against any outstanding demand under the Act or under any existing law, an order giving details of the adjustment may be issued in **FORM GST RFD-07**.

(2) Where the proper officer is satisfied, for reasons to be recorded in writing, that the whole or any part of the amount claimed as refund is not admissible or is not payable to the applicant, he shall issue a notice in **FORM GST RFD-08** to the applicant, requiring him to furnish a reply in **FORM GST RFD-09** within 15 days of the receipt of such notice and after considering the reply, make an order in **FORM GST RFD-06**, sanctioning the amount of refund in whole or part, or rejecting the said refund claim and the said order shall be made available to the applicant electronically. Provided that no application for refund shall be rejected without giving the applicant a reasonable opportunity of being heard.

(3) Where the proper officer is satisfied that the amount refundable or is payable to the applicant under sub-section (8) of Section 48, he shall make an order in **FORM GST RFD-06** and issue a payment advice in **FORM GST RFD-05**, for the amount of refund and the same shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund.

(4) Where the proper officer is satisfied that the amount not refundable, for the amount of refund to be credited to the Consumer Welfare Fund.

10. Credit of the amount of rejected refund claim

(1) Where any deficiencies have been communicated under sub-rule (3) of Rule 2, the amount debited under sub-rule (3) of rule 1 shall be re-credited to the electronic credit ledger.

(2) Where any amount claimed as refund is rejected under rule 4, either fully or partly, the amount debited, to the extent of rejection, shall be re-credited to the electronic credit ledger by an order made in **FORM GST PMT-03**.

11. Order sanctioning interest on delayed refund

Where any interest is due and payable to the applicant under Section 56, the proper officer shall make an order along with a payment advice in **FORM GST RFD-05**, specifying therein the amount of refund which is delayed, the period of delay for which interest is payable and the amount of interest payable @ 6%, if the RFD-06 has not been received within 60 days from the date of receipt of **GST RFD-01A** and such amount of interest shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund.

12. Advance Ruling

The Hon'ble Tribunal Kolkata in the case of *Vedanta Ltd v Commissioner of CGST & C. Ex., Rourkela*, reported in 2021 (44) G.S.T.L. 99 (Tri. - Kolkata) held that Refund of Service Tax - SEZ Unit - Mere technical discrepancy in the invoices cannot be the ground for denying substantive benefit of refund available to SEZ unit when it is the policy of the Government to exempt or refund the input

tax incurred by the SEZ unit - The fact that appellant is SEZ unit is not disputed and receipt of the services is also not disputed as also the payment of Service Tax to the service provider - Regarding re-conciliation of Service Tax payment with evidence of challans, the same was produced and found to be satisfactory - Hence appellant is entitled to refund of Service Tax paid by the service provider - Sections 7 and 51 of Special Economic Zones Act, 2005 - Notification No. 40/2012-S.T., dated 20-6-2012.

* * *

The Hon'ble High Court of Gujarat in the case of *Britannia Industries Limited v Union of India*, reported in 2020 (42) G.S.T.L. 3 (Guj.) held that Refund of unutilized credit to SEZ - IGST credit lying in Electronic Credit Ledger - Petitioner being a SEZ making zero rated supplies, unable to utilize the credit of Input Tax Credit of IGST from its Input Service Distributor (ISD) - Input Tax Credit being distributed by ISD, there is no specific supplier of goods and services to file a refund application to claim the refund of Input Tax Credit distributed by ISD - Therefore, petitioner is entitled to claim refund of IGST lying in Electronic Credit Ledger - Respondents directed to process the claim of refund made by petitioner for unutilized IGST credit lying in Electronic Credit Ledger under Section 54 of Central Goods and Services Tax Act, 2017 - Section 16 of Integrated Goods and Services Tax Act, 2017 - Rule 89 of Central Goods and Services Tax Rules, 2017.

* * *

The Hon'ble High Court of Karnataka in the case of *Lalitha Muraleedharan v Range Forest Officer, Idukki*, reported in 2020 (34) G.S.T.L. 102 (Ker.) - SEZ - Supply to SEZ - Deemed export - Zero-rated supply - Exporter of sandalwood products in Tamil Nadu purchasing sandalwood in e-auction from Forest Department in Kerala - GST being destination based tax, therefore, tax finally payable where goods and services are consumed - Petitioner upon completion of other sale conditions although receives the sandalwood logs at Marayoor Forest Department depot, Kerala, acknowledgment of goods there not results in termination of movement of goods but results in further movement of goods at the hands of recipient to SEZ - Accordingly, actual place of supply by plain interpretation of Section 10(1) of Integrated Goods and Services Tax Act, 2017 within SEZ in Madras, State of Tamil Nadu, but not in State of Kerala - Subject supply comes as inter-State movement of goods to SEZ outside the State of Kerala and subject transaction to be treated as a 'Zero-rated supply' in terms of Section 16(1)(b) ibid and at par with physical export - IGST not payable.

Advance Rulings:

The Appellate Authority under GST, Andhra Pradesh, In Re: IN RE: Vaachi International Pvt. Ltd., reported in 2020 (36) G.S.T.L. 538 (A.A.R-GST).

Refund of unutilized input tax credit - Zero-rated supplies made to SEZ - SEZ unit/developers not eligible to claim refund against ITC involved in supplies

received by them from non-SEZ suppliers, eligibility for refund claim being available to suppliers who made zero-rated supplies to SEZ units/Developers with payment of tax. It was held that "Thus, a conjoint reading of all the above provisions undoubtedly point towards a conclusion that SEZ unit/developers shall not claim any refund against the ITC involved in supplies received by them from non SEZ suppliers. The Act facilitates eligibility for refund claim to the suppliers who made supplies to SEZ unit/developers with payment of tax. The AA has rightly adhered to these provisions and rejected the refund claim in legitimate manner. In addition to this, it is to be observed that the appellant contentions of their eligibility regarding refund against the zero-rated supplies received by them, is found to be not tenable. Accordingly, refund claim filed by appellant-SEZ rejected - Section 54(3) of Central Goods and Services Tax Act, 2017 read with Rules 89(1) and 89(2)(f) of Central Goods and Services Tax Rules, 2017.

* * *

The Authority for Advance Ruling Under GST, Karnataka, In Re: *Poppy Dorothy Noel*, reported in 2019 (30) G.S.T.L. 129 (A.A.R. - GST)

Accommodation services - Services to SEZ units but rendered outside SEZ Zone - Provisions in Section 7(5)(b) of Integrated Goods and Services Tax Act, 2017 overrides provisions in Section 12(3)(c) ibid - Transaction an inter-State supply of services, provided that supply of services made to SEZ unit was an authorized operation under Special Economic Zones Act, 2005 - In terms of Circular No. 2/2014, dated 25-7-2014 issued by Development Commissioner, Office of Zonal Development Commissioner, Kerala and Karnataka Special Economic Zones accommodation services added to list of services to enable SEZ units to avail Service Tax benefits for their authorized operation - If authorized operations, then it is covered under "zero-rated supplies" and if not authorised operations, then it would be not covered under "zero-rated supplies" and liable to tax at 18% IGST with place of supply being provision of such services - Sections 7(5)(b) and 16(1) of Integrated Goods and Services Tax Act, 2017."

* * *

Authority for Advance Ruling, Gujarat, In Re: *Sapthagiri Hospitality Pvt. Ltd*, reported in 2018 (18) G.S.T.L. 91 (A.A.R. - GST), held that as per Section 7(5)(b) of IGST Act, 2017, observed that" As per Section 7(5)(b) of IGST Act, 2017 supply of goods and services or both to or by a SEZ developer or SEZ unit would be treated to be a supply in the course of inter-State trade or commerce. As per Section 8 of the IGST Act, supply of goods or services to or by SEZ developer or unit would not be considered as intra-State supply. Hence the provisions of Section 7 and Section 8 of IGST Act, 2017 read with the definition of SEZ developer given at Section 2(20) of IGST Act, mandate that all the supply of goods or services made by or to SEZ Co-developer would be considered as inter-State supply and the levy of IGST is attracted at the applicable rate. But the IGST law allows the benefit of zero rating to supplies made to an SEZ unit. As per Section 16(1) of IGST Act 'zero rated supply' means any of the following

supply of goods or services or both namely (a) export of goods or services or both; or (b) supply of goods or services or both to a SEZ developer or SEZ Unit. Section 2(m)(iii) of SEZ Act, 2005 defines export means supplying goods, or providing services, from one unit to another unit or developer, in the same or different special economic zone. A combined reading of Section 16(1) of IGST Act and Section 2(m)(iii) of SEZ Act indicate that supply of services made by the applicant to other units or developers of SEZ would be zero rated supply. Rendering of services from SEZ to DTA does not qualify as zero rated supply in terms of Section 16 of IGST Act, 2017. Therefore, SEZ Unit/developer making inter-State supply to DTA would be liable to pay IGST under IGST Act. Therefore, supply of services by the SEZ unit or Developer from SEZ to DTA would be covered under the normal course of supply. Accordingly the applicant will be liable to pay GST at the prescribed rates for supplies made to the clients located outside the territory of SEZ.

Ruling:

- (i) The supplies made by M/s. Sapthagiri Hospitality Private Limited, 17-18, Sapthagiri Complex, Opp. The Gateway Hotel, Near Akota Garden, Akota, Vadodara - 390 002 (GSTIN 24AAMCS8870KIZN), a SEZ Co-developer, from their hotel located in non-processing zone of Dahez Special Economic Zone to the clients located in Special Economic Zone for authorized operations will be treated as zero rated supplies under the provisions of Section 16(1) of Integrated Goods and Services Tax Act, 2017 read with Section 2(m) of SEZ Act, 2005.
- (ii) The applicant is liable to pay GST on the services from their hotel located in non-processing zone of Dahez Special Economic Zone to the clients located outside the territory of Special Economic Zone under the provisions of Section 5(1) of Integrated Goods and Services Tax Act, 2017.

Chapter 49

Taxability of Government Services under GST

Synopsis

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1. Meaning of the Government

Section 2(53) of the CGST Act, 2017 defines “Government” as the Central Government, which also includes the following for the purpose of this Act.

- As per clause (23) of Section 3 of the General Clauses Act, 1897 ‘Government’ includes both Central Government and any State Government.
- As per clause (8) of Section 3 of the said Act ‘Central Government’, in relation to anything done or to be done after the commencement of the constitution, mean the President.
- As per Article 53 of the Constitution the executive power of the Union shall be vested in the President and shall be exercised by him either directly or indirectly through officers subordinate to him in accordance with the Constitution.
- In terms of Article 77 of the Constitution all executive actions of the Government of India shall be expressed to be taken in the name of the President.

Therefore, the Central Government means the President and the officers subordinate to him while exercising the executive powers of the Union vested in the President and in the name of the President.

- Similarly as per clause (60) of Section 3 of the General Clauses Act, 1897 ‘State Government’, as respects anything done after the commencement of the Constitution, shall have been, in a State the Governor, and in Union Territory the Central Government.
- Further, as per Article 154 of the Constitution the executive power of the State shall be vested in the Governor and shall be exercised by him either directly or indirectly through officers subordinate to him in accordance with the Constitution.
- Further, as per Article 166 of the constitution all executive actions of the Government of State shall be expressed to be taken in the name of Governor.

Therefore, State Government means the Governor or the officers subordinate to him who exercise the executive power of the state vested in the Governor and in the name of the Governor.

2. Meaning of local authority

Section 2(69) of the CGST Act, 2017 defines “Local Authority” means—

- (a) a “Panchayat” as defined in clause (d) of Article 243 of the Constitution;
- (b) a “Municipality” as defined in clause (e) of Article 243P of the Constitution;
- (c) a Municipal Committee, a Zila Parishad, a District Board, and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund;

- (d) a Cantonment Board as defined in Section 3 of the Cantonments Act, 2006 (41 of 2006);
- (e) a Regional Council or a District Council constituted under the Sixth Schedule to the Constitution;
- (f) a Development Board constituted under Article 371 of the Constitution; or
- (g) a Regional Council constituted under Article 371A of the Constitution;

The cited definition of ‘local authority’ is very specific and means only those bodies which are mentioned as ‘local authorities’ in clause (69) of Section 2 of the CGST Act, 2017. It would not include other bodies which are merely described as a ‘local body’ by virtue of a local law of State or Central Government. For example, State Governments have setup local development authorities to undertaken developmental works like infrastructure, housing, etc. The Governments setup these authorities under the Town and planning Act. Examples of such development authorities are Delhi Development Authority, Ahmedabad Development Authority, Bangalore Development Authority, Chennai Metropolitan Development Authority, Bihar Industrial Area Development Authority, etc. Such developmental authorities formed under the Town and Planning Act, are not qualified as local authorities for the purposes of the CGST Acts.

3. Statutory bodies are not ‘Government’ or ‘local authority’

Further, a statutory body, corporation or an authority created by the Parliament or a State Legislative is neither ‘Government’ nor a ‘local authority’. Such statutory bodies, corporation or authorities are normally created by the Parliament or a State Legislature in exercise of the powers conferred under Article 53(3)(b) and Article 154(2)(b) of the Constitution respectively. It is a settled position of law (*Agarwal v Hindustan Steel Subordinate - Air 1970 Supreme Court 1150*) that the manpower of such statutory authorities or bodies do not become officers subordinate to the President under Article 154(1). Such a statutory body, corporation or an authority as a juridical entity is separate from the State and cannot be regarded as the Central or a State Government and also does not fall in the definition of ‘local authority’. Thus, regulatory bodies and other autonomous entities would not be regarded as the Government or local authorities for the purposes of the GST Acts.

4. Corporations and Autonomous Bodies are not Government

Various corporations formed under the Central Acts or State Acts or various government companies registered under the Companies Act, 1956/2013 or autonomous institutions set up by special Acts are not covered under the definition of ‘Government’. The corporations formed under the Central or a State Act or various companies registered under the Companies Act, 1956/2013 or autonomous institutions set up by the State Acts will not be covered under the definition of ‘Government’. Therefore, services provided by them will be taxable unless exempted by a notification.

5. Regulatory bodies are not Government

The various regulatory bodies formed by the Government are not covered under the definition of 'Government'. A regulatory body, also called regulatory agency, is a public authority or a government body which exercises functions assigned to them in a regulatory or supervisory capacity. These bodies do not fall under the definition of Government. Examples of regulatory bodies are – Competition Commission of India, Press Council of India, Directorate General of Civil Aviation, Forward Market Commission, Inland Water Supply Authority of India, Central Pollution Control Board, Securities and Exchange Board of India.

6. The functions entrusted to Municipality by the Constitution of India

The functions entrusted to a municipality under the Twelfth Schedule to Article 243W of the Constitution are the following:—

- (a) Urban planning including town planning.
- (b) Regulation of land-use and construction of buildings.
- (c) Planning for economic and social development.
- (d) Roads and bridges.
- (e) Water supply for domestic, industrial and commercial purposes.
- (f) Public health, sanitation conservancy and solid waste management.
- (g) Fire services.
- (h) Urban forestry, protection of the environment and promotion of ecological aspects.
- (i) Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.
- (j) Slum improvement and up gradation.
- (k) Urban poverty alleviation.
- (l) Provision of urban amenities and facilities such as parks, garden, playgrounds.
- (m) Promotion of cultural, educational and aesthetic aspects.
- (n) Burials and burial grounds, cremations, cremation grounds, and electric crematoriums.
- (o) Cattle pounds, prevention of cruelty to animals.
- (p) Vital statistics including registration of births and deaths.
- (q) Public amenities including street lighting, parking lots, bus stops and public conveniences.
- (r) Regulation of slaughter houses and tanneries.

7. The functions entrusted to a Panchayat by the Constitution of India

The functions entrusted to a Panchayat under the Eleventh Schedule to Article 243G of the Constitution are the following:—

- (i) Agriculture, including agricultural extension.
- (ii) Land improvement, implementation of land reforms, land consolidation and soil conservation.

- (iii) Minor irrigation, water management and watershed development.
- (iv) Animal husbandry, dairying and poultry.
- (v) Fisheries.
- (vi) Social forestry and farm forestry.
- (vii) Minor forest produce.
- (viii) Small scale industries, including food processing industries.
- (ix) Khadi, village and cottage industries.
- (x) Rural housing.
- (xi) Drinking water.
- (xii) Fuel and fodder.
- (xiii) Roads, culverts, bridges, ferries, waterways and other means of communication.
- (xiv) Rural electrification, including distribution of electricity.
- (xv) Non-conventional energy sources.
- (xvi) Poverty alleviation programme.
- (xvii) Education, including primary and secondary schools.
- (xviii) Technical training and vocational education.
- (xix) Adult and non-formal education.
- (xx) Libraries.
- (xxi) Cultural activities.
- (xxii) Market and fairs.
- (xxiii) Health and sanitation, including hospitals, primary health centers and dispensaries.
- (xxiv) Family welfare.
- (xxv) Women and child development.
- (xxvi) Social welfare, including welfare of the handicapped and mentally retarded.
- (xxvii) Welfare of the weaker sections, and in particular, of the Schedule Castes and the Scheduled Tribes.
- (xxviii) Public distribution system.
- (xxix) Maintenance of community assets.

8. Exemption of services provided by Government or local authority

All services provided by the Government or a local authority are not exempt from tax. As for instance, the various services provided by the following Government department are not exempt and hence liable to tax:

- (i) services by the Department of posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Government;
- (ii) services in relation to an aircraft or a vessel, include or outside the precincts of an airport or a port;

- (iii) transport of goods or passengers; or
- (iv) any service, other than services covered under (i) to (iii) above, provided to business entities are not exempt and these services are liable to tax.

That above said, most of the services provided by the Central Government, State Government, Union Territory or local authority are exempt from tax. These include services provided by government or a local authority or governmental authority by way of any activity in relation to any function entrusted to a municipality under Article 243W of the Constitution and services by a government authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution.

9. Liability to pay tax by the Government or local authority on supply of services

The Government or local authority or a governmental authority is liable to pay tax on supply of services other than the services notified as exempt or notified as neither a supply of goods nor a supply of services under clause (b) of sub-section (2) of Section 7 of the CGST Act, 2017. In respect of services other than following:

- (i) renting of immovable property;
- (ii) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Government; and
- (iii) services in relation to an aircraft or a vessel, inside or outside the precincts of an airport or a port, the service recipients are required to pay the tax under reverse charge mechanism. (The supplier of services may claim the input tax credit on the amount of tax paid under reverse charge mechanism.)

10. Liability to pay tax on services received from outside India

No tax is payable on the services received by the Government/local authority/governmental authority from a provider of service located outside India. However, the exemption is applicable to only those services which are received for the purpose other than commerce, industry or any other business or profession. In other words, if the Government receives such services for the purpose of business or commerce, then tax would apply on the same. But online information and database access or retrieval services received by Governmental or local authorities from non taxable territory for any purpose including furtherance of business or commerce are liable to tax.

11. Applicability of reverse charge on services provided by the Government or Local Authority

Reverse charge is applicable in respect of services provided by Government or local authorities to any person whose turnover exceeds ₹ 20 lakhs (₹ 10 lakhs for Special Category States) excluding the following services:

- (i) renting of immovable property;

- (ii) services by the Department of Posts by way of speed post, express parcel post, life insurance and agency services provided to a person other than Government;
- (iii) services in relation to an aircraft or a vessel, inside or outside the precincts of an airport or port;
- (iv) transport of goods or passengers.

Thus, the recipient of supply of goods or services is liable to pay the entire amount of tax involved in such supply of services or goods or both.

12. Applicability of tax on services provided by Government or a local authority to a business entity located in a special category State

The expression “special category States” provided in *Explanation (iii)* to section 22 of the CGST Act, shall mean the States as specified in sub-clause (g) of clause (4) of Article 279A of the constitution. As per the said clause, the States of Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand have been given the status of special category States for the purpose of GST Acts. Notification No. 12/2017-C.T. (Rate), dated 28-6-2017 (Sl. No. 7 of the Table) provides for exemption from payment of tax in a special category State with a turnover up to ₹ 10 lakh rupees.

However, this exemption is not applicable to (a) services of the following:

- (i) by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Government;
- (ii) in relation to an aircraft or a vessel, inside or outside the precincts of an airport or a port;
- (iii) of transport of goods or passengers and
- (iv) services by way of renting of immovable property.

13. Taxability of services provided by one department of the Government to another department of the Government

Services provided by one department of the Central Government/State Government to another department of the Central Government/State Government are exempt under Notification No. 12/2017-C.T. (Rate), dated 28-6-2017. [Sl. No. 8 of the Table].

However, this exemption is not applicable to:

- (a) services provided by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, the State Government and Union Territory;
- (b) services in relation to a vessel or an aircraft inside or outside the precincts of a port or an airport;
- (c) services of transport of goods and/or passengers.

14. Taxability of pure services provided to Government:

Pure services provided to Government is exempted *vide* Notification No. 12/2017-C.T. (Rate), dated 28-6-2017. In the context of the language used in the Notification, supply of services without involving any supply of goods would be treated as supply of ‘pure services’. For example, supply of man power for cleanliness of roads, public places, architect services, consulting engineer services, advisory services, and like services provided by business entities not involving any supply of goods would be treated as supply of pure services.

In the case of a governmental authority awarding the work of maintenance of street lights in a Municipal area to an agency which involves apart from maintenance, replacement of defunct lights and other spares, where the scope of the service involves maintenance work and supply of goods, which falls under the works contract services. The exemption is provided only to supply of services and not to works contract services.

15. Taxability of services in relation to supply of motor vehicles to Government

Supply of a motor vehicle meant to carry more than twelve passengers by way of hire to a state transport undertaking is exempted from tax. The exemption is applicable to services provided to state transport undertaking and not to other departments of Government or local authority. Generally, such State transport undertakings/corporations are established by law with a view to providing public transport facility to the commuters. In some cases, transport undertakings hire the buses on lease basis from private persons on payment of consideration. The services by way of supply of motor vehicles to such state transport undertaking are exempt from payment of tax. However, supplies of motor vehicles to Government Departments other than the state transport undertakings are taxable.

16. Taxability of services provided by Police and Security Agencies to Government

The services provided by police or security agencies of Government to PSU/Private business entities are not exempt from GST. Such services are taxable supplies and the recipients are required to pay the tax under reverse charge mechanism on the amount of consideration paid to Government for such supply of services.

17. Taxability of transport services provided by the Government

The following transport services provided by the Government or local authorities to passengers are exempted:

- (i) railways in a class other than- (a) first class; or (b) an air-conditioned coach;
- (ii) metro, monorail or tramway;
- (iii) inland waterways;
- (iv) public transport, other than predominantly for tourism purpose, in a vessel between places located in India; and
- (v) metered cabs or auto rickshaws (including E-rickshaws) are exempt from tax.

18. Taxability of services provided by the Department of Posts

The services provided by the Department of Post by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Government or Union territory are not exempt. In respect of these services, the Department of Posts is liable to pay tax without application of reverse charge. However, the following services provided by the Department of Posts are not liable to tax.

- (a) Basic mail services known as postal services such as post card, inland letter, book post, registered post provided exclusively by the Department of Posts to meet the universal postal obligations.
- (b) Transfer of money through money orders, pension payments and other such services.

The Department of Posts also provides services like distribution of mutual funds, bonds, passport applications, collection of telephone and electricity bills on commission basis. These services are in the nature of intermediary and generally called agency services as mentioned in the Notification No. 12/2017-C.T. (Rate), dated 28-6-2017. In these cases the Department of Posts is liable to pay tax without application of reverse charge.

19. Taxability of non-performance of a contract or breach of contract

Non-performance of a contract or breach of contract is one of the conditions normally stipulated in the Government contracts for supply of goods or services. The agreement entered into between the parties stipulates that both the service provider and service recipient abide by the terms and conditions of the contract. In case any of the parties breach the contract for any reason including non-performance of the contract, then such person is liable to pay damages in the form of fines or penalty to the other party. Non-performance of a contract is an activity or transaction which is treated as a supply of service and the person is deemed to have received the consideration in the form of fines or penalty and is, accordingly, required to pay tax on such amount.

However, non-performance of contract by the supplier of service in case of supplies to Government is covered under the exemption from payment of tax. Thus, any consideration received by the Government from any person or supplier for non-performance of contract is exempted from tax. This gets covered under the exemption by way of tolerating non-performance of a contract for which consideration in the form of fines or liquidated damages is payable to the Government or the local authority.

20. Taxability of royalty paid to the Government

The Government provides license to various companies including Public Sector Undertakings for exploration of natural resources like oil, hydrocarbons, iron ore, manganese, etc. For having assigned the rights to use the natural resources, the licensee companies are required to pay consideration in the form of annual license fee, lease charges, royalty, etc. to the Government. The activity of assignment of rights to use natural resources is treated as supply of services and

the licensee is required to pay tax on the amount of consideration paid in the form of Royalty or any other form under reverse charge mechanism.

21. Taxability of construction work entrusted to Government authority

The Regulation/change of land-use, construction of buildings and other services listed in the Twelfth Schedule to the Constitution which have been entrusted to Municipality under Article 243W of the Constitution, when provided by Government authority are exempt from payment of tax.

22. Requirement of registration for the Government Department

The Government Department is required to take registration as a normal taxpayer only if it makes a taxable supply of goods and/or services and in such cases, the registration shall be obtained on the basis of PAN but Bank account is not mandatory. However, if it is not making any taxable supply of goods and/or services, it is required to register only as a deductor of tax at source on the basis of TAN/PAN.

23. Mandatory responsibility of the Government department to deduct TDS

As per Section 51 of the CGST Act, tax at source is required to be deducted by the Government departments from the payment made or credited to the supplier in specified situations of supply of goods and services or both. The supplier of such cases takes into account the amount so deducted and makes the balance payment of tax to the Government.

The CGST Act specified the following Government departments empowered to deduct tax at source Section 51(1) of the Act:

- (c) a department or establishment of the central Government or state Government, or
- (d) local authority; or
- (c) Governmental agencies.
- (d) Such person or category of persons as may be notified by Central or State Governments on the recommendation of the GST Council.

24. Government Services-under GST

The Government vide Notification No. 73/2018-CT, dated 31-12-2018, exempted supplies made by the Government department and PSUs to another Government department or PSUs and vice versa from the payment of TDS w.e.f. 1-1-2019. By virtue of this Notification, there shall be no deduction of tax (GST) from the payment made or credited to the supplier, for supply of goods or services or both, when transactions take place between persons stated below:

- (a) a department or an establishment of the Central Government or State Government; or
- (b) local authority; or
- (c) government agencies; or
- (d) such persons or category of persons as may be notified by Government on the recommendations of the Council.

It is to be mentioned that the Central Government *vide* Notification No. 61/2018-CT, dated 5th November, 2018 has stipulated that deduction of tax (GST) under Section 51 of the CGST Act, 2017 is not required in case of supply of goods or services or both, when supplied from one public sector undertaking to another public sector undertaking w.e.f. 1st October, 2018.

25. Threshold limit of TDS deduction applicable

The tax would be deducted @1% of the payment made to the supplier (the deductee) of taxable goods or services or both, where the total value of such supply, under a contract, exceeds two lakh fifty thousand rupees (excluding the amount of Central Tax, State Tax, Union Territory tax, Integrated Tax and Cess indicated in the invoice). Thus, individual supplies may be less than ₹2,50,000/-, but if contract value is more than ₹2,50,000/-, TDS will have to be deducted. However, no deduction shall be made if the location of the supplier and the place of supply is in a State or Union territory, which is different from the State, or as the case may be, Union Territory of registration of the recipient.

26. ITC on Tax Deducted at Source

The tax deducted at source cannot be used as input tax credit. So the deductee cannot claim the input tax credit. However, the amount deducted shall be credited to the electronic cash ledger (upon being accepted by the deductee in his **Form GSTR-2A**) of the deductee and can be utilized for payment of output tax.

27. Exemption on Government Services

- Services supplied by banks to Basic Saving Bank Deposit (BSBD) account holders under Pradhan Mantri Jan Dhan Yojana (PMJDY).
- Services supplied by rehabilitation professionals recognised under Rehabilitation Council of India Act, 1992 at medical establishments, educational institutions, rehabilitation centers established by Central Government/State Government or Union Territories or entity registered under Section 12AA of the Income-tax Act.
- Services provided by GTA to Government Departments/Local Authorities registered only for the purpose of deducting tax under Section 51 shall be excluded from payment of tax under RCM.
- Services provided by Central or State Government or Union Territory Government to their undertakings or PSUs by way of guaranteeing loans taken by them from financial institutions in relation to guaranteeing of such loans taken from banks.

[Notification No. 28/2018-C.T. (Rate), dated 31-12-2018]

* * *

28. Advance Rulings

Three conditions required to be fulfilled for exemption:

In Re: *Anandjiwala Technical Consultancy*, reported in 2021 (48) G.S.T.L. 316 (A.A.R. - GST - Guj.) Pure services to Government entity - Project Management Consultancy services provided to Rajkot Urban Development

Authority (RUDA) in respect of PM Awas Yojana - Exemption under Sl. No. 3 of Notification No. 12/2017-C.T. (Rate) - To be eligible to exemption under aforesaid Notification, three conditions required to be fulfilled - Firstly, services provided should be pure service excluding works contract and composite supplies involving supply of goods; secondly, such services should be provided to Government, Government authority/entity or local authority and thirdly, the services should be in relation to any function entrusted to a Panchayat/Municipality under Articles 243G and 243W respectively of Constitution of India - However, only after fulfilling first condition, applicability of other two conditions can be examined - Since applicant neither submitted copy of agreement nor established in their written submissions that services provided by them are pure services, merely on the basis of Letter of Acceptance issued by RUDA for preparing estimates, tenders, evaluation of tenders, consulting and supervision work of affordable housing, it is not possible to give ruling on the issue as to whether services provided are pure services and eligible to exemption under aforesaid Notification - Sections 11 and 98 of Central Goods and Services Tax Act, 2017."

* * *

Pure Services to the Government exempted:

In Re: *Consulting Engineers Group Limited*, reported in 2020 (39) G.S.T.L. 155 (A.A.R. - GST - A.P.) Pure services to Government - Project Management Consultancy Services to Andhra Pradesh Panchayat Raj Engineering Department (APPRED) of Andhra Pradesh Rural Road Project - Services provided through its professionals and experts in various fields - Copy of Invoice showed detailed bifurcation of cost which comprises of reimbursement of remuneration of professionals and experts employed for undertaking various tasks assigned to applicant in Contract Agreement - No component of supply of goods - Supply classifiable as pure services - APPRED formulated by Government of Andhra Pradesh and function directly under Ministry of Panchayat Raj & Rural Development - APPRED qualifies as to be a technical wing of Department of Panchayat Raj & Rural Development of State **Government - Services** rendered are covered under Eleventh Schedule to Constitution of India - Services provided exempted under Sl. No. 3 of Notification No. 12/2017-C.T. (Rate) as amended by Notification No. 32/2017-C.T. (Rate) and Sl. No. 3 (Chapter 99) of Table mentioned in G.O. Ms. No. 588-(Andhra Pradesh) State Tax (Rate) - Articles 243G and 243W of Constitution of India."

* * *

Pure services - Services of providing energy saving street lighting services including O&M of street lighting installations to Municipal Corporation:

In Re: *Super Wealth Financial Enterprises Private Ltd*, reported in 2019 (24) G.S.T.L. 771 (App. A.A.R. - GST) Street lights - Supply and maintenance for Local Authority - Exemption under Serial No. 3 of Notification No. 12/2017-C.T. (Rate) - Pure services - Services of providing energy saving street lighting services including O&M of street lighting installations to Municipal Corporation

- Said services not pure services inasmuch as these in addition to maintenance work also involve supply of goods by replacement and thus covered under works contract - Further, there being transfer of all assets after stipulated period, appellant's activity also covered as 'Supply of Goods' under in terms of S. No. 4(a) of Schedule-II of Central Goods and Services Tax Act, 2017 - Transfer of Business - Accordingly aforesaid exemption entry not applicable - Cases relied by appellant distinguishable - Impugned Ruling of AAR sustainable."

* * *

Contract for Railway station sanitation and/or cleaning, train cleaning & railway premises cleaning - Exemption under Serial No. 3 of Notification No. 9/2017-I.T. (Rate)

In Re: *VPSSR Facilities*, reported in 2018 (13) G.S.T.L. 116 (A.A.R. - GST) Cleaning activity rendered to Railways - GST - Advance Ruling - Contract for Railway station sanitation and/or cleaning, train cleaning & railway premises cleaning - Exemption under Serial No. 3 of Notification No. 9/2017-I.T. (Rate) - Available only to "pure services" without any supply of material and are in relation to any functions which are entrusted to Municipality as per Article 243W of Constitution of India - High Court in earlier case holding that contract was pure Service contracts - C.B.E. & C. clarifying in FAQ (question No. 25) that supply of services without involving any supply of goods would be treated as supply of 'pure services' - Cleaning contracts of applicant with Northern Railways, which may involve use of consumables such as soap/detergent/chemicals of a minimal quantity and of very nominal value are "pure service" contracts - Contracts awarded in name of President of India and therefore Northern Railway covered in said Notification as 'Central Government' - According to Article 243Q of Constitution of India, only Nagar Panchayats, Municipal Councils and Municipal Corporations are considered as Municipalities - Railways cannot be called Municipality under Articles 243P and 243Q of Constitution of India It is held that the cleaning services supplied by the applicant to the Northern Railways are not exempted under Sl. No. 3 of the Notification No. 9/2017-Integrated Tax (Rate), dated 28-6-2017, as amended by Notification No. 2/2018-Integrated Tax (Rate), dated 25-1-2018 and parallel Notifications of CGST and SGST."

Chapter 50

GST Compensation Cess

Synopsis

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1. Introduction

GST Compensation Cess is the additional levy on notified goods in addition to applicable GST on these goods.

Goods and Services Tax (Compensation to States) Act, 2017 was enacted to levy Compensation Cess for providing compensation to the States for the loss of revenue arising on account of implementation of the goods and services tax with effect from the date from which the provisions of the Central Goods and Services Tax Act was brought into force (1-7-2017), for a period of five years or for such period as may be prescribed on the recommendations of the GST Council.

Section 2(c) of the GST (Compensation to States) Act, 2017 defines “Cess” means the goods and services tax compensation cess levied under Section 8 of the Act.

Section 2(d) of the GST (Compensation to States) Act, 2017 defines “Compensation” means an amount, in the form goods and services tax compensation, as determined under Section 7 of the Act.

2. Requirement of Compensation Cess in GST

Due to implementation of GST in the country, many manufacturing States suffered a decrease in revenue as GST is a destination and consumption based tax. The manufacturing States namely Maharashtra, Gujarat and Tamil Nadu were likely to lose revenue on account of GST.

The main reason for the loss of revenue was that Central Sales Tax (CST) was an origin-based tax, which was levied by the Central Government but collected and appropriated by the State Government. Thereby by the Origin State was availing benefit of CST even though the goods were not consumed in the same State.

In the GST provisions the Origin State where the goods will be supplied to another State will charge IGST but the IGST will accrue to the consuming State. Thereby causing loss of revenue to the State from where goods were supplied. The Government had introduced the additional levy of Compensation cess in order to compensate the loss to the Origin State.

3. Basis of levy of Compensation Cess on goods

The compensation cess on goods imported into India shall be levied and collected in accordance with the provisions of Section 3 of the Customs Tariff Act, 1975, at the point when duties of customs are levied on the said goods under Section 12 of the Customs Act, 1962, on a value determined under the Customs Tariff Act, 1975.

Compensation Cess will not be charged on goods exported by an exporter under bond and the exporter will be eligible for refund of input tax credit of Compensation Cess relating to goods exported. In case goods have been exported on the payment of Compensation Cess the exporter will be eligible for refund of Compensation Cess paid on goods exported by him. Compensation cess shall not be leviable on supplies made by a taxable person who has decided to opt for composition levy.

4. Value for calculation of Compensation Cess

The compensation cess is chargeable on notified supply of goods with reference to their transaction value, then for each such supply, the value has to be determined under Section 15 of the Central Goods and Services Tax Act, 2017 like GST charged on these goods.

5. Who will collect the Compensation Cess?

A taxable person selling or supplying goods on payment of GST, is required to charge compensation cess on notified goods as per the rates as notified by the Government. The supplier has to collect compensation cess and pay to the Government against outward supply of notified goods.

6. Input Tax Credit

The input tax credit in respect of compensation cess on supply of goods or services can be utilised only towards payment of the compensation cess on supply of goods or services. Compensation cess cannot be utilised for payment of GST such as CGST/SGST/UTIGST and IGST.

7. Usage of Compensation Cess

All the proceeds received from the GST compensation cess would be credited to a non-lapsable fund known as the Goods and Services Tax Compensation Fund. The funds would then be used for compensating tax revenue loss to States on account of GST implementation. If any funds are unutilized, then at the end of the transition period, it would be shared in half by the Central

Government and all State Governments. State government's share would be distributed in the ratio of their total revenues from the State tax or the Union territory goods and services tax, in the last year of the transition period.

8. Key provisions of Compensation Cess

- (i) ***Projected growth rate:*** The projected nominal growth rate of revenue subsumed for a State during the transition period shall be 14% per annum. (*Section 3 of the GSTCSA*)
- (ii) ***Base year:*** For the purpose of calculating the compensation amount payable in any financial year during the transaction period, the financial year ending 31st March'2016 shall be taken as base year. (*Section 4 of the GASTCSA*)
- (iii) ***Base year revenue:*** The base year revenue for a State shall be sum of the revenue collected by the State and the local bodies during the base year, on account of the taxes levied by the respective State or Union and net of refunds, with respect to following taxes:
 - (a) the Value Added Tax, Sales Tax, Purchase Tax, tax collected on works contract, or any other tax collected entry 54 of List-II (State List) of the Seventh Schedule to the Constitution;
 - (b) the Central Sales Tax levied under CST Act, 1956;
 - (c) the entry tax, octroi, local body tax, or any other tax collected 52 of List-II (State List) of the Seventh Schedule to the Constitution;
 - (d) the luxuries taxes or any other taxes or any other tax collected 62 of List-II (State List) of the Seventh Schedule to the Constitution;
 - (e) the taxes on advertisement or any other tax collected 55 of List-II (State List) of the Seventh Schedule to the Constitution;
 - (f) the duties of excise on medicinal and toilet preparations under the erstwhile Article 268 of the Constitution;
 - (g) any cess or surcharge or fee leviable under entry 66 read with entries 52, 54, 55 and 62 of List-II of the Seventh Schedule to the Constitution. (*Section 5 of the GSTCSA*)
- (iv) ***Projected revenue for any year:*** The projected revenue for any year in a State shall be calculated by applying the projected growth rate over the base year revenue of that State.
- (v) ***Calculation and release of compensation:*** The compensation payable to a State shall be provisionally calculated and released at the end of every two months period, and shall be finally calculated for every financial year after the receipt of final revenue figures, as audited by the Comptroller and Auditor-General of India. (*Section 7 of the GSTCSA*)

9. Levy and collection of Compensation Cess

The Compensation Cess is collected under Section 8 of the GST (Compensation to States) Act, and the relevant provisions are:

1. There shall be levied a cess on such intra-State supplies of goods or services or both , as provided for in Section 9 of the Central Goods and Services Tax Act, and such inter-State supplies of goods or services or

both as provided for in Section 5 of the Integrated Goods and Services Tax Act, and collected in such manner as may be prescribed, on the recommendations of the Council, for the purposes of providing compensation to the States for loss of revenue arising on account of implementation of the goods and services tax with effect from the date from which the provisions of the Central Goods and Services Tax Act is brought into force, for a period of five years or for such period as may be prescribed on the recommendations of the Council.

2. No such cess shall be levied on supplies made by a taxable person who has decided to opt for composition levy.
3. The cess shall be levied on such supplies goods and services as are specified in column (2) of the Schedule, on the basis of value, quantity or on such basis at such rate not exceeding the rate specified by the Council.
4. For domestic supplies, the value shall be determined under Section 15 of the Central Goods and Services Tax Act.
5. For the cess on goods imported in to India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975, at the point when duties of customs are levied on the said goods under Section 12 of the Customs Act, 1962, on a value determined under the Customs Tariff Act, 1975.

10. Applicability of Compensation Cess

Compensation Cess would be applicable on both supply of goods or services that have been notified by the Central Government. Also, both intra-state supplies of goods or services and inter-state supplies of goods or services would attract Compensation cess. All taxable person under GST, except taxpayers registered under GST composition scheme are expected to collect and remit compensation cess. The following goods will attract compensation Cess (as per the Schedule)

1. Pan Masala
2. Tobacco and manufactured tobacco substitutes, including tobacco products.
3. Coal, briquettes, ovoids and similar solid fuels manufactured from coal, lignite, whether or not agglomerated, excluding jet, peat (including peat litter), whether or not agglomerated.
4. Aerated waters.
5. Motor cars and other motor vehicles principally designed for the transport of persons (other than motor vehicles for the transport of ten or more persons, including the driver), including station wagons and racing cars.
6. Any other supplies as notified from time to time.

Note: Motor vehicles falling under Chapter Tariff Heading 8703, from 15% to 25% Advolrem, the Government has exempted all old and used motor vehicles from levy of Compensation Cess provided that the supplies of such goods has not availed input tax credit paid on such vehicles *vide* Notification No. 1/2018-C.C. (Rate), dated 25-1-2018.

11. Laws and Rules applicable

The provisions of the **Central Goods and Services Tax Act, 2017** and the rules made thereunder, including those relating to assessment, input tax credit, non-levy, short-levy, interest, appeals, offences and penalties, shall apply in relation to the levy and collection of the cess on the intra-State supply of goods and services. Similarly, in case of inter-State supplies the provisions of the Integrated Goods and Services Tax Act, and the rules made thereunder will apply.

12. Returns, Payments and refunds

- (1) Every taxable person, making a taxable supply of goods or services or both, shall—
 - (a) pay the amount of cess as payable under this Act in such manner;
 - (b) furnish such returns in such forms, along with the returns to be filed under the Central Goods and Services Tax Act; and
 - (c) apply for refunds of such cess paid in such form, as may be prescribed.

(2) For all purposes of furnishing of returns and claiming refunds, except for the form to be filed, the provisions of the Central Goods and Services Tax Act and the rules made thereunder, shall, as far as may be, apply in relation to the levy and collection of the cess leviable under section 8 on all taxable supplies of goods or services or both, as they apply in relation to the levy and collection of central tax on such supplies under the said Act or the rules made thereunder.

13. Crediting proceeds of cess to Compensation Fund

The proceeds of the cess leviable under section 8 and such other amounts as may be recommended by the Council, shall be credited to a non-lapsable Fund known as the Goods and Services Tax Compensation Fund, which shall form part of the public account of India and shall be utilised for purposes specified in the said section.

(2) All amounts payable to the States under section 7 shall be paid out of the Fund.

(3) Fifty per cent. of the amount remaining unutilised in the Fund at the end of the transition period shall be transferred to the Consolidated Fund of India as the share of Centre, and the balance fifty per cent. shall be distributed amongst the States in the ratio of their total revenues from the State tax or the Union territory goods and services tax, as the case may be, in the last year of the transition period.

(3A) Notwithstanding anything contained in sub-section (3), fifty per cent. of such amount, as may be recommended by the Council, which remains unutilised in the Fund, at any point of time in any financial year during the transition period shall be transferred to the Consolidated Fund of India as the share of Centre, and the balance fifty per cent. shall be distributed amongst the States in the ratio of their base year revenue determined in accordance with the provisions of section 5:

Provided that in case of shortfall in the amount collected in the Fund against the requirement of compensation to be released under section 7 for any two

months' period, fifty per cent. of the same, but not exceeding the total amount transferred to the Centre and the States as recommended by the Council, shall be recovered from the Centre and the balance fifty per cent. from the States in the ratio of their base year revenue determined in accordance with the provisions of section 5.

(4) The accounts relating to Fund shall be audited by the Comptroller and Auditor-General of India or any person appointed by him at such intervals as may be specified by him and any expenditure in connection with such audit shall be payable by the Central Government to the Comptroller and Auditor-General of India.

(5) The accounts of the Fund, as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be laid before each House of Parliament.

14. Government has extended the levy of GST Compensation Cess till 31 March 2026

The GST Council (in its 42nd meeting) had decided to extend the levy of Compensation Cess beyond the transition period of five years for such period as may be required to meet the revenue gap. Further, in the 45th GST Council meeting, it was brought out that the revenue collections from Compensation Cess in the period beyond June 2022 till April 2026 would be exhausted in repayment of borrowings and debt servicing made to bridge the gap in 2020-21 and 2021-22.

15. Advance Ruling

In Re: *Haryana Power Generation Corporation Ltd.* reported in 2021 (49) G.S.T.L. 71 (A.A.R. - GST - Haryana) Coal Rejects of Power Plant - Classification - Rate of Compensation Cess - *HELD*: Chapter Heading/sub-heading 2701 of HSN covers: Coal, briquettes, ovoids and similar solid fuels manufactured from coal - Impugned coal rejects covered under said HSN 2701 - As per Notification No. 1/2017-C.C. (Rate), Compensation Cess @ ₹ 400 per MT payable by applicant's power plant - Further, impugned notification also provides that 2.5% CGST leviable for same Heading i.e. 2701 under Schedule-I."

* * *

In Re: *Tata Motors Limited*, reported in 2019 (31) G.S.T.L. 544 (App. A.A.R. - GST-Maharashtra) Motor vehicle - Sports utility vehicle - Compensation cess - Exemption - Ground clearance in motor vehicle for calculation of cess as mentioned in explanation to Serial No. 52B of Schedule to Cess Rate Notification No. 1/2017-C.C. (Rate) - For purpose of Cess @ 22% under Serial No. 52B of said notification, ground clearance of vehicle to be considered in laden condition only - Any vehicles whose ground clearance in laden state are below 170 mm. not covered under Serial No. 52B of the said notification."

Chapter 51

GST on Cooperative Housing Societies

Synopsis

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1. Introduction

Co-operative Housing Societies are entities registered under the co-operative laws of the respective States. According to Section 2(16) of the Maharashtra Co-operative Society Act, 1960, “housing society” means a society, the object of which is to provide its members with open plots for housing, dwelling houses or flats; or if open plots, the dwelling houses or flats are already acquired, to provide its members common amenities and services.

Therefore, a residential society is a collective body of persons, who stay in a residential society. As a collective body, they would be supplying certain services to its members, be it collecting statutory dues from its members and remitting to statutory authorities, maintenance of the building, security etc.

A Society is akin to a club, which is composed of its members. Accordingly, the service provided by a Housing Society to its members is to be treated as service provided by one person to another.

2. Statutory provisions of Levy of GST

As per Section 9 of CGST Act, 2017 for levy of GST is on supply of goods and services. As per Section 7 expression “supply” includes—

- (a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

The definition of “person” in Section 2(84)(i) of the CGST Act, 2017 specifically includes a co-operative society registered under any law relating to co-operative societies. Thus a registered co-operative society is a person within the meaning of the term in the CGST Act.

The activity of the society can be said to be in the course or furtherance of business. The definition of business as per Section 2(17) of the CGST Act, 2017, “business” includes—

- (a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;
- (b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);
- (c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;
- (d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;
- (e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;
- (f) admission, for a consideration, of persons to any premises;
- (g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;
- (h) services provided by a race club by way of totalisator or a licence to book maker in such club; and
- (i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities.

Thus, as per Section 2(17)(e) of the CGST Act, 2017 provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members is deemed to be a business. The activities of the housing society would thus attract the levy of GST and the housing society would be required to register and comply with the GST Law.

3. Requirement of registration & taxability

As per the threshold provision of registration, if the turnover of housing society is above ₹20 lakhs, it needs to take registration under GST in terms of Section 22 of the CGST Act, 2017. However, taking registration does not mean that the housing society has to compulsorily charge GST in the monthly maintenance bills raised on its members. Notification No. 12/2017-C.T. (Rate), dated 28-6-2017 at Sr. No. 77 as amended by Notification No. 2/2018-C.T., dated 25-1-2018 provides for the following exemption to housing societies:

Service by an unincorporated body or a non-profit entity registered under any law for the time being in force, to its own members by way of reimbursement of charges or share of contribution—

- (a) as a trade union;
- (b) for the provision of carrying out any activity which is exempt from the levy of Goods and service Tax; or

- (c) up to an amount of ₹7500/- per month per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex.

In view of the provision contained at (c) above, a society may be registered under GST, however if the monthly contribution received from members is less than ₹7500/- (and the amount is for the purpose of sourcing of goods and services from a third person for the common use of its members), no GST is to be charged by the housing society on the monthly bill raised by the society. However, GST would be applicable if the monthly contribution exceeds ₹7500/-.

In addition to monthly, certain statutory dues such as property tax, electricity charges etc. form part of the monthly maintenance bill raised by the society on its members. These charges should be excluded while computing the monthly limit of ₹ 7500/- in terms of clause (c) of Sr. No. 77 of Notification No. 12/2017-C.T. (Rate), dated 28-6-2017 as amended by Notification No. 2/2018-C.T., dated 25-1-2018.

Thus, if monthly bill is more than ₹7500/- then GST will be applicable on amount in excess of ₹7500/-.

4. Clarification issued by the Government

TRU *vide* F. No. 332/04/2017-TRU, released FAQs on levy of GST on supply of services to the Co-operative society and has clarified as under:

| S. No. | Question | Answer |
|--------|--|---|
| 1 | <p>The society collects the following charges from the members on quarterly basis as follows:</p> <ol style="list-style-type: none"> 1. Property Tax-actual as per Municipal Corporation of Greater Mumbai (MCGM) 2. Water Tax-Municipal Corporation of Greater Mumbai (MCGM) 3. Non-Agricultural Tax-Maharashtra State Government 4. Electricity charges 5. Sinking Fund-mandatory under the Bye-laws of the Co-operative Societies 6. Repairs & maintenance fund 7. Car parking Charges | <p>1. Services provided by the Central Government, State Government, Union territory or local authority to a person other than business entity, is exempted from GST. So, Property Tax, Water Tax, if collected by the RWA/Co-operative Society on behalf of the MCGM from individual flat owners, then GST is not leviable.</p> <p>2. Similarly, GST is not leviable on Non-Agricultural Tax, Electricity Charges etc, which are collected under other statutes from individual flat owners. However, if these charges are collected by the Society for generation of electricity by Society's generator or to provide drinking water facility or any other service, then such charges collected by the society are liable to GST.</p> |

| S. No. | Question | Answer |
|-----------|---|---|
| | <p>8. Non Occupancy Charges 9. Simple interest for late payment.</p> <p>From the tax/charge as listed above, on which GST is not applicable.</p> | <p>3. Sinking fund, repairs & maintenance fund, car parking charges, Non-occupancy charges or simple interest for late payment, attract GST, as these charges are collected by the RWA/Co-operative Society for supply of services meant for its members.</p> |

As per Section 23(1) of the CGST Act, 2017, the following persons shall not be liable to registration, namely:—

- (a) any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax under this Act or under the Integrated Goods and Services Tax Act.
- (b) an agriculturist, to the extent of supply of produce out of cultivation of land.

Thus, if the turnover of the society is less than ₹20 Lakh or even if the turnover is beyond ₹20 lakhs but the monthly contribution of individual members towards maintenance is less than ₹7,500/- (such services being exempt) and the society is providing no other taxable service to its members or outsiders, then the society (essentially exclusively providing wholly exempt services) need not take registration under GST.

5. FAQs issued by the Government

Whether activities of Housing Societies would become more expensive under GST

No. In the press release dated 13-7-2017, it has been clarified as under

There are some press reports that services provided by a Housing Society [Resident Welfare Association (RWA)] will become expensive under GST. These are completely unsubstantiated.

It may be mentioned that supply of service by RWA (unincorporated body or a registered non- profit entity) to its own members by way of reimbursement of charges or share of contribution up to an amount of five thousand rupees per month per member for providing services and goods for the common use of its members in a housing society or a residential complex are exempt from GST.

Further, if the aggregate turnover of such RWA is up to ₹20 Lakh in a financial year, then such supplies would be exempted from GST even if charges per member are more than ₹ five thousand.

RWA shall be required to pay GST on monthly subscription/contribution charged from its members if such subscription is more than ₹5,000 per member and the annual turnover of RWA by way of supplying of services and goods is also ₹20 lakhs or more. Under GST, the tax burden on RWAs will be lower for

the reason that they would now be entitled to ITC in respect of taxes paid by them on capital goods (generators, water pumps, lawn furniture etc.), goods (taps, pipes, other sanitary/hardware fillings etc.) and input services such as repair and maintenance services. ITC of Central Excise and VAT paid on goods and capital goods was not available in the pre-GST period and these were a cost to the RWA.

Thus, there is no change made to services provided by the Housing Society (RWA) to its members in the GST era.

6. Advance Rulings

In Re: Apsara Co-operative Housing Society Ltd. reported in 2020 (43) G.S.T.L. 266 (App. A.A.R. - GST - Mah.) observed" Now, as regards the second question raised by the Appellant as to whether they are correctly discharging their GST liability for which they had furnished the illustrative invoices, we agree with the ruling pronounced by the MAAR, wherein they have ruled that the said question regarding the computation of the GST liability on the basis of the illustrative invoices raised by the Appellant cannot be answered as the said question is outside the purview of Advance Ruling in terms of the Section 97(2) of the CGST Act, 2017. Even though the Appellant have contended that the said question can be categorized under Clause (e) of Section 97(2) of the CGST Act, 2017, which deals about the determination of the liability to pay tax on any goods or services or both, it is stated that the Clause (e) does not speak about the computation or assessment of the tax liability of any transaction, but only the determination of the liability as to whether any supply of goods or services or both are liable for GST or otherwise. Hence, the contention put forth by the Appellant is not acceptable.

ORDER

We do not find any reason to interfere with the ruling passed by the Maharashtra Advance Ruling Authority, vide their Order No. GST-ARA-21/2019-20/B-34, dated 17-3-2020, in light of the above stated reasons. Accordingly, it is held that activities carried out by the Appellant would amount to supply in terms of Section 7(1)(a) of the CGST Act, 2017, and the same would be liable for GST subject to the condition that the monthly subscription/contribution charged by the society from its members is more than Rs. 7500/- per month per member and the annual aggregate turnover of the society by way of supplying of services and goods is also Rs. 20 lakhs or more. Further, their second question regarding correctness of the GST liability on the basis of the illustrative invoices cannot be answered on account of the above stated reasons."

* * *

In Re: The Karnataka State Co-Operative Marketing Federation Limited, reported in 2020 (42) G.S.T.L. 309 (A.A.R. - GST - Kar.), held that applicant is neither established by any Government with 51% or more participation by way of equity or control, to carry out its function nor is a Society established by the Central Government or the State Government or a local authority under the Society Registration Act, 1860. Hence the applicant is not covered under the list

provided either in the Notification No. 50/2018-Central Tax, dated 13-9-2018 or under the list prescribed under Section 51 of CGST/KGST Act, 2017. Therefore the provisions of TDS as prescribed under Section 51 of CGST/KGST Act, 2017 are not applicable to the applicant.

* * *

In Re: *Gnanaganga Gruha Nirmana Sahakara Sangha Niyamitha*, reported in 2020 (41) G.S.T.L. 279 (A.A.R. - GST - Kar.), The contributions collected by the applicant from the member of the housing society either annually or once in ten years, if such amount when utilized for sourcing of goods or service from the third person for the common use of its member, the amount utilised in that particular tax period, from both individual contributions and from the endowment fund, must be divided by recipients of such service in the society and if the said amount per member does not exceed Rupees Seven thousand five hundred in that tax period, such amount is exempted from tax as per Entry No. 77 of Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017 as amended by the Notification No. 2/2018, dated 25-1-2018. Suppose if that amount per member in that tax period exceeds Rupees Seven thousand five hundred, then entire amount is taxable.”

* * *

In Re: *Tamil Nadu Co-operative Silk Products Federation Ltd*, reported in 2020 (32) G.S.T.L. 506 (A.A.R. - GST - T.N.), TDS- applicant although established by Government of Tamil Nadu as a Co-operative Society registered as Apex Society under Tamil Nadu Co-operative Societies Act, 1983 but the equity ownership at present or in the past never beyond 51%, nor is it under the control of the Government as management not having any voting rights as stipulated in its bye laws and by Tamil Nadu Co-operative Societies Act, 1983 - Consequently, applicant is not a person or category of person stipulated under Notification No. 33/2017-C.T. as amended and Notification No. II(2)/CTR/783 (c-3)/2017 vide G.O. (Ms) No. 107, dated 15-9-2017 as amended - Applicant exempt from recovery of TDS under GST.

Chapter 52

GST on Charitable and Religious Trusts

Synopsis

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1. Introduction

Charitable and religious activities were not chargeable under Service tax regime and the rationale behind this exemption was to encourage charitable activities and not burden these activities with tax burden. The similar provisions are also incorporated under GST. All services provided by such entities are not exempt. In fact, there are many services that are provided by such entities which would be within the ambit of GST.

2. General Exemption to Charitable activities by Notification

Notification No. 12/2017-C.T. (Rate), dated 28-06-2017 exempts services provided by entity registered under Section 12AA of the Income-tax Act, 1961 by way of charitable activities from whole of GST vide entry No. 1 of the notification, which specifies that “services by an entity registered under Section 12AA of Income Tax Act, 1961 by way of charitable activities” are exempt from whole of the GST. Thus as per this notification, exemption is given to the charitable trusts, only if the following conditions are satisfied.

- (a) Entities must be registered under Section 12AA of the Income-tax Act, and
- (b) Such services or activities by the entity are by way of charitable activities.

Thus, it is essential that the activities must conform to the term “charitable activities”.

3. Meaning of Charitable Activity

“Charitable activities” means activities relating to—

- (i) public health by way of,—
 - (A) care or counselling of
 - (a) terminally ill persons or persons with severe physical or mental disability;
 - (b) persons afflicted with HIV or AIDS;
 - (c) persons addicted to a dependence-forming substance such as narcotics drugs or alcohol; or
 - (B) public awareness of preventive health, family planning or prevention of HIV infection;
- (ii) advancement of religion, spirituality or yoga;
- (iii) advancement of educational programmes or skill development relating to,—
 - (A) abandoned, orphaned or homeless children;
 - (B) physically or mentally abused and traumatized persons;
 - (C) prisoners; or
 - (D) persons over the age of 65 years residing in a rural area;
- (iv) preservation of environment including watershed, forests and wildlife.

This notification makes the exemption to charitable trusts available for charitable activities more specific. While the income from only those activities listed above is exempt from GST, income from the activities other than those mentioned above is taxable. Thus, there could be many services provided by charitable and religious trust which are not considered as charitable activities and hence, such services come under the GST net. The indicative list of such services could be renting of premises by such entities, grant of sponsorship and advertising rights during conduct of events/functions etc.

4. Taxability of Renting of premises for conducting religious ceremony

This is also borne out from the fact that in so far as renting out of religious precincts is concerned, there is a limited exemption available to such entities. Activities not covered by the specific exemption would be taxable. Entry No.13 of Notification No. 12/2017-C.T. (Rate), dated 28-6-2017, provides the following exemption to entities registered under Section 12AA of the Income Tax Act:

Services by a person by way of—

- (a) conduct of any religious ceremony;
- (b) renting of precincts of a religious place meant for general public, owned or managed by an entity registered as a charitable or religious trust under Section 12AA of the Income Tax Act, 1961 (hereinafter referred to as the Income-tax Act) or a trust or an institution registered under sub clause (v) of clause (23C) of section 10 of the Income Tax Act or a body or an authority covered under clause (23BBA) of section 10 of the said Income Tax Act:

Provided that nothing contained in entry (b) of this exemption shall apply to,—

- (i) renting of rooms where charges are one thousand rupees or more per day;
- (ii) renting of premises, community halls, kalyanmandapam or open area, and the like where charges are ten thousand rupees or more per day;
- (iii) renting of shops or other spaces for business or commerce where charges are ten thousand rupees or more per month.

Therefore, the law provides a limited exemption to renting of only religious precincts or a religious place meant for general public by the entity registered under Section 12AA of the Income Tax Act. As per Clause (zc) of the said notification, the term “general public” means “the body of people at large sufficiently defined by some common quality of public or impersonal nature”.

5. Meaning of religious place

As per the clause 2(zy) of the notification “a place which is primarily meant for conduct of prayers or worship pertaining to a religion, meditation, or spirituality”.

Dictionary meaning of “precincts” is an area within the walls or perceived boundaries of a particular building or place, an enclosed or clearly defined area of ground a cathedral, church, temple, college, etc.

As per clause 2(zz) of the said notification “renting in relation to immovable property” means allowing, permitting or granting access, entry, occupation, use or any such facility, wholly or partly, in an immovable property, with or without the transfer of possession or control of the said immovable property and includes letting, leasing, licensing or other similar arrangements in respect of immovable property;

Hence, if immovable properties owned by charitable trusts like marriage hall, convention hall, rest house for pilgrims, shops situated within the premises of a religious place are rented out, income from letting out of such property is wholly exempt from GST. But if such properties are not situated in the precincts of a religious place meaning thereby not within walls or boundary walls of the religious place, such letting out will not be entitled to avail this exemption and income from it will be liable to GST.

6. Taxability of Income from religious ceremony

Thus, income from a religious ceremony organized by a charitable trust is exempt as per the Notification. Religious ceremony means conducting festivals on special occasions like Navratri functions or any other religious pooja conducted on special festivals occasions by person or charitable trust or religious trust are exempted from GST. Any income from conducting religious ceremony is exempted. But all income from such a religious ceremony is not exempted. For example, if with regard to religious functions, charitable trust rent out space to agencies for advertisement hoardings, income from such advertisement is chargeable to GST.

7. Taxability of Training and Coaching

The Entry No. 80 of Notification No. 12/2017-C.T. (Rate), provides the following exemption to a Services by way of training or coaching in recreational activities relating to—

- (a) arts or culture, or
- (b) sports by charitable entities registered under Section 12AA of the Income Tax Act.

Thus, services provided by way of training or coaching in recreational activities relating to arts or culture or sports by a charitable entity will be exempt from GST.

8. Exemption to Educational institutions are being runned by charitable trusts

If charitable trusts are running schools, colleges or any other educational institutions specifically for abandoned, orphans, homeless children, physically or mentally abused persons, prisoners or persons over age of 65 years or above residing in a rural area, such activities will be considered as charitable activities and income from such supplies will be wholly exempt from GST.

The rural area means the area belongs to a village as defined in land revenue records excluding the areas under administration of municipal committee, Municipal Corporation, town area committee, cantonment board or notified area committee or any area that may be notified as an urban area by the Central Government or a State Government.

9. Applicability of Reverse charge in case of Import of services

Entry No. 10 of Notification No. 9/2017-I.T. (Rate), dated 28-6-2017, if charitable trusts registered under Section 12AA of Income Tax Act receives any services from provider of services located in non-taxable territory, for charitable purposes, such services received are not chargeable to GST under the reverse charge mechanism.

Services by and to Education Institutions (including institutions run by charitable trusts):

The Entry 66 of Notification No. 12/2017-C.T. (Rate), dated 28-6-2017 provides for exemption with regard to supply by and to educational institutions and only the following services received by eligible educational institution are exempt:

- (a) Transportation of students, faculty and staff of the eligible educational institution.
- (b) Catering service including any mid-day meals scheme sponsored by the Government.
- (c) Security or cleaning or house-keeping services in such educational institution.
- (d) Services relating to admission to such institution or conduct of examination.

If such school or other educational institution gives property owned by such institution on rent to others, no exemption will be available for such services. Therefore, all services received by educational institutions managed by charitable trusts (for other than charitable activities, as defined) except those services mentioned above are taxable.

10. Arranging yoga and meditation camp by charitable trusts

Charitable trusts organize yoga camps or other fitness camps and they generally are not free for participants, as trusts charge some amount from the participants in the name of accommodation or participation. As the payment/donations are not made for yoga but for accommodation etc., it will be considered commercial activity and it will be covered under the levy of GST.

11. Reiki, Aerobics etc. are not exempted

If charitable trusts organize fitness camps in reiki, aerobics, etc., and receive donation from participants, such income that comes under health and fitness services will also be taxable.

12. Running of Public Library by the Trust

GST on running of public libraries by charitable trusts: No GST will be applicable if charitable trusts are running public libraries and lend books, other publications or knowledge-enhancing content/material from their libraries. This activity is specifically excluded by way of Entry No. 50 of Notification No. 12/2017-C.T. (Rate).

13. Public Library remains open to all

The Entry No. 50 of Notification No. 12/2017-C.T. (Rate): If donors of 'public library remain open to all' and if it caters to educational, informational and recreational needs of its users and finance for such libraries can be provided from donation, subscription, from special fund created for this purpose or from combination of all such sources, it will be called public library and no GST will be applicable on such services.

14. Hospital managed by charitable trusts

The Entry No. 74 of Notification No. 12/2017-C.T. (Rate), dated 28-6-2017 (applicable to all persons including charitable trusts) exempts healthcare services at clinical establishment, an authorised medical professional or paramedics.

As per clause (zg), health care services means any service by way diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognized system of medicines in India and includes services by way of transportation of the patient to and from a clinical establishment, but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, development abnormalities, injury or trauma.

Thus, all treatment or diagnosis or care for illness, injury, deformity, abnormality or pregnancy by a clinical establishment is covered under exemption.

If charitable trusts run a hospital and appoint specialist doctors, nurses and provide medical services to patients at a concessional rate, such services are not liable to GST. If hospitals hire visiting doctors/specialists and these deduct some money from consultation/visit fees payable to doctors and agreement between hospital and consultant doctors is such that some money is charged for providing services to doctors, there may be GST on such amount deducted from fees paid to doctors.

15. Definition of clinical establishment

As per clause (s), the clinical establishment means a hospital, nursing home, clinic, sanatorium or any other institution by, whatever name called, that offers services or facilities requiring diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognized system of medicines in India, or a place establishment as an independent entity or a part of an establishment to carry out diagnostic or investigative services of diseases.

16. GST on taxable services provided to charitable trusts

Only Services exempted under Notification are not scope of GST, thus all services other than those specifically exempted provided to charitable trusts will be subject levy of GST.

17. GST on supply of taxable goods supply by charitable trusts

Any sale of taxable goods by a charitable trust is liable to GST. There is no exemption for supply of goods by charitable trusts. Thus any goods supplies by such charitable trusts for consideration shall be liable to payment of GST.

18. Hostel accommodation services are not charitable purposes

It is clarified by CBIC; *vide* Circular No. 32/06/2018-GST, dated 12-2-2018 that Hostel accommodation services do not fall within the ambit of charitable activities. However, services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having declared tariff of a unit of accommodation below one thousand rupees per day or equivalent are exempt. Thus, accommodation service in hotels including by Trusts having declared tariff below one thousand rupees per day is exempt.

19. Advance Rulings

In Re: Swayam, reported in 2020 (38) G.S.T.L. 628 (A.A.R. - GST - W.B.), observed “The applicant is apparently assisting the women survivors in various ways to get back on their feet. Such survivors of sexual and other violence need services like legal aid, medical assistance, and vocational training. The recipient of such services is, therefore, not the applicant but the survivor woman. The applicant makes payments not to the supplier of the services, but as financial support in the form of reimbursement to the recipient survivor. It is, therefore, not liable to pay GST based on reverse charge mechanism on such payments.

The applicant does not charge any consideration for facilitating the legal aid and other assistance. Such activities of the applicant, therefore, does not result in ‘supply’ of service as defined under Section 7(1) of the GST Act. The applicant is not, therefore, liable to pay tax there.

RULING

The applicant’s activities do not amount to ‘supply’ of service, neither is it a recipient of the services for which it often provides financial assistance to the women survivors of sexual and other violence. The applicant is, therefore, not liable to pay GST on the activities described in the application

* * *

In Re: Nagri Eye Research Foundation, reported in 2020 (38) G.S.T.L. 248 (A.A.R. - GST - Guj.) Registration - Taxable supply - **Charitable trust** providing medicines from its medical store at lower rate - Trust fell within definition of ‘person’ - Any trade carried out whether for pecuniary benefit or not amounted to ‘business’ - Medicine cover under definition of ‘goods’ - Sale of medicine amounted to taxable supply and GST leviable under HSN Code 30 - Supply of medicine though at lower price was for consideration - Activity of supply of medicines not covered under list appearing in Schedule-III to Central Goods and Services Tax Act, 2017 - **Charitable trust** making taxable supply from its medical store and when its aggregate exceeds threshold limit, it has to obtain registration - Sections 2(31), 2(52), 2(84)(m), 2(108) and 22(1) of Central Goods and Services Tax Act, 2017.

* * *

In Re: All India Disaster Mitigation Institute, reported in 2020 (36) G.S.T.L. 104 (A.A.R. - GST - Guj.), GST Registration - Charitable trust - Applicant being engaged in training/research relating to disaster prevention, mitigation and management, is a charitable trust registered under the Bombay Public Trust Act, 1950 - Applicant duly registered as a charitable trust under Section 12AA as well as under Section 80G of Income-tax Act, 1961 and therefore, entire income of applicant exempt from income-tax, even the donations made to applicant are admissible deductions for donors under Section 80G ibid - Activities of applicant relating to disaster prevention, disaster mitigation and disaster management are activities relating to “preservation of environment” as defined in clause 2(r) of Notification No. 12/2017-C.T. (Rate) and considered as charitable activities - Accordingly, activities of applicant, being registered under Section 12AA ibid,

exempt from tax under the GST Acts, by virtue of Entry No. 1 of the Notification No. 12/2017-C.T. (Rate) - Consequently, applicant not liable to registration in respect of charitable activities relating to preservation of environment which attracts nil rate of GST, by virtue of Section 23(1)(a) of Central Goods and Services Tax Act, 2017.”

* * *

In Re: *Shri Kamal Kishor Agrawal*, reported in 2019 (24) G.S.T.L. 496 (A.A.R. - GST), Hostel run by charitable trust - Providing residence to students on rent - Nominal lump sum amount of ₹7,000 and ₹6,000 per month per bed depending upon number of beds per room, charged for giving residence - Ancillary services such as food, parking also provided without charging any amount over and above lump sum charges - As per C.B.E. & C. Circular No. 32/06/2018-GST, dated 12-2-2018, hostel accommodation service would not fall within ambit of charitable activities as defined in para 2(r) of Notification No. 12/2017-C.T. (Rate) - However, services by a hostel, inn guest house, club or campsite, by whatever name called, for residential or lodging purposes, having declared tariff of a unit of accommodation below one thousand rupees per day or equivalent exempted under Serial No. 14 of said notification - No ambiguity as regards fact that primarily occupants approach Hostel facility providers for having accommodation facility and only when accommodation facility gets ensured, need for other allied facilities arose - No other charges collected from occupants for allied services provided - Lump sum amount received against accommodation services in hostel was to be treated as exempt supply as amount was less than ₹1000 per unit (bed) when computed on a daily basis - Activity of providing accommodation services by applicant in their hostel merits exemption as stipulated under Notification No. 12/2017-State Tax (Rate) No. F-10-43/2017/CT/V(80), Naya Raipur, dated 28-6-2017 under Serial No. 14, Chapter 9963 - Amount received for such supply by applicant falling under Tariff Heading 9963 qualified for being treated as nil rate tax exempted supply.”

* * *

In Re: *Dream Runners Foundation*, reported in 2019 (23) G.S.T.L. 133 (A.A.R. - GST), as per Section 22 of CGST/TNGST Act, every supplier shall be liable to be registered under this Act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds twenty lakh rupees. In the instant case, the Applicant's annual turnover is more than Rs. 20 lakhs and they are providing the taxable supply of organizing marathon events. Hence, they are liable to register under CGST/TNGST Act.”

Chapter 54

GST - MSME

Synopsis

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1. Introduction on MSME

MSME stands for Micro, Small and Medium Enterprises. MSMEs are classified in two categories Manufacturing Enterprises and Service Enterprises as per the provision of Micro, Small and Medium Enterprises Development (MSMED) Act, 2006.

2. Manufacturing Enterprises

The enterprises engaged in the manufacture or production of goods pertaining to any industry specified in the first schedule to the Industries Development and Regulation Act, 1951 or employing plant and machinery in the process of value addition to the final product having a distinct name or character or use. The manufacturing Enterprises are defined in terms of investment in Plant and Machinery. As notified *vide* S.O. 1642(E), dated 29th September, 2006 issued by the Ministry of MSME, Government of India, New Delhi,

- (a) Micro Enterprise: investment in plant and machinery is less than or equal to ₹25 lakhs.
- (b) Small Enterprise: investment in plant and machinery is more than ₹25 lakhs but limited to ₹5 crore.

- (c) Medium Enterprise: investment in plant and machinery is more than ₹5 crore but does not exceed ₹10 crore.

3. Service Enterprises

The enterprises engaged in providing or rendering of services are defined in terms of investment in equipment for Micro, Small and Medium Enterprises.

- (a) Micro Enterprise: investment in equipment does not exceed ₹10 lakhs.
- (b) Small Enterprise: investment in equipment is more than ₹10 lakhs but limited to ₹2 crore.
- (c) Medium Enterprise: investment in equipment is between ₹2 crore to ₹5 crore.

4. MSME Re-defined

The Ministry of Micro, Small & Medium Enterprise has redefined the definition of MSME with effect from 1st July 2020.

New MSME Classification w.e.f July 1, 2020:

Composite Criteria of Investment in Plant & Machinery or Equipment and Turnover.

| Classification | Micro | Small | Medium |
|--------------------------|---|---|--|
| Manufacturing & Services | Investment does not exceed ₹1 crore and Turnover does not exceed ₹5 crore | Investment does not exceed ₹10 crore and Turnover does not exceed ₹50 crore | Investment does not exceed ₹50 crore and Turnover does not exceed ₹250 crore |

- (i) A composite criterion of investment in plant & Machinery or Equipment and Turnover, as detailed in the matrix above, shall apply for classification an enterprise as micro, small or medium.
- (ii) The criteria is applicable to enterprise for both manufacturing and services sector.
- (iii) If an enterprise crosses the ceiling limits specified for its present category in either of the two criteria of investment or turnover, it will cease to exist in that category and be placed in the next higher category but no enterprise shall be placed in the lower category unless it goes below the ceiling limits specified for its present category in both the criteria of investment as well as turnover.
- (iv) All units with Goods and Services Tax Identification Number (GSTIN) listed against the same Permanent Account Number (PAN) shall be collectively treated as one enterprise and the turnover and investment figures for all of such entities shall be seen together and only the aggregate values will be considered for deciding the category as micro, small or medium enterprise.

The MSME sector contributes significantly to the national economy and is the largest employment provider besides being a breeding ground for entrepreneurship and skill development. The number of MSMEs is more than 30

million providing employment to around 100 million people. Out of these micro enterprises are around 90%, small enterprises are around 9% while the number of medium enterprises is less than 1%. In spite of having the potential and inherent capabilities to grow, MSMEs in India have been facing a number of problems like sub-optimal scale of operational, technological obsolescence, supply chain inefficiencies, increasing domestic and global competition, fund shortages, change in manufacturing strategies and turbulent and uncertain market scenario. To survive in such a scenario and compete with large and global enterprises, MSMEs need to be supported and assisted to ensure sustained growth and development in the existing competitive arena. It is understood that the cost of compliance in terms of statutory laws is proportionately much higher for MSMEs *vis-a-vis* the bigger companies. Therefore, some relaxation benefits are necessary in order to help them cope with sudden increase/change in compliance challenges.

5. Benefits to MSMEs under GST

With the implementation of GST, the Micro, Small and Medium Enterprises have been accorded with lot of benefits in terms of compliance reliefs given in the form of threshold exemptions, Composition levy scheme, quarterly filing of the GST returns to mention a few. While doing so, it has also been kept in mind that they do not become uncompetitive even as they are given all the benefits of GST.

6. Compliance benefits for MSMEs under GST

As a trade facilitation measure based on turnover, following Micro, Small and Medium enterprises are not required to obtain GST registration:

- (i) **Persons involved in intra:** State taxable supply of goods or services or both, if his aggregate turnover in a financial year does not exceed prescribed amount of threshold exemption limit i.e. ₹₹20 lakhs (₹10 lakhs in case of the special category states of Nagaland, Manipur, Mizoram and Tripura).
- (ii) **Persons involved in inter:** State taxable supply of services only (not goods), if his aggregate turnover in a financial year does not exceed prescribed amount of threshold exemption limit i.e. ₹20 lakhs (₹10 lakhs in case of the special category states of Nagaland, Manipur, Mizoram and Tripura).

For inter-state suppliers of goods, registration under GST is a compulsory, even if their aggregate turnover in a financial year does not exceed the threshold limit.

7. Composition levy scheme

Composition levy scheme in GST is an alternative method of levy of tax designed for micro, small and medium taxpayers whose turnover is upto the prescribed limit. It is very simple, hassle free compliance scheme for small taxpayers. It is a voluntary and optional scheme. A person opting to pay tax under composition levy scheme can neither take input tax credit nor it can collect any tax from the recipient. The salient features of composition levy scheme are:

- (i) A registered taxable person, whose aggregate turnover does not exceed ₹One Crore (₹75 lakh for special category States except J & K and Uttarakhand) in the preceding financial year may opt for this scheme.
- (ii) Composition levy scheme is available for registered taxable person making supplies (aggregate turnover) upto ₹1 Crore (₹75 lakh for special category States except J & K and Uttarakhand) during current financial year.
- (iii) A supplier of services, except a person engaged in supply of restaurant service, is currently not eligible for composition levy scheme.
- (iv) Ice cream, pan masala and tobacco manufacturers cannot opt for the GST composition levy scheme.
- (v) A taxpayer registered under composition levy scheme has to pay an amount equal to certain fixed percentage of his taxable turnover as tax to the government. The rate of tax under composition levy scheme is 1% for eligible manufactures and traders and 5% for eligible service providers. This amount cannot be collected from the customers.
- (vi) The tax has to be paid on quarterly basis. Such taxpayer does not have to maintain elaborate accounts and records and instead of two monthly statements and a return (which a normal taxpayer has to file under GST), he has to file a simple quarterly return in **FORM GSTR-04**.
- (vii) A taxable person opting for the scheme has to issue bill of supply as he is not eligible to issue taxable invoice under GST. He has to mention the words “composition taxable person, not eligible to collect tax on supplies” at the top of every bill of supply issued by him.

[As per the recent amendment in the CGST Act vide the CGST (Amendment) Act, 2018 following changes have come in respect of composition scheme, however, the notification for date of implementation of the amendment Act is yet to be issued.

- (i) *Government empowered to enhance upper limit for composition scheme to ₹1.50 crore by notification*
- (ii) *A person who opts to pay tax under composition scheme may supply services, of value not exceeding ten per cent of turnover in a State or Union territory in the preceding financial year or five lakh rupees, whichever is higher.]*

8. Input tax credit

In the GST regime, a registered person is entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business, subject to the provisions of Section 17(5) of the CGST Act.

There are some special provisions for availability of credit in special circumstances like new registration, shifting from composition levy to normal levy and *vice versa*, exempted supplies becoming taxable and vice versa, etc. This helps the MSMEs whenever they shift from composition or exempted category.

9. Tax invoice in GST

GST Act provides for issuance of tax invoice within prescribed period (i.e. before removal of goods for supply in case of supply of goods and upto a maximum of 30 days from the date of provision of service, in case of supply of services) showing the prescribed particulars. However, there is no specific format prescribed as such for a tax invoice.

In case of supply of goods, the tax invoice has to be prepared in triplicate (original for buyer, duplicate for transporter and triplicate for supplier); whereas in case of service, the invoice has to be prepared in duplicate (original for buyer and duplicate for supplier).

10. Special invoice provisions for MSME Sector

The HSN code required to be mentioned in tax invoice has been done away for taxpayers upto annual turnover of upto ₹1.5 crores. Further, taxpayers having annual turnover between ₹1.5 Crore to ₹5 crores may mention first two digits of HSN code in their invoices and taxpayers having annual turnover above ₹5 crores need to mention full 4 digit HSN code in their invoices.

11. Exemption from compulsory audit by CA for MSME Sector

In GST regime, every registered person whose turnover during a financial year exceeds the prescribed limit is required to get his accounts audited by a chartered accountant or a cost accountant. As a trade facilitation measure, government has noticed that registered persons having annual turnover upto ₹2 crores are exempted from getting their accounts audited by a chartered accountant or a cost accountant.

12. Returns in GST

GST Act has provided the manner and time of furnishing of the details of outward supplies by a registered person, other than certain categories of registered person and manner and time of communication of these details to the corresponding recipients. The act also has provided for manner and time period for rectification of errors or omission and payment of tax and interest, if any.

13. Return filing process

All eligible registered persons need to furnish electronically, in **FORM GSTR-1**, the details of outward supplies of goods or services or both effected during a tax period on or before the tenth day of succeeding month.

Similarly, all eligible registered persons are required to furnish electronically, in **FORM GSTR-3B**, a summary return of liabilities, input tax credit and payment of tax pertaining to the month on or before the twentieth day of

succeeding month return for the entire quarter. Facility for filing quarterly return shall also be available through an SMS.

A person opting to pay tax under composition levy scheme is required to furnish electronically, in **FORM GSTR-4**, a quarterly return, of turnover in the State or Union Territory, inward supplies of goods or services or both, tax payable and tax paid within eighteen days after the end of such quarter.

14. Special return filing provision for MSME Sector

As a trade facilitation measure, the government has notified that all the eligible registered person having annual turnover upto ₹1.5 crores may opt for filing quarterly return, in **FORM GSTR-1** (i.e. the details of outward supplies of goods or services or both effected during a quarter.)

15. Proposed system of simplified GST return filing process

GST Council has recently approved the new return formats and associated changes in law. The major changes is the option of filing quarterly return with monthly payment of tax in a simplified return format by the small tax payers. The salient features of proposed GST return filing process are given below:

1. Monthly Return and due-date: All taxpayers excluding a few exceptions like small taxpayers, composition dealer, Input Service Distributor (ISD), Non-resident registered person, persons liable to deduct tax at source under Section 51 of CGST Act, 2017, persons liable to collect tax at source under Section 52 of the CGST Act, 2017, shall file one monthly return. Returns filing dates shall be staggered based on the turnover of the tax of the taxpayer. The due date for filing of return by a large taxpayers shall be 20th of the next month.

2. (i) **Nil return:** Taxpayers who have no purchases, no output tax liability and no input tax credit to avail in any quarter of the financial year shall file one NIL return for the entire quarter. Facility for filing return shall also be available through an SMS.

(ii) **Small taxpayers:** Taxpayers who have a turnover up to ₹5 Crores in the last financial year shall be considered small. These small taxpayers shall have facility to file quarterly return with monthly payment of taxes on self-declaration basis. However, the facility would be optional and small taxpayer can also file monthly return like a large taxpayer.

16. E-Way Bill in GST

GST Electronic Way Bill i.e. E-Way Bill (EWB) has been implemented in India from 1st April 2018 for inter-state movement of goods and from 16th June 2018, all 36 States/Union Territories have made EWB applicable for intra-State movement of goods.

The salient features of GST E-Way Bill System are:

(1) EWB is a document required for movement of goods from one place to another. The movement may be either (i) from supplier to recipient and vice versa; or (ii) from manufacturer to job worker and vice versa; or (iii) between two premises of same businessman; or (iv) for any other purpose.

(2) EWB is to be generated by every registered person causing movement of goods of consignment value (inclusive of GST) exceeding ₹50,000/-. For consignments even below ₹50,000/-, EWB is mandatory in case of inter-State movement of (i) goods being sent for job work; and (ii) handicraft goods.

(3) There can be four situations for movement of goods:

(i) Registered supplier to registered recipient: EWB may be generated by either of them depending on terms of delivery i.e. the person causing movement of goods is responsible for EWB generation.

- (ii) Registered supplier to unregistered recipient: EWB to be generated mandatorily by registered supplier.
- (iii) Unregistered supplier to registered recipient: In such supplies, the movement of goods is deemed to have been caused by registered recipient and he is required to generate EWB.
- (iv) Unregistered supplier to unregistered recipient: In such transactions, though EWB is not mandatory, it can be generated by either of them on voluntary basis.

(4) Normally EWB is not required for exempted goods. In addition, there are few items for which EWB is not required as detailed in Annexure to Rule 138(14) of the CGST Rules.

(5) No distance exemption clause in EWB provisions. Any direct movement of goods between supplier and recipient warrants EWB, irrespective of distance. However, for Intra-State movement of goods from supplier's premises to transporter and from transporter's premises to recipient, part B is not mandatory, if the said distance is below 50 km.

(6) *Validity period:* For non over dimensional cargo (ODC) cargo, the validity is one day for every 100 km. or part thereof. However, in case of ODC cargo, one day is given for every 20 km. or part thereof. Validity starts from the time of part B updation (i.e. vehicle number entry) and first day lasts till 12 midnight of next day.

(7) No changes can be done in part A (i.e. consignment details) of EWB once generated. However, part B (i.e. vehicle details) can be updated any number of times within validity period. However, in case of wrong details fed, EWB can be cancelled by generator within 24 hours provided it has not been verified in transit.

(8) EWB can be cancelled by generator within 24 hours; whereas it can be rejected by recipient within 72 hours or the time of delivery of the goods, whichever is earlier. If recipient does not reject EWB within 72 hours, it would be treated as deemed accepted by him.

(9) EWB can be generated online on <https://www.ewaybillgst.gov.in>. In addition to web, EWB can be generated by SMS, Android App, APIs, bulk utility, etc.

17. Measures taken for the MSME sector under GST

Various decisions have been taken by the GST Council in its various meetings for the benefit of the MSME sector. The details of such major decisions are as below:

- (i) Goods predominantly manufactured and/or used in the unorganized MSME sector have been kept at lower rates or are exempted. For instance, electrical switches and wires, pipeline, plastic products, etc. are largely produced by MSMEs and they earlier did not pay Central Excise duty and therefore tax rate on these have been brought down from 28% to 18%. Similarly, rates of GST on jute and coir like hand bags, ropes etc., which are mainly made in the cottage sector, have been reduced

from 12 to 5%. Rate on Fishing hooks largely used by the fisherman – the industry being largely labour intensive with insignificant ITC have been reduced from 12 to 5%.

- (ii) Upper limit of turnover for opting for composition scheme to be raised from ₹1 crore to ₹1.5 crore.
- (iii) Composition dealers to be allowed to supply services, for upto a value not exceeding 10% of turnover in the preceding financial year, or ₹5 lakhs, whichever is higher. This will make a large number of MSMEs eligible for the composition scheme.
- (iv) Levy of GST on reverse charge mechanism on receipt of supplies from unregistered suppliers, to be applicable to only specified goods in case of certain notified classes of registered persons, on the recommendations of the GST Council.
- (v) Filing of NIL returns to be simplified with one step process.
- (vi) Service providers making inter-State supplies whose aggregate annual turnover does not exceed ₹20 lakhs have been exempted from the requirement of registration under GST *vide* notification No. 8/2017-I.T., dated 14-9-2017.
- (vii) Extending the Advance Authorization (AA)/Export Promotion Capital Goods (EPCG)/100% Export Oriented Units (EOU) schemes to sourcing inputs etc. from abroad as well as domestically. Holders of AA/EPCG and EOUs are not required to pay IGST, Cess etc. on imports. Further, domestic supplies to holders of AA/EPCG and EOUs are treated as deemed exports under Section 147 of CGST/SGST Act and refund of tax paid on such supplies is given to either the supplier or the recipient *vide* Notification No. 48/2017-C.T., dated 18-10-2017.
- (viii) Supply of taxable goods by a registered supplier to a registered recipient for exports shall attract a total GST rate of 0.1% thereby reducing working capital blockage for exporters. This provision has been made effective *vide* Notification No. 40/2017-C.T. (Rate), dated 23-10-2017 and Notification No. 41/2017-I.T. (Rate), dated 23-10-2017.
- (ix) Registered persons making supply of goods are required to make payment of tax at the time of the issuance of invoice and not at the time when advances are received. This has been implemented *vide* issuance of Notification No. 66/2017-C.T., dated 15th November, 2017.
- (x) GST Council meeting, in its 28th meeting held on 21st July, 2018, has recommended following other amendments to be carried out in the CGST Act, 2017 and the IGST Act, 2017, which are trade friendly measures slated to benefit the MSME sector:
 - Registered persons would be allowed to issue consolidated credit/debit notes in respect of multiple invoices issued in a Financial Year.
 - Commissioner to be empowered to extend the time limit for return of inputs and capital sent on job work, up to a period of one year and two years respectively.

- Amount of pre-deposit payable for filing of appeal under the CGST Act, 2017 before the Appellate Authority and the Appellate Tribunal to be capped at ₹25 Crore and ₹50 Crore respectively.

These measures have been implemented w.e.f. 01.02.2019.

- (xi) The GST Council, in its 23rd meeting held on 10-11-2017, decided that taxpayers having annual turnover of up to ₹1.5 crore in the previous year would have the option to file quarterly returns. This has been implemented vide issuance of Notification No. 57/2017-C.T., 15th November, 2017.
- (xii) The GST Council, in its 23rd meeting held on 10-11-2017, reduced the amount of late fee payable for delayed filing of return in **FORM GSTR-3B** from ₹200 per day for delayed filing Vide Notification No. 64/2017-C.T., 15th November, 2017, a taxpayer whose tax liability for the month is ‘Nil’, is liable to pay late fee of ₹20/- per day ₹10/- per day each under CGST & SGST Acts) subject to maximum of ₹5000/- each under Act from October, 2017 onwards. In all other cases, the amount of late fee payable for delayed filling of return in **FORM GSTR-3B** by other taxpayers has been reduced to ₹50/- per day (₹25/- per day each under CGST & SGST Acts) subject to maximum ₹5000/- each under Act from October, 2017.
- (xiii) The uniform rate of tax @1% (0.5% under the CGST Act and 0.5% under the respective SGST Act) is payable under the composition scheme for manufacturers and traders with effect from 1st January, 2018. This has been implemented vide issuance of Notification No. 1/2018-C.T., dated 1st January, 2018. For restaurant services, the rate continues to be 5 per cent.
- (xiv) A person eligible for composition scheme also supplying exempt services including services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount, would not become ineligible for the composition scheme. Further, for computing the aggregate turnover for eligibility for the scheme, the turnover of exempted services, including services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount, supplied by a taxpayer will not be included. This has been implemented vide issuance of Order No. 1/2017-C.T., dated 13-10-2017.
- (xv) The GST Council, in its 25th meeting held on 18-1-2018, reduced the amount of late fee payable late fee by any registered person for failure to furnish **FORM GSTR-1** (supply details) to fifty rupees per day and twenty rupees per day for NIL filers.
- (xvi) The GST Council, in its 25th meeting held on 18-1-2018, allowed taxable persons who have obtained voluntary registration to apply for cancellation of registration even before the expiry of one year from the effective date of registration.

- (xvii) The GST Council meeting in its 28th meeting held on 21st July, 2018 recommended certain amendments to be carried out in the CGST Act, 2017 and the IGST Act, 2017, which are trade friendly measures slated to benefit the MSME sector. The details of major amendments which are beneficial to the MSME sector are as below:
- (a) the upper limit of turnover for opting for composition scheme would be increased from ₹1 crore to ₹1.5 crore. Further, composition dealers would be allowed to supply services, for upto a value not exceeding 10% of turnover in the preceding financial year or ₹5 lakhs, whichever is higher.
 - (b) provisions of reverse charge mechanism under sub-section (4) of Section 9 of the CGST Act, 2017 and sub-section (4) of Section 5 of the IGST Act, 2017 and sub-section (4) of Section 7 of the Union territory Goods and Services Tax Act, 2017 (UTGST Act, 2017) have been amended for empowering the Government to notify a class of persons who would be liable to pay tax under reverse charge with respect to specified categories of goods or services or both. As of now, the said provisions have been suspended for the CGST Act, IGST Act and the UTGST Act till 30-9-2019 vide Notification No. 22/2018-C.T. (Rate), dated 6-8-2018, 23/2018-I.T. (Rate), dated 6-8-2018 and 22/2018-U.T.T. (Rate), dated 6-8-2018 respectively.
 - (c) option for quarterly filing of returns under GST would be introduced for taxpayers having annual turnover upto ₹5 crore in the previous financial year. Further, provisions in law would be amended to introduce a new and simple return filing system. The new formats have been put in the public domain for stakeholder consultation. The proposed new return filing system also envisages SMS based filing of a nil return and a single page return per tax period for certain taxpayers.
 - (d) threshold exemption limit for registration in the States of Assam, Arunachal Pradesh, Himachal Pradesh, Meghalaya, Sikkim and Uttarakhand is to be increased to ₹20 lakhs from ₹10 lakhs.
 - (e) allowing taxpayers to opt for multiple registrations for different places of business within the same State or Union territory.
 - (f) mandatory registration would be required only for those e-commerce operators who are required to collect tax at source under Section 52 of the CGST Act, 2017.
 - (g) temporary suspension of registration would be allowed while proceedings of cancellation of registration are underway.
 - (h) registered persons would be allowed to issue consolidated credit/debit notes in respect of multiple invoices issued in a Financial Year.
 - (i) amount of pre-deposit payable for filing of appeal under the CGST Act, 2017 before the Appellate Authority and the Appellate Tribunal to be capped at ₹25 crore and ₹50 crore, respectively.

- (j) Commissioner to be empowered to extend the time limit for return of inputs and capital sent on job work, upto a period of one year and two years, respectively.
- (k) supply of services to qualify as exports, even if payment is received in Indian Rupees, where permitted by the RBI
- (l) Place of supply in case of job work of any treatment or process done on goods temporarily imported into India and then exported without putting them to any other use in India, to be outside India.
- (m) scope of input tax credit is being widened, and it would now be made available in respect of the following:
 - (i) most of the activities or transactions specified in Schedule III;
 - (ii) motor vehicles for transportation of persons having seating capacity of more than thirteen (including driver), vessels and aircraft;
 - (iii) services of general insurance, repair and maintenance in respect of motor vehicles, vessels and aircraft on which credit is available; and
 - (iv) goods or services which are obligatory for an employer to provide to its employees, under any law for the time being in force.

The recommended amendments have been introduced and passed by the Lok Sabha on 9-8-2018. The same received the assent of the Hon'ble President of India and were enacted on 30-8-2018. These amendments will be made effective when all States pass the SGST Act amendments in their respective SGST Acts.

In its 29th meeting held on 4-8-2018, it was decided by the GST Council to form a Group of Ministers (GoM) for MSMEs which would identify the measures to be taken to provide a conducive environment for the growth of MSMEs after examining the recommendations of the Law Committee, the Fitment Committee and the IT Committee on the representations and suggestions relating to the MSME sector received from various stakeholders.

The micro, small and medium enterprises (MSMEs) sector is of special significance for the Indian Government. It is expected to offer higher employment opportunities by 2020. In line with the commitment to MSME sector, certain relaxations have already been implemented for them.

As MSMEs become accustomed to a larger compliance climate, a better level of preparedness and discipline in conducting business will gradually be a part of their operation. With the Government's commitment to strengthen MSMEs on all fronts including GST, it is expected that the current challenges would be stabilized and the industry will gradually take a positive turn to fulfill the nation's visions.

18. Changes Made for Relaxation to MSMEs from furnishing FORM GSTR-9C

On recommendations made in 39th GST Council Meeting held on March 14, 2020 amendment made for relaxation to MSMEs from furnishing of Reconciliation Statement in FORM GSTR-9C, for the financial year 2018-19, for taxpayers having aggregate turnover below ₹5 crores. The CBIC *vide Notification No. 16/2020-CT, dated March 23, 2020* has amended Central Goods and Services Tax Rules, 2017 (“CGST Rules”) in following manner:

1. **Rule 80 of the CGST Rules- Filing of Reconciliation audited statement (GSTR-9C) by such Registered Person whose aggregate turnover during the financial year 2018-2019 exceeds five crore rupees**

Proviso to Sub-rule (3) is inserted:

“**Provided** that every registered person whose aggregate turnover during the financial year 2018-2019 exceeds five crore rupees shall get his accounts audited as specified under sub section (5) of section 35 and he shall furnish a copy of audited annual accounts and a reconciliation statement, duly certified, in FORM GSTR-9C for the financial year 2018-2019, electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner.”

19. Vivad Se Vishwas I; Government provided Relief to MSMEs

The Government of India, Ministry of Finance, Department of Expenditure, Procurement Policy Division has issued Office Memorandum *vide No. F.1/1/2023-PPD dated February 6, 2023* providing Relief to the Micro, Small and Medium Enterprises (“MSMEs”).

The government has been getting many references from Micro, Small and Medium Enterprises (MSMEs) regarding difficulties being faced by them in the last two years due to COVID-19 pandemic. The Government had provided certain benefits to the industry (including MSMEs) in Government contracts in the past.

In order to further support MSMEs, it has been decided to provide relief in all contracts for procurement of Goods and Services, entered into by any Ministry/Department/attached or subordinate office/autonomous body/Central Public Sector Enterprise (CPSE)/Public Sector Financial Institution etc with MSMEs, which meet the following criteria:

- (i) The contractor/supplier should be registered as a Medium, Small or Micro Enterprise with Ministry of MSME, as on March 31, 2022.
- (ii) The original delivery period/completion period was between February 19, 2020 and March 31, 2022.

For the MSMEs which meet the specified criteria, the following reliefs shall be provided:

- (i) 95% of the performance security forfeited from such firms shall be refunded.

- (ii) 95% of the Bid security (Earnest Money Deposit), if any, forfeited from MSME firms in tenders opened between February 19, 2020 and March 31, 2022 shall be refunded.
- (iii) 95% of the Liquidated Damages (LD) deducted from such firms shall also be refunded. LD so refunded shall not exceed 95% of the performance security stipulated in the contract.
- (iv) In case firm has been debarred only due to default in execution of such contracts, such debarment shall also be revoked, by issuing an appropriate order by the procuring entity.
However, in case a firm has been ignored for placement of any contract due to debarment in the interim period (i.e. date of debarment and the date of revocation under this order), no claim shall be entertained.
- (v) No interest shall be paid on such refunded amount.

Government e-Marketplace (GeM) shall provide an online portal for the purpose implementation of this order. Broad functionality of the portal shall be as follows:

Step 1: GeM shall provide functionality to MSME Vendors to register on the portal through its authorized personnel.

Step 2: The registered contractor shall list out the applicable contracts on the portal. The list of the procuring entities shall be available only through drop down menu, which should be changed only with the approval of DoE. The details of the dispute should contain atleast following details: contract number, contracting authority, paying authority, Deducted/forfeited amount.

Step 3: GeM portal shall intimate through email to nodal officers of each procuring entity to verify the claim of the MSME vendor.

Step 4: The nodal officer of the procuring entity shall after due diligence and refund of due amount as per this order shall update the portal with the amount, date and transaction details of the payment.

Step 5: Reports to track pendency in each procuring entity shall be provided by GeM.

The date of commencement of the scheme shall be notified separately.

20. MSME — FAQ's

Question 1: What is GST?

Answer: GST stands for Goods and Services Tax, which is levied on supply of goods or services. “Supply” is a legal term which has very broad sweep and various types of economic activities are covered by it. For example, sale of goods is a type of supply.

Question 2: On what supply is GST levied?

Answer: GST is levied on all types of supplies which are - (i) made for a consideration and (ii) are in the course or furtherance of business. There are some exceptions when these conditions are not met, yet supply is considered to have been made, for example, inter-state stock transfer of goods even without

consideration or importation of services even if not in the furtherance of business.

Question 3: Will GST be levied on all goods or services or both?

Answer: No, GST will not be levied on alcohol for human consumption. GST on Crude, Motor Spirit (Petrol), High Speed Diesel, Aviation Turbine Fuel and Natural Gas will be levied with effect from a date to be decided by the GST Council. Electricity and sale of land and building are exempted from levy of GST. Securities are neither goods nor services for the purposes of the Act and therefore supply of securities is not taxable.

Question 4: How many types of GST will be levied on different kinds of supply of goods or services?

Answer: GST is a dual levy to be simultaneously levied by both Centre and State. On every supply within a State (intra-State supply), GST levied will have two components - Central Tax and State Tax popularly called CGST and SGST/UTGST. On every supply across States (inter-State), Integrated Tax popularly called IGST will be levied. The rate of CGST and SGST/UTGST would be equal. IGST would be levied at a rate equal to the sum of CGST and SGST/UTGST.

Question 5: Whether a registered person will have to approach two authorities - Centre as well as State for various permissions, audit etc. under the Act?

Answer: No, a registered person will have to approach only one tax authority for all practical purposes. Each registered-person would have one tax administration office, either of the Centre or of the State. Legal provisions (called cross-empowerment) have been made to ensure that one officer can discharge all functions under CCST, SGST and ICST Act. The registered person would be informed of the tax administration concerned with him. A common registration is granted for the purposes of CGST, SGST/UTGST and IGST.

Question 6: What is destination based consumption tax?

Answer: When a supply originates in one State and is consumed in another State, tax can accrue to either of the two States. In a destination based consumption tax, taxes accrue to the State where the supply is consumed. In origin based tax, the tax accrues to the State where the supply originates. GST is basically a destination based consumption tax. For example, if a car is manufactured in Chennai but is purchased eventually by a consumer in Mumbai, SGST (or the State component in IGST) would accrue to Maharashtra and not to Tamil Nadu.

Question 7: Who will pay GST?

Answer: GST is generally paid by the supplier, i.e. the one who makes the supply after collecting it from the recipient. The supplier collects GST from the recipient of the supply as part of the consideration. However, in a few exceptional cases, the recipient, would be liable to pay GST to the Government on reverse charge basis.

Question 8: What is Input Tax Credit?

Answer: A person doing business will be purchasing goods/availing services for making further supplies in the course or furtherance of business. When such purchases are made by him, tax would have been charged by his supplier and collected from him. Since tax is collected from him, he can avail credit of the tax paid by him to his supplier (that is to say, he can use this amount for making payment of tax due from him on further supply made by him). This is known as input tax credit for the recipient.

Question 9: Is GST going to increase compliance burden on the trade?

Answer: No. On the contrary GST will result in streamlining of processes and reduction of compliance burden. GST is a simple tax which uniformly applies across the country. GST has been designed to have minimal human interface and would be implemented through strong IT platform run by GSTN. Also, in the earlier regime there were multiple compliances required for taxes such as Central Excise, Service tax, VAT etc. with Centre and State. GST makes it single and uniform compliance for indirect taxes across the country. Under GST, there is just one interface with no face-to-face meeting between taxpayers and tax authorities and practically every activity will be done online.

Question 10: What is the threshold for registration in GST?

Answer: A person having business which has aggregate turnover of more than ₹20 lakhs calculated for a given PAN across the country would need to register under GST. There are some exceptions to this rule as mentioned in section 24 of the GST Act. Aggregate turnover is defined in section 2(6) of the said Act.

For example, assume that a taxable person's business is in many States on same PAN. All supplies are below ₹10 lakhs but collectively they are above ₹20 lakhs. He would be required to register under GST.

Question 11: Is an agriculturist liable to registration?

Answer: No. An agriculturist, to the extent of supply of produce out of cultivation of land is not liable to registration.

Question 12: What is the most important precaution to be taken to avail the facility of threshold exemption?

Answer: An MSME availing threshold exemption should not make any inter-State supply of goods whatsoever, though the MSME may receive supply from other States. They may, however, make inter-State supply of services.

Question 13: I am engaged exclusively in the business of supplying goods or services which are exempt from GST. Am I liable for registration?

Answer: No.

Question 14: How do I make supply, if I have not applied for registration?

Answer: You should apply for registration at the earliest on the GST common portal and obtain application reference number (ARN). You need not disrupt your business and may continue to make supplies on invoices without GSTIN. The application for registration must be made within 30 days of the

turnover crossing ₹20 lakhs or attracting any of the conditions mentioned in section 24. After registration, you can issue revised invoices as permitted under section 31(3)(a) of the GST Act. These supplies should be shown in the return and taxes paid on them.

Question 15: How can an application for fresh registration be made under GST? Within what time will registration be granted?

Answer: Application for fresh registration is to be made electronically on the GST common portal (www.gst.gov.in) in FORM GST REG-01. If the details and documents are in order, registration will be granted within 3 working days, except in cases where an objection has been raised within this period in which case registration will be granted within a maximum period of 17 days.

Question 16: I was registered under VAT but not under Central Excise. Do I need to apply for new registration?

Answer: No Existing registrants of VAT having valid PAN have been issued Provisional ID and password. If you have not received provisional ID, please contact your tax administration to obtain the same. This Provisional Identity Number (PID) would eventually be your GSTIN, when the migration process is completed.

Question 17: If I have obtained provisional GSTIN (PID), can I use the same on the invoice to make supply without waiting for final GSTIN?

Answer: Provisional GSTIN (PID) would eventually be your final GSTIN. The number would remain the same. Yes, you can use this PID on invoice for making supply without waiting for final GSTIN.

Question 18: I am a SME selling printed books after printing and have a turnover of twenty-five lakhs rupees per annum. I print only Children's picture, drawing or colouring books which are exempt from GST. Do I need to register?

Answer: No. A person dealing with only exempted supplies is not liable to registration irrespective of his turnover. Section 23(i)(a) of the GST Act refers.

Question 19: If I register voluntarily though my turnover is less than ₹20 lakhs, am I required to pay tax on supplies made post registration?

Answer: Yes. If you obtain voluntary registration despite the turnover being below ₹20 lakhs, you would be treated as a normal taxable person and would need to pay tax on supplies even if they are below the threshold for registration. You will also be entitled to take Input tax credit.

Question 20: How will taxpayer get the certificate of registration?

Answer: The taxpayer can himself download the certificate of registration online from the GST common portal (www.gst.gov.in).

Question 21: Can registration particulars once furnished be amended?

Answer: Yes, request for amendment has to be made online. All amendments in registration particulars, except some core fields, can be amended in the system without the intervention of any official by merely filing the details of the amendment. Also for amendments of core fields, approval may be needed.

Examples of fields which require approval are - legal name of business, address of the place of business and addition, deletion or retirement of partners or directors etc. responsible for day to day affairs of the business. Examples of fields which can be amended without any approval are - change of telephone number, email ID, bank account etc.

Question 22: In which State will a person be registered?

Answer: A person liable to be registered has to apply for registration in each State from where he makes or intends to make outward supplies under GST. Within each State, generally only one registration is required to be obtained.

Question 23: Are all manufacturers necessarily required to be registered under GST?

Answer: No, there is no provision requiring that a manufacturer irrespective of threshold or nature of supply register himself under GST. For example, a manufacturer dealing only in exempted goods or where his turnover is only intra-State and below ₹20 lakhs, is not required to be registered.

Question 24: Who is liable to issue a ‘tax invoice’ and how many copies are required to be issued?

Answer: Every registered person (other than a registered person availing the benefit of composition or a registered person supplying exempted goods or services) supplying goods or services or both is required to issue ‘tax invoice’. Invoice should be issued in triplicate. The original copy is meant for buyer, duplicate for transporter and triplicate copy for record of the seller. A registered person under composition scheme or supplying exempted goods or services shall issue a bill of supply instead of a tax invoice.

Question 25: What details are to be contained in a ‘tax invoice’?

Answer: The tax invoice shall contain details as specified in the rule in this regard. The key details specified in the rules are - name, address and GSTIN of the supplier and the recipient (if registered), a unique number of the invoice and the date of issue, description of goods, value of goods, rate of tax, amount of tax and signature.

Question 26: Is it necessary to issue invoices even if the value of transaction is very low?

Answer: A registered person may not issue a tax invoice if the value of the goods/services supplied is less than ₹200, subject to the condition that the recipient is not a registered person and the recipient does not ask for such invoice (if the recipient asks for the invoice then the same must be issued, irrespective of the value). In such cases, the registered person shall issue a consolidated invoice at the end of the day in respect of all such supplies.

Question 27: When should a tax invoice be issued for goods?

Answer: Tax invoice for goods shall be issued on or before the time of removal/delivery of goods. In case of continuous supply of goods, it shall be issued on or before the time of issue of statement of accounts/receipt of payment.

Question 28: *In case of supply of exempt goods or when tax is paid under Composition Scheme, is the registered person required to issue a tax invoice? How a bill of supply is different from a tax invoice?*

Answer: No. In such cases, the registered person shall issue a Bill of Supply and not a tax invoice. The bill of supply is different from a tax invoice both in name and details contained. While most of the details to be provided in a bill of supply are similar to tax invoice, the bill of supply does not contain the rate of tax and the amount of tax charged as the same cannot be collected.

Question 29: *If goods are transported in semi-knocked down condition, when shall the complete Invoice be issued?*

Answer: When goods are transported in semi-knocked down condition, the complete invoice shall be issued before dispatch of the first consignment. Delivery challan shall be issued for subsequent consignments. Original copy of invoice shall be sent along with the last consignment.

Question 30: *Is there any scheme for payment of taxes under GST for small traders and manufacturers?*

Answer: Yes. Composition levy is an alternative method of levy of tax designed for small taxpayers whose turnover is up to ₹1 crore (₹75 lakhs for special category States, excluding J&K and Uttarakhand). It is a kind of turnover tax. The objective of the scheme is to provide a simplified tax payment regime for the small taxpayers. The scheme is optional and is mainly for small traders, manufacturers and restaurants.

Question 31: *What is the eligibility criteria for opting for composition levy? Which are the Special Category States in which the turnover limit for Composition Levy for CGST and SGST purpose shall be ₹50 lakhs?*

Answer: Composition scheme is a scheme for payment of GST available to small taxpayers whose aggregate turnover in the preceding financial year did not cross ₹1 crore. In the case of 9 special category States, the limit of turnover is ₹75 Lakhs in the preceding financial year, namely - Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura and Himachal Pradesh. However, if you are a manufacturer of ice-cream, pan masala or tobacco or tobacco products or if you are a service provider other than a restaurant, you are not eligible for composition scheme. You can, however, make supply of exempt services including services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.

Question 32: *What is the form in which an intimation to pay tax under the composition scheme needs to be made by the taxable person?*

Answer: Composition scheme is optional and intimation that option has been availed should be made electronically in Form GST CMP-01 by the migrating taxable person. A person who has already obtained registration and opts for payment under composition levy subsequently needs to give intimation electronically in Form GST CMP-02.

Question 33: What is the rate of tax under Composition levy for a manufacturer?

Answer: Composition rate for manufacturers is 1% (0.5% CGST and 0.5% SGST) of the turnover.

Question 34: Are all manufacturers eligible for composition scheme?

Answer: A manufacturer is eligible to avail composition scheme except manufacturers—

- (a) whose aggregate turnover in the preceding financial year crossed ₹1 crore (₹75 Lakhs in State of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura and Himachal Pradesh);
- (b) who make any inter-State outward supplies of goods;
- (c) who make supply of goods through an electronic commerce operator;
- (d) who manufacture the following goods:

| Sl. No | Tariff Head | Description |
|-----------|----------------|---|
| 1 | 2105 00 00 | Ice cream and other edible ice, whether or not containing cocoa |
| 2 | 2106 90 20 | Pan masala |
| 3 | 24 | Tobacco and manufactured tobacco substitutes |

Question 35: When will a registered person have to pay tax?

Answer: A registered person will have to pay GST on monthly basis on or before 20th of the succeeding month and if he has opted for composition levy he will have to pay GST on a quarterly basis on or before the 18th day of the month after the end of the quarter.

Question 36: A person availing composition scheme during a financial year crosses the turnover of ₹75 Lakhs/₹50 Lakhs during the course of the year i.e. say, he crosses the turnover of ₹75 Lakhs/₹50 Lakhs in December? Will he be allowed to pay tax under composition scheme for the remainder of the year i.e. till 31st March?

Answer: No. The option to pay tax under composition scheme shall lapse from the day on which his aggregate turnover during the financial year exceeds ₹75 Lakhs/ ₹50 Lakhs. Once he crosses the threshold, he shall file an intimation for withdrawal from the scheme in **FORM GST CMP-04** within seven days of the occurrence of such event. He shall also furnish a statement in **FORM GST ITC-01** containing details of the stock of Inputs and capital goods as per the rules in this regard. This would help him join the Input tax credit chain and avail credit of tax that he has paid on his inputs/goods lying in stock on the day he crosses over.

Question 37: For the purpose of availing composition how will aggregate turnover be computed for the purpose of composition?

Answer: Aggregate turnover shall be computed on the basis of turnover on all India basis, it includes aggregate value of all taxable supplies (excluding the

value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-State supplies of persons having the same Permanent Account Number but excludes GST and cess.

Question 38: Can a person who has opted to pay tax under the composition scheme avail Input Tax Credit on his inward supplies?

Answer: No, a taxable person opting to pay tax under the composition scheme is out of the credit chain. He cannot take input tax credit on the supplies received.

Question 39: How is a manufacturer under the composition scheme required to bill his supply? Can a registered person, who purchases goods from a composition manufacturer take Input tax credit?

Answer: A manufacturer opting to pay tax under the composition scheme cannot issue a tax invoice to his buyer but would issue a Bill of Supply. He cannot collect any tax on the supplies made by him on his Bill of Supply and is required to show only the price charged for the supply. Consequently, the registered person buying goods from a composition manufacturer cannot take input tax credit.

Question 40: How would a manufacturer under the composition scheme who receives inputs or input services from an unregistered person pay GST? What will be the tax rate if the purchase is from a person availing composition?

Answer: Till September, 2019, no tax is required to be paid by manufacturer under the composition scheme who receives inputs or input services from an unregistered person.

Question 41: In case a person has registration in multiple States, can he opt for payment of tax under composition levy only in one State and not in other States?

Answer: No. An intimation that composition scheme has been availed in one State shall be deemed to be an intimation in respect of all other places of business registered on the same Permanent Account Number in other States.

Question 42: What is the effective date of composition levy?

Answer: There can be three situations with respective effective dates as shown below:

| Situation | Effective date of composition levy |
|--|---|
| Persons who have been granted provisional registration and who opt for composition levy (Intimation is filed under Rule 3(1) in FORM GST CMP-01) | 1st July, 2017. |
| Persons opting for composition levy at the time of making application for new registration in the same registration application itself (The intimation under Rule 3(2) in FORM GST REG-01) | Effective date of registration; Intimation shall be considered only after the grant of registration and his option to pay tax under composition scheme shall be effective from the effective date of registration |

| Situation | Effective date of composition levy |
|---|--|
| Persons opting for composition levy after obtaining registration (The intimation is filed under Rule 3(3) in FORM GST CMP-02) | The beginning of the next financial year |

Question 43: What is the validity of composition levy?

Answer: The option exercised by a registered person to pay tax under the composition scheme shall remain valid so long as he satisfies all the conditions specified in the law. The option is not required to be renewed.

Question 44: What are the other compliances which a provisionally registered person opting to pay tax under the composition levy need to make?

Answer: Such person is required to furnish the details of stock, including the inward supply of goods received from unregistered persons, held by him on the 30th day of June, 2017 electronically, in FORM GST CMP-03, on the common portal, either directly or through a Facilitation Centre notified by the Commissioner, within a period of sixty days from the date on which the option for composition levy is exercised or within such further period as may be extended by the Commissioner in this behalf. Further, if on 1st July, 2017 such person holds in stock goods that have been received from outside the State or imported from outside the Country, he is not eligible to opt for composition scheme.

Question 45: Can a person paying tax under composition levy, withdraw voluntarily from the scheme?

Answer: Yes, the registered person who intends to withdraw from the composition scheme can file a duly signed or verified application in FORM GST CMP-04. In case he wants to claim input tax credit on the stock of inputs and inputs contained in semi-finished or finished goods held in stock by him on the date of withdrawal, he is required to furnish a statement in FORM GST ITC-01 containing the details of such stock within a period of thirty days of withdrawal.

Question 46: Will withdrawal intimation in any one place be applicable to all places of business?

Answer: Yes. Any intimation or application for withdrawal in respect of any place of business in any State or Union territory, shall be deemed to be an intimation for withdrawal in respect of all other places of business registered on the same Permanent Account Number.

Question 47: Can a person paying tax under composition scheme make exports or supply goods to SEZ?

Answer: No, because exports and supplies to SEZ from Domestic Tariff Area are treated as inter-State supply. A person paying tax under composition scheme cannot make inter-State outward supply of goods.

Question 48: Can a manufacturer under composition scheme do job-work for other manufacturers?

Answer: Job-work is a supply of service and not eligible for composition scheme. Any manufacturer or processor who wishes to carry out job-work for others would not be eligible for composition scheme.

Question 49: How can tax payments be made by a registered person under the composition scheme?

Answer: A registered person under composition scheme would not have input tax credit and he would make all his tax payments by debit in the cash ledger maintained at the common portal. The taxpayer can deposit cash anytime in the electronic cash ledger at his convenience. The payment in cash ledger can be made through all modes available like e-payment through net-banking, credit card and debit card, over the counter of banks, RTGS or NEFT.

Question 50: Does a registered person under the composition scheme pay his taxes every month?

Answer: No, registered person under the composition scheme will not pay taxes every month. He would file return and pay taxes on a quarterly basis i.e. for each quarter of the financial year. Due date for payment of tax for them would be on or before the 18th day after the end of such quarter.

Question 51: What are the accounts a manufacturer under the composition scheme needs to maintain?

Answer: Rules on Accounts and Records provide details of the accounts to be maintained. They are maintained under normal course of business by any small manufacturer. The details to be maintained in accounts *inter alia* consists of goods supplied, inward supplies attracting reverse charge, invoices, bills of supply, delivery challans, credit notes, debit notes, receipt vouchers, payment vouchers, refund vouchers etc.

Question 52: Does a manufacturer under the composition scheme need to maintain details of accounts of every supply received and made?

Answer: No, the requirement to maintain detailed accounts of stocks in respect of goods received and supplied, work in progress, lost, destroyed etc. does not apply to a manufacturer under the composition scheme. Such a person shall maintain a true and correct account of production or manufacture of goods, inward and outward supply of goods, stock of goods, tax payable and paid.

Question 53: Does a manufacturer under the composition scheme needs to maintain account of inputs tax credit?

Answer: A manufacturer under the composition scheme need not maintain account of input tax, input tax credit claimed etc. as he is neither allowed to avail of input tax credit nor can he issue an invoice showing tax using which buyer can avail input tax credit.

Question 54: Can a manufacturer under the composition scheme maintain his accounts manually? And can he issue his bill of supply manually?

Answer: Yes, a manufacturer under the composition scheme can maintain his accounts in registers serially numbered and also issue bill of supply manually following the conditions specified in rules in this regard.

Question 55: Whether a registered person under the composition scheme needs to learn HSN code of any input purchases and output supplies?

Answer: No, a registered person under the composition scheme would not need to specify HSN code of their products in bill of supply or return.

Question 56: *What return a registered person under the composition scheme needs to file and at what frequency?*

Answer: A registered person under the composition scheme of GST is required to furnish quarterly return called GSTR-4 upto 18th day of the month succeeding the quarter.

Question 57: *What details are required to be furnished in the return to be filed by the registered person under the composition scheme?*

Answer: GSTR-4 may be referred for details required to be filled in the return. It is a very simple return containing consolidated details of outward supplies, details of import of services or other supplies attracting reverse charge.

Question 58: *What is frequency of furnishing details of outward supplies in GSTR-1 for small taxpayers who are not under composition scheme?*

Answer: GSTR-1 is to be furnished quarterly for person with aggregate turnover of ₹1.5 crore per annum. All others have to furnish GSTR-1 on monthly basis.

Note: Reference to CGST Act, 2017 included reference to SGST Act, 2017 and UTGST Act, 2017 also.

[Issued by Directorate General of Taxpayer Services]

Chapter 54

Taxability of Health Care Services

Synopsis

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1. Introduction

‘Health care services’ means the providing medicine, medical or surgical treatment, nursing, hospitalization, dental service, complementary health services, ambulance services for patient transportation or for any other services relating to sickness or personal injury and providing services for the purposes of preventing, alleviating, curing or healing human illness, physical disability or injury. As per Oxford Dictionary, Health Care means the maintenance and improvement of physical and mental Health, especially through the provision of medical services.

In the pre-GST regime, the health care services were not under the scope of levy of Service Tax. In the GST regime the Government, instead of giving full exemption to health care services, has minimized the burden of tax by exempting certain health care services as a welfare measures for the citizen of the country.

2. Exemption of Health Care Services under GST

Notification No. 12/2017-Central Tax (Rate) dated 28-06-2017 (Sr. No. 74), and Notification No.9/2017-Integrated Tax (Rate) dated 28-06-2017 (Sr. No.77), certain health care services have been exempted which are tabulated as under:

| Sl. No. | Chapter, Section, Heading, Group or Service Code (Tariff) | Description of Services | Rate (Per cent) | Condition |
|-------------------------------------|--|--|------------------------|------------------|
| (1) | (2) | (3) | (4) | (5) |
| 74 of Notification No.12/2017 | Heading 9993 | Services by way of— (a) health care services by a clinical | Nil | Nil |

| Sl. No. | Chapter, Section, Heading, Group or Service Code (Tariff) | Description of Services | Rate (Per cent) | Condition |
|--|---|--|-----------------|-----------|
| (1) | (2) | (3) | (4) | (5) |
| and 77 of Notification No.9/2017 | | establishment, an authorised medical practitioner or para-medics; (b) services provided by way of transportation of a patient in an ambulance, other than those specified in (a) above. | | |

Thus, the above table relating to exemption notification implies that Services by way of:

- (a) “Health care services” by a clinical establishment, an authorised medical practitioner or para medics; and
- (b) Services provided by way of transportation of a patient in an ambulance, other than those specified in (a) above, are exempted from the payment of tax under GST regime.

It may be pointed out that certain terms have also been defined for the purposes of the said notification which are reproduced below:

“Health care services” means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognized system of medicines in India and includes services by way of transportation of the patient to and from a clinical establishment, but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma;

“Clinical establishment” means a hospital, nursing home, clinic, sanatorium or any other institution by, whatever name called, that offers services or facilities requiring diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognized system of medicines in India, or a place established as an independent entity or a part of an establishment to carry out diagnostic or investigative services of diseases;

“Authorised medical practitioner” means a medical practitioner registered with any of the councils of the recognized system of medicines established or recognized by law in India and includes a medical professional having the requisite qualification to practice in any recognized system of medicines in India as per any law for the time being in force;

“Paramedics” mean health care professionals such as nursing staff, physiotherapists, technicians, lab assistants etc. Services by these professionals in a clinical establishment in the capacity of employee and not provided in independent capacity and thus consider as services by such clinical establishment. Similarly, services of assisting an authorised medical professional shall be considered as services by such authorised medical professional only.

Apart from the definition of ‘clinical establishment’ as provided in the exemption notification reference may be made for wider definition of the said term as provided under Section 2(e) of the Clinical Establishments (Registration and Regulation) Rules, 2010 which defines clinical establishment as:

- (i) a hospital, maternity home, nursing home, dispensary, clinic, sanatorium or an institution by whatever name called that offers services, facilities requiring diagnosis, treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognized system of medicine established and administered by any person or body of persons, whether incorporated or not; or
- (ii) a place established as an independent entity or part of an establishment referred to in sub clause (i), in connection with the diagnosis or treatment of diseases where pathological, bacteriological, genetic, radio logical, chemical, biological investigations or other diagnostic or investigative services with the aid of laboratory or other medical equipment, are usually carried on, established and administered or maintained by any person or body of persons, whether incorporated or not, and shall include a clinical establishment owned, controlled or managed by the :
 - The Government or a department of the Government;
 - A trust, whether public or private;
 - A corporation(including a society) registered under a Central, Provincial or State Act, whether or not owned by the Government;
 - A local authority; and
 - A single doctor,

But does not include the clinical establishments owned, controlled or managed by the Armed Forces constituted under the Army Act, 1950, the Air Force Act, 1950 and the Navy Act, 1957.

3. Meaning of various terminologies

Hospital: As per WHO, hospital means- Health care institutions that have an organized medical and other professional staff and inpatient facilities, and deliver medical, nursing and related services 24x7 hours. Hospitals offer a varying range of acute, convalescent and terminal care using diagnostic and curative services in response to acute and chronic conditions arising from diseases as well as injuries and genetic anomalies.

Maternity Home: Means any premises used or intended to be used for reception of pregnant women or of women in labour or immediately after child birth.

Nursing Home: Means any premises used or intended to be used for reception of persons suffering from any sickness, injury or infirmity and providing of treatment and nursing for them and include a maternity home. A nursing home is a small private establishment providing *healthcare services* with accommodation.

Clinic: A medical facility run by a single or group of physicians or health practitioners smaller than a hospital. Clinics generally provide only outpatient services and can have an observation bed for short stay.

Sanatorium: A sanatorium is an institution that provides medical treatment and rest, often in a healthy climate, for people who have been ill for a long time for chronic disease such as tuberculosis etc.

4. Other Exemptions related to healthcare services

Notification No. 12/2017-Central Tax, provides exemption as under:

- (i) Sr. No. 46, Services provided by a veterinary clinic in relation to health care of animals or birds.
- (ii) Sr. No. 73, Services provided by the cord blood by way of preservation of stem cells or any other service in relation to such preservation.
- (iii) Sr. No. 74, Services by way of transportation of patients in Ambulance.

Notification No. 9/2017-Integrated Tax, provides exemption as under:

- (i) Sr. No. 48, Services provided by a veterinary doctors services in relation to health care of animals or birds.
- (ii) Sr. No. 76, Services provided by the cord blood banks include other blood banks by way of preservation of stem cells or any other services for such preservation.
- (iii) Sr. No. 77, Services by way of transportation of patients in Ambulance.
- (iv) Sr. No. 77, Services of medical tests done in clinical establishment.
- (v) Sr. No. 78, Services provided by operators of the common bio-medical waste treatment facility to a clinical establishment by way of treatment or disposal of bio-medical waste or the processes incidental thereto. Thus, services provided to hospitals by way of treatment and disposal of bio-medical waste is not taxable under GST.
- (vi) Sr. No. 77, Room rent charged for patients are exempted but if the hospital is renting space for a chemist shop or providing rooms on rent for caretakers then attracts GST.

5. C.B.I & C, Clarification on Health Care Services

Circular No. 32/06/2018-TRU, dated 12-02-2018 [2018(9) G.S.T.L.C25]

(1) Hospitals hire senior doctors/consultants/technicians independently, without any contract of such persons with the patient; and pay them consultancy charges, without there being any employer employee relationship. Will such consultancy charges be exempt from GST? Will revenue take a stand that they are providing services to hospitals and not to patients and hence must pay GST?

Clarification: Services provided by senior doctors/consultants/technicians hired by the hospitals, whether employees or not, are healthcare services which are exempt.

(2) Retention money: Hospitals charge the patients, say, ₹10000/- and pay to the consultants/technicians only ₹7500/- and keep the balance for providing ancillary services which include nursing care, infrastructure facilities, paramedic care, emergency services, checking of temperature, weight, blood pressure etc. Will GST be applicable on such money retained by the hospitals?

Clarification: Healthcare services have been defined to mean any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognized system of medicines in India [para 2(zg) of notification No. 12/2017-CT(Rate)]. Therefore, hospitals also provide healthcare services. The entire amount charged by them from the patients including the retention money and the fee/payments made to the doctors etc., is towards the healthcare services provided by the hospitals to the patients and is exempt.

(3) Food supplied to the patients: Health care services provided by the clinical establishments will include food supplied to the patients; but such food may be prepared by the canteens run by the hospitals or may be outsourced by the Hospitals from outdoor caterers. When outsourced, there should be no ambiguity that the suppliers shall charge tax as applicable and hospital will get no ITC. If hospitals have their own canteens and prepare their own food; then no ITC will be available on inputs including capital goods and in turn if they supply food to the doctors and their staff; such supplies, even when not charged, may be subjected to GST.

Clarification: Food supplied to the in-patients as advised by the doctor/nutritionists is a part of composite supply of healthcare and not separately taxable. Other supplies of food by a hospital to patients (not admitted) or their attendants or visitors are taxable.

6. GST on Health care services

Health care services by a clinical establishment, an authorized medical practitioner or para-medics are exempt from GST as per the notifications issued by the Government. Services by a veterinary clinic in relation to health care of animals or birds are also exempt from GST.

The health care services are not rendered/provided by a clinical establishment or an authorized medical practitioner or para-medics shall attract levy of GST.

7. Scope of supply for health care services

In case of healthcare industry, healthcare services is the predominant element of the composite supply whereas medicines, implants and food supply are ancillary to it and does not in itself become principal supply.

The taxability on a composite supply shall be rate of tax applicable on supply of principal supply. In case of healthcare services, the principal supply i.e. health services is liable to tax at Nil rate and hence Nil rate will be considered the rate of tax applicable on the composite supply of health care services and supply of implants and medicines to IPD.

With regard to supply of medicines, it is submitted that these are taxable under GST. Most of the medicines are taxed @ 5%, certain medicines are taxed @ 12% and 18% ranges and depending upon the HSN classification code of the medicines. Similarly, consumables/injectables and implants are taxed as per applicable rate.

8. Classification of health care services

GST rate for goods and services is based on HSN/SAC code. GST rate for health care services by a clinical establishment, an authorized medical practitioner or para-medics is exempt from GST. Similarly, Services by a veterinary clinic in relation to health care of animals or birds is also exempt from GST. But there are certain healthcare services not rendered by a clinical establishment or an authorized medical practitioner or a para-medics which are subject to GST for which the classification code of such services and applicable GST rates as under:

9. Classification of healthcare services with SAC Code

| Heading No.9993 | SAC | Description of Services | CGST @ | SGST @ | IGST @ |
|-----------------|--------|--|--------|--------|--------|
| Group 99931 | 999311 | Human Health Care Services Inpatient services | 9% | 9% | 18% |
| | 999312 | Medical and dental services | 9% | 9% | 18% |
| | 999313 | Childbirth and related services | 9% | 9% | 18% |
| | 999314 | Nursing and Physiotherapeutic services | 9% | 9% | 9% |
| | 999315 | Ambulance services | 9% | 9% | 9% |
| | 999316 | Medical Laboratory and Diagnostic-imaging services | 9% | 9% | 18% |
| | 999317 | Blood, sperm and organ bank services | 9% | 9% | 18% |
| | 999319 | Other human health services including homeopathy, unani, ayurveda, naturopathy, acupuncture and the like | 9% | 9% | 18% |
| | | | | | |
| Group 99932 | 999321 | Residential care services for the elderly and disabled. | 9% | 9% | 18% |
| | 999322 | Residential health-care services other than by hospitals. Residential care services for the elderly and person with disabilities. | 9% | 9% | 18% |
| Group 99933 | 999331 | Other social services with accommodation Residential care services for children suffering from mental retardation, mental health illnesses or substance abuse | 9% | 9% | 18% |
| | 999332 | Other social services with accommodation for children | 9% | 9% | 18% |
| | 999333 | Residential care services for adults suffering from mental retardation, mental health illnesses or substance abuse | 9% | 9% | 18% |
| | 999334 | Other social services with accommodation for adults | 9% | 9% | 18% |
| | | | | | |
| Group 99934 | 999341 | Social services without accommodation for the elderly and disabled | 9% | 9% | 18% |
| | 999349 | Vocational rehabilitation services Other social services without accommodation for the elderly and disabled nowhere else classified | 9% | 9% | 18% |
| | | | | | |

| Heading No.9993 | SAC | Description of Services | CGST @ | SGST @ | IGST @ |
|-----------------|--------|---|--------|--------|--------|
| Group 99935 | 999351 | Other social services without accommodation | 9% | 9% | 18% |
| | 999352 | Child day-care services | | | |
| | 999353 | Guidance and counselling services nowhere else classified related to children | | | |
| | 999353 | Welfare services without accommodation | | | |
| | 999359 | Other social services without accommodation nowhere else classified | | | |

Recommendations by the GST Council:

The 47th GST Council meeting decided that non-ICU room charges in hospitals shall be taxed @5% without input tax credit where room charge is more than ₹500 per day per patient. The recommendation states as follows:

“Room rent (excluding ICU) exceeding ₹5000 per day per patient charged by a hospital shall be taxed to the extent of amount charged for the room @5% without ITC.”

C.B.I&C. has issued Notification No.3/2022-C.T.(Rate), dated 13-07-2022 amended Notification No.11/2017-C.T.(Rate), dated 28-06-2017 by inserting new entry 31A w.e.f. 18-7-2022 to include following service to be taxed @5% (2.5% CGST +2.5% IGST) under the SAC Code 9993:

“Services provided by a clinical establishment by way of providing room [other than Intensive care unit care Unit ((ICU)/Critical Care Unit (CCU/Intensive Cardiac Unit (ICCU)/Neo natal Intensive Care Unit (NICU)] having room charges exceeding ₹5000 per day to a person receiving health care services.”

This will be subject to condition that the credit of input tax charged on goods and services used in supplying the service has not been taken.

10. Advance Rulings

In Re: *M/s Ernakulam Medical Centre Pvt. Ltd.*(GST AAR Kerala) 2018 (18) G.S.T.L. 142 (A.A.R. - GST)

Issue: Levy of GST- supply of medicines and allied items through the pharmacy-composite supply-health care services by a clinical establishment-exemption vide Notification No.12/2017-Central Tax (Rate), dated 28.06.2017.

Observations of AAR:

Health care services provided by a clinical establishment, an authorised medical practitioner or para medics are exempted vide Sr.No.74 of Notification No.12/2017-Central Tax (Rate), dated 28.06.2017. In case of inpatient as well as outpatient, medicines are dispensed based on prescriptions. Hence, there is no privilege for the hospitals that are dispensing medicine to outpatients. Therefore pharmacy run by hospital dispensing medicine to outpatient or by-standers or others can be treated as individual supply of medicine and not covered under the ambit of health care services. Hence such supply of medicines and allied goods are taxable.

Ruling:

The supply of medicines and allied items provided by the hospital through the pharmacy to the inpatients is part of composite supply of health care treatment and hence not separately taxable. The supply of medicines and allied items provided by the hospital through the pharmacy to the outpatients is taxable.

In Re: *M/s Medivision Scan and Diagnostic Research Centre (P) Ltd*, (GST AAR Kerala) [2019(24) G.S.T.L. 788(A.A.R-GST)].

Questions before the AAR:

- (i) Whether diagnostic service provider has to take registration under GST?
- (ii) Whether the applicant is exempt from GST considering the exemption provided in the Notification No.12/2017-Central Tax (Rate), dated 28-06-2017?

Findings of AAR:

By virtue of Section 23 of State Goods and Services Tax Act, any person engaged exclusively in the business of supplying goods or services or both, that are not liable to tax or wholly exempt from tax under GST Act, are not liable to take registration. However, such persons are liable to obtain registration if they are receiving any goods or services liable to tax under reverse charge as per notifications issued under Section 9(3) of the State Goods and Services Tax Act.

As per SRO.No.371/2017 *vide* Sr. No. 74 (Notification No. 12/2017-Central Tax (Rate), dated 28.06.2017), services by way of diagnosis come under the category of health care services covered under SAC 9993 in connection with health care services provided by a clinical establishment and are, therefore exempted.

Ruling:

Services provided by diagnostic centre which is a clinical establishment and providing healthcare services. Therefore, such health care service is exempted from GST.

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Appendix 1

Procedure for Cancellation of Registration

Circular No. 69/43/2018-GST, dated 26-10-2018

Subject: Processing of Applications for Cancellation of Registration submitted in FORM GST REG-16 — Reg. 24

The Board is in receipt of representations seeking clarifications on various issues in relation to processing of the applications for cancellation of registration filed by taxpayers in **FORM GST REG-16**. In order to clarify these issues and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by Section 168(1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the “CGST Act”), hereby clarifies the issues as detailed hereunder:

2. Section 29 of the CGST Act, read with Rule 20 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the “CGST Rules”) provides that a taxpayer can apply for cancellation of registration in FORM GST REG-16 in the following circumstances:

- (a) Discontinuance of business or closure of business;
- (b) Transfer of business on account of amalgamation, merger, de-merger, sale, lease or otherwise;
- (c) Change in constitution of business leading to change in PAN; Circular No. 69/43/2018-GST
- (d) Taxable person (including those who have taken voluntary registration) is no longer liable to be registered under GST;
- (e) Death of sole proprietor;
- (f) Any other reason (to be specified in the application).

3. Rule 20 of the CGST Rules provides that the taxpayer applying for cancellation of registration shall submit the application in **FORM GST REG-16** on the common portal within a period of 30 days of the “occurrence of the event warranting the cancellation”. It might be difficult in some cases to exactly identify or pinpoint the day on which such an event occurs. For instance, a business may be transferred/disposed over a period of time in a piece meal fashion. In such cases, the 30-day deadline may be liberally interpreted and the taxpayers application for cancellation of registration may not be rejected because of the possible violation of the deadline.

4. While initiating the application for cancellation of registration in **FORM GST REG16**, the Common portal captures the following information which has to be mandatorily filled in by the applicant:

- (a) Address for future correspondence with mobile number and email address;
- (b) Reason for cancellation;
- (c) Date from which cancellation is sought;
- (d) Details of the value and the input tax/tax payable on the stock of inputs, inputs contained in semi-finished goods, inputs contained in finished goods, stock of capital goods/plant and machinery;
- (e) In case of transfer, merger of business, etc., particulars of registration of the entity in which the existing unit has been merged, amalgamated, or transferred (including the copy of the order of the High Court/transfer deed);
- (f) Details of the last return filed by the taxpayer along with the ARN of such return filed. On successful submission of the cancellation application, the same appears on the dashboard of the jurisdictional officer.

5. Since the cancellation of registration has no effect on the liability of the taxpayer for any acts of commission/omission committed before or after the date of cancellation, the Circular No. 69/43/2018-GST proper officer should accept all such applications within a period of 30 days from the date of filing the application, except in the following circumstances:

- (a) The application in **FORM GST REG-16** is incomplete, i.e. where all the relevant particulars, as detailed in para 4 above, have not been entered;
- (b) In case of transfer, merger or amalgamation of business, the new entity in which the applicant proposes to amalgamate or merge has not got registered with the tax authority before submission of the application for cancellation. In all cases other than those listed at (a) and (b) above, the application for cancellation of registration should be immediately accepted by the proper officer and the order for cancellation should be issued in **FORM GST REG-19** with the effective date of cancellation being the same as the date from which the applicant has sought cancellation in **FORM GST REG-16**. In any case the effective date cannot be a date earlier to the date of application for the same.

6. In situations referred to in (a) or (b) in para 5 above, the proper officer shall inform the applicant in writing about the nature of the discrepancy and give a time period of seven working days to the taxpayer, from the date of receipt of the said letter, to reply. If no reply is received within the specified period of seven working days, the proper officer may reject the application on the system, after giving the applicant an opportunity to be heard, recording reasons for rejection in the dialog box that opens once the “Reject” button is chosen. If reply to the query is received and the same on examination is found satisfactory, the

Proper Officer may approve the application for cancellation and proceed to cancel the registration by issuing an order in **FORM GST REG-19**. If reply to the query is found to be not satisfactory, the Proper Officer may reject the application for cancellation on the system, after giving the applicant an opportunity to be heard. The Proper Officer must also record his reasons for rejection of the application in the dialog box that opens when the “Reject” button is chosen.

7. Section 45 of the CGST Act requires every registered person (other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of Section 10 or Section 51 or Section 52) whose registration has been cancelled, to file a final return in **FORM GSTR-10**, within three months of the effective date of cancellation or the date of order of cancellation, whichever is later. The purpose of the final return is to ensure that the taxpayer discharges any liability that he/she may have incurred under sub-section (5) of the Section 29 of the CGST Act. It may be noted that the last date for furnishing of **FORM GSTR-10** by those taxpayers whose registration has been cancelled on Circular No. 69/43/2018-GST or before 30-9-2018 has been extended till 31-12-2018 *vide* Notification No. 58/2018-C.T., dated the 26th October, 2018.

8. Further, sub-section (5) of Section 29 of the CGST Act, read with Rule 20 of the CGST Rules states that the taxpayer seeking cancellation of registration shall have to pay, by way of debiting either the electronic credit or cash ledger, the input tax contained in the stock of inputs, semi-finished goods, finished goods and capital goods or the output tax payable on such goods, whichever is higher. For the purpose of this calculation, the stock of inputs, semi-finished goods, finished goods and capital goods shall be taken as on the day immediately preceding the date with effect from which the cancellation has been ordered by the proper officer i.e. the date of cancellation of registration. However, it is clarified that this requirement to debit the electronic credit and/or cash ledger by suitable amounts should not be a prerequisite for applying for cancellation of registration. This can also be done at the time of submission of final return in **FORM GSTR-10**. In any case, once the taxpayer submits the application for cancellation of his/her registration from a specified date, he/she will not be able to utilize any remaining balances in his/her electronic credit/cash ledgers from the said date except for discharging liabilities under GST Act upto the date of filing of final return in **FORM GSTR-10**. Therefore, the requirement to reverse the balance in the electronic credit ledger is automatically met. In case it is later determined that the output tax liability of the taxpayer, as determined under sub-section (5) of section 29 of the CGST Act, was greater than the amount of input tax credit available, then the difference shall be paid by him/her in cash. It is reiterated that, as stated in sub-section (3) of Section 29 of the CGST Act, the cancellation of registration does not, in any way, affect the liability of the taxpayer to pay any dues under the GST law, irrespective of whether such dues have been determined before or after the date of cancellation.

9. In case the final return in **FORM GSTR-10** is not filed within the stipulated date, then notice in **FORM GSTR-3A** has to be issued to the taxpayer. If the taxpayer still fails to file the final return within 15 days of the receipt of notice in **FORM GSTR-3A**, then an assessment order in **FORM GST ASMT-13** under Section 62 of the CGST Act read with Rule 100 of the CGST Rules shall have to be issued to determine the liability of the taxpayer under sub-section (5) of Section 29 on the basis of information available with the proper officer. If the taxpayer files the final return within 30 days of the date of service of the order in **FORM GST ASMT-13**, then the said order shall be deemed to have been withdrawn. However, the liability for payment of interest and late fee shall continue. Circular No. 69/43/2018-GST

10. Rule 68 of the CGST Rules requires issuance of notices to registered persons who fail to furnish returns under Section 39 (**FORM GSTR-1**, **FORM GSTR-3B** and **FORM GSTR-4**), Section 44 (Annual Return – **FORM GSTR-9/FORM GSTR-9A/FORM GSTR-9C**), Section 45 (Final Return – **FORM GSTR-10**) or Section 52 (TCS Return – **FORM GSTR-6**). It is clarified that issuance of notice would not be required for registered persons who have not made any taxable supplies during the intervening period (i.e. from the date of registration to the date of application for cancellation of registration) and has furnished an undertaking to this effect.

11. It is pertinent to mention here that Section 29 of the CGST Act has been amended by the CGST (Amendment) Act, 2018 to provide for “Suspension” of registration. The intent of the said amendment is to ensure that a taxpayer is freed from the routine compliances, including filing returns, under GST Act during the pendency of the proceedings related to cancellation. Although the provisions of CGST (Amendment) Act, 2018 have not yet been brought into force, it will be prudent for the field formations not to issue notices for non-filing of return for taxpayers who have already filed an application for cancellation of registration under Section 29 of the CGST Act. However, the requirement of filing a final return, as under Section 45 of the CGST Act, remains unchanged.

12. It may be noted that the information in table in **FORM GST REG-19** shall be taken from the liability ledger and the difference between the amounts in Table 10 and Table 11 of **FORM GST REG-16**.

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Circular No. 95/14/2019-GST, dated 28-3-2019

Subject: Verification of applications for grant of new registration — Reg.

Recently, a large number of registrations have been cancelled by the proper officer under the provisions of sub-section (2) of section 29 of the Central Goods and Services Act, 2017 (hereinafter referred to as “CGST Act”) read with rule 21 of the Central Goods and Services Rules, 2017 (hereinafter referred to as „CGST Rules“) on account of noncompliance of the said statutory provisions. In this regard, instances have come to notice that such persons, who continue to carry on business and therefore are required to have registration under GST, are not

applying for revocation of cancellation of registration as specified in section 30 of the CGST Act read with rule 23 of the CGST Rules. Instead, such persons are applying for fresh registration. Such new applications might have been made as such person may not have furnished requisite returns and not paid tax for the tax periods covered under the old/cancelled registration. Further, such persons would be required to pay all liabilities due from them for the relevant period in case they apply for revocation of cancellation of registration. Hence, to avoid payment of the tax liabilities, such persons may be using the route of applying for fresh registration. It is pertinent to mention that as per the provisions contained in proviso to sub-section (2) of section 25 of the CGST Act, a person may take separate registration on same PAN in the same State.

2. In order to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the CGST Act, hereby issues the following instructions.

3. Sub-section (10) of section 25 of the CGST Act read with rule 9 of the CGST Rules provide for rejection of application for registration if the information or documents submitted by the applicant are found to be deficient. It is possible that the applicant may suppress some material information in relation to earlier registration. Some of the information that may be concealed in the application for registration in FORM GST REG-01 are S. No. 7 “Date of Commencement of Business”, S. No. 8 “Date on which liability to register arises”, S. No. 14 “Reason to obtain registration” etc. Such persons may also not furnish the details of earlier registrations, if any, obtained under GST on the same PAN.

4. It is hereby instructed that the proper officer may exercise due caution while processing the application for registration submitted by the taxpayers, where the tax payer is seeking another registration within the State although he has an existing registration within the said State or his earlier registration has been cancelled. It is clarified that not applying for revocation of cancellation of registration along with the continuance of the conditions specified in clauses (b) and (c) of sub-section (2) of section 29 of the CGST Act shall be deemed to be a “deficiency” within the meaning of sub-rule (2) of rule 9 of the CGST Rules. The proper officer may compare the information pertaining to earlier registrations with the information contained in the present application, the grounds on which the earlier registration(s) were cancelled and the current status of the statutory violations for which the earlier registration(s) were cancelled. The data may be verified on common portal by fetching the details of registration taken on the PAN mentioned in the new application *vis-a-vis* cancellation of registration obtained on same PAN. The information regarding the status of other registrations granted on the same PAN is displayed on the common portal to both the applicant and the proper officer. Further, if required, information submitted by applicant in S. No. 21 of FORM GST REG-01 regarding details of proprietor, all partner/Karta/Managing Directors and whole time Director/Members of

Managing Committee of Associations/Board of Trustees etc. may be analysed *vis-à-vis* any cancelled registration having same details.

5. While considering the application for registration, the proper officer shall ascertain if the earlier registration was cancelled on account of violation of the provisions of clauses (b) and (c) of sub-section (2) of section 29 of the CGST Act and whether the applicant has applied for revocation of cancellation of registration. If proper officer finds that application for revocation of cancellation of registration has not been filed and the conditions specified in clauses (b) and (c) of sub-section (2) of section 29 of the CGST Act and whether the applicant has applied for revocation of cancellation of registration. If proper officer finds that application for revocation of cancellation of registration has not been filed and the conditions specified in clauses (b) and (c) of sub-section (2) of section 29 of the CGST Act are still continuing, then, the same may be considered as a ground for rejection of application for registration in terms of sub-rule (2) read with sub-rule (4) of rule 9 of CGST Rules. Therefore, it is advised that where the applicant fails to furnish sufficient convincing justification or the proper officer is not satisfied with the clarification, information or documents furnished, then, his application for fresh registration may be considered for reject CGST Act are still continuing, then, the same may be considered as a ground for rejection of application for registration in terms of sub-rule (2) read with sub-rule (4) of rule 9 of CGST Rules. Therefore, it is advised that where the applicant fails to furnish sufficient convincing justification or the proper officer is not satisfied with the clarification, information or documents furnished, then, his application for fresh registration may be considered for rejection.

* * *

Circular No. 99/18/2019-GST, dated 23-4-2019

Subject: Clarification regarding filing of application for revocation of cancellation of registration in terms of Removal of Difficulty Order (RoD) number 05/2019-Central Tax dated 23.04.2019 — Reg.

Registration of several persons was cancelled under sub-section (2) of section 29 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “the said Act”) due to non-furnishing of returns in FORM GSTR-3B or FORM GSTR-4. Sub-section (2) of section 29 of the said Act empowers the proper officer to cancel the registration, including from a retrospective date. Thus registration have been cancelled either from the date of order of cancellation of registration or from a retrospective date.

2. Representations have been received that large number of persons whose registration were cancelled could not apply for revocation of the said cancellation of registration within the period of 30 days as provided in sub-section (1) of section 30 of the said Act. Accordingly, a Removal of Difficulty Order (RoD) number 05/2019-Central Tax dated the 23rd April, 2019 has been issued wherein persons whose registrations have been cancelled under sub-section (2) of section 29 of the said Act after they were served notice in the manner provided in section clause (c) and clause (d) of sub-section (1) of section 169 of the said Act and who

could not reply to the said notice and for whom cancellation order has been passed up to 31st March, 2019, have been given one time opportunity to apply for revocation of cancellation of registration on or before the 22nd July, 2019. Further, *vide* notification No. 20/2019-Central Tax, dated the 23rd April, 2019, two provisos have been inserted in sub-rule (1) of rule 23 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the said Rules"). In the light of these changes and in order to ensure uniformity in the implementation of the provisions of the law, the Board, in exercise of its powers conferred by section 168(1) of the said Act, hereby clarifies the issues relating to the procedure for filing of application for revocation of cancellation of registration.

3. First proviso to sub-rule (1) of rule 23 of the said Rules provides that if the registration has been cancelled on account of failure of the registered person to furnish returns, no application for revocation of cancellation of registration shall be filed, unless such returns are furnished and any amount in terms of such returns is paid. Thus, where the registration has been cancelled with effect from the date of order of cancellation of registration, all returns due till the date of such cancellation are required to be furnished before the application for revocation can be filed. Further, in such cases, in terms of the second proviso to sub-rule (1) of rule 23 of the said Rules, all returns required to be furnished in respect of the period from the date of order of cancellation till the date of order of revocation of cancellation of registration have to be furnished within a period of thirty days from the date of the order of revocation.

4. Where the registration has been cancelled with retrospective effect, the common portal does not allow furnishing of returns after the effective date of cancellation. In such cases it was not possible to file the application for revocation of cancellation of registration. Therefore, a third proviso was added to sub-rule (1) of rule 23 of the said Rules enabling filing of application for revocation of cancellation of registration, subject to the condition that all returns relating to the period from the effective date of cancellation of registration till the date of order of revocation of cancellation of registration shall be filed within a period of thirty days from the date of order of such revocation of cancellation of registration.

* * *

Circular No. 20/16/34/2019-GST/802, dated 24-5-2021

Subject: Guidelines regarding cancellation of Registration under Rule 22 (3) of CGST Rules, 2017 — Reg.

Kind attention is invited to Rule 22(3) of CGST Rules, 2017 regarding procedure to be followed for processing of application filed by taxpayers for cancellation of registration. The same is reproduced below:

“(3) Where a person who has submitted an application for cancellation of his registration is no longer liable to be registered or his registration is liable to be cancelled, the proper officer shall issue an order in FORM GST REG-19, within a period of thirty days from the date of application submitted

under rule 20 or , as the case may be, the date of the reply to the show cause issued under sub-rule(1), [or under sub-rule (2A) of rule 21A] cancel the registration, which effect from a date to be determined by him and notify the taxable person, directing him to pay arrears of any tax, interest or penalty including the amount liable to be paid under sub-section (5) of section 29.”

2. It is evident from aforesaid rule that the proper officer is required to issue order in FORM GST REG-19 in respect of the application for cancellation of registration filed by the taxpayer within a period of thirty days from the date of the application submitted by the taxpayer and direct him to pay arrears of any tax, interest or penalty including the amount liable to be paid under sub-section (5) of section 29.

3. In order to provide clarification on various issues in relation to processing of the applications for cancellation of registration filed by taxpayers in FORM GST REG-16 and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board issued Circular No. 69/43/2018-GST dated 26.10.2018. The said circular clarified in detail the procedure to be followed in relation to processing of the applications for cancellation of registration filed by taxpayers. Para 5 of the said Circular is reproduced below:

“5. Since the cancellation of registration has no effect on the liability of the taxpayer for any acts of commission/omission committed before or after the date of cancellation, the proper officer should accept all such applications within a period of 30 days from the date of filing the application, except in the following circumstances:

- (a) The application in FORM GST REG-16 is incomplete, i.e. where all the relevant particulars, as detailed in para 4 above, have not been entered;
- (b) In case of transfer, merger or amalgamation of business, the new entity in which the applicant proposes to amalgamate or merge has not got registered with the tax authority before submission of the application for cancellation.

In all cases other than those listed at (a) and (b) above, the application for cancellation of registration should be immediately accepted by the proper officer and the order for cancellation should be issued in FORM GST REG-19 with the effective date of cancellation being the same as the date from which the applicant has sought cancellation in FORM GST REG-16. In any case the effective date cannot be a date earlier to the date of application for the same.”

4. However, O/o C&AG, during the course of the audit, has observed that in a large number of cases, the applications for cancellation of GST registration were not disposed of by tax officers within 30 days, as prescribed under Rule 22(3) of CGST Rules, 2017. It has also been observed that in some cases, the cancellation applications were found pending even after more than 120 days.

5. Considering that the legal provision stipulates passing of order in respect of the application of cancellation of registration within 30 days of the date of the

application, and also as it has already been clarified *vide* Circular No. 69/43/2018-GST dated 26-10-2018 that cancellation of registration has no effect on the liability of the taxpayer for any Acts of commission/omission committed before or after the date of cancellation, the proper officer should act as per prescribed legal process within the stipulated time in order to avoid any delay.

6. It is requested that all the officers under your jurisdiction may be suitably instructed to scrupulously follow the due process as envisaged in the law in time bound manner and issue the requisite order in respect of all such applications within a period of 30 days from the date of the application.

Appendix 2

Valuation Mechanism & Applicability of GST

Circular No. 57/31/2018-GST [CBEC-20/16/4/2018-GST], dated 4-9-2018

Subject: Scope of Principal-agent relationship in the context of Schedule I of the CGST Act — regarding

In terms of Schedule I of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the “CGST Act”), the supply of goods by an agent on behalf of the principal without consideration has been deemed to be a supply.

In this connection, various representations have been received regarding the scope and ambit of the principal-agent relationship under GST. In order to clarify some of the issues and to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under Section 168(1) of the CGST Act hereby clarifies the issues in the succeeding paras.

2. As per Section 182 of the Indian Contract Act, 1872, an “agent” is a person employed to do any act for another, or to represent another in dealings with third person. The person for whom such act is done, or who is so represented, is called the “principal”. As delineated in the definition, an agent can be appointed for performing any act on behalf of the principal which may or may not have the potential for representation on behalf of the principal. So, the crucial element here is the representative character of the agent which enables him to carry out activities on behalf of the principal.

3. The term “agent” has been defined under sub-section (5) of Section 2 of the CGST Act as follows: “agent” means a person, including a factor, broker, commission agent, arhatia, del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another.

4. The following two key elements emerge from the above definition of agent: Circular No. 57/31/2018-GST

- (a) the term “agent” is defined in terms of the various activities being carried out by the person concerned in the principal-agent relationship; and
- (b) the supply or receipt of goods or services has to be undertaken by the agent on behalf of the principal. From this, it can be deduced that the crucial component for covering a person within the ambit of the term “agent” under the CGST Act is corresponding to the representative character identified in the definition of “agent” under the Indian Contract Act, 1872.

5. Further, the two limbs of any supply under GST are “consideration” and “in the course or furtherance of business”. Where the consideration is not extant in a transaction, such a transaction does not fall within the ambit of supply. But, in certain scenarios, as elucidated in Schedule I of the CGST Act, the key element of consideration is not required to be present for treating certain activities as supply. One such activity which has been detailed in para 3 of Schedule I (hereinafter referred to as “the said entry”) is reproduced hereunder:

3. Supply of goods—

- (a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or
- (b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.

6. Here also, it is worth noticing that all the activities between the principal and the agent and vice versa do not fall within the scope of the said entry. Firstly, the supply of services between the principal and the agent and vice versa is outside the ambit of the said entry, and would therefore require “consideration” to consider it as supply and thus, be liable to GST. Secondly, the element identified in the definition of “agent”, i.e., “supply or receipt of goods on behalf of the principal” has been retained in this entry.

7. It may be noted that the crucial factor is how to determine whether the agent is wearing the representative hat and is supplying or receiving goods on behalf of the principal. Since in the commercial world, there are various factors that might influence this relationship, it would be more prudent that an objective criteria is used to determine whether a particular principal-agent relationship falls within the ambit of the said entry or not. Thus, the key ingredient for determining relationship under GST would be whether the invoice for the further supply of goods on behalf of the principal is being issued by the agent or not. Where the invoice for further supply is being issued by the agent in his name then, any provision of goods from the principal to the agent would fall within the fold of the said entry. However, it may be noted that in cases where the invoice is issued by the agent to the customer in the name of the principal, such agent shall not fall within the ambit of Schedule I of the CGST Act. Similarly, where the goods being procured by the agent on behalf of the principal are invoiced in the name of the agent then further provision of the said goods by the agent to the principal would be covered Circular No. 57/31/2018-GST by the said entry. In other words, the crucial point is whether or not the agent has the authority to pass or receive the title of the goods on behalf of the principal.

8. Looking at the convergence point between the character of the agent under both the CGST Act and the Indian Contract Act, 1872, the following scenarios are discussed:

Scenario 1 - Mr. A appoints Mr. B to procure certain goods from the market. Mr. B identifies various suppliers who can provide the goods as desired by Mr. A, and asks the supplier (Mr. C) to send the goods and issue the invoice directly to Mr. A. In this scenario, Mr. B is only acting as the procurement agent, and has

in no way involved himself in the supply or receipt of the goods. Hence, in accordance with the provisions of this Act, Mr. B is not an agent of Mr. A for supply of goods in terms of Schedule I.

Scenario 2 - M/s. XYZ, a banking company, appoints Mr. B (auctioneer) to auction certain goods. The auctioneer arranges for the auction and identifies the potential bidders. The highest bid is accepted and the goods are sold to the highest bidder by M/s. XYZ. The invoice for the supply of the goods is issued by M/s. XYZ to the successful bidder. In this scenario, the auctioneer is merely providing the auctioneering services with no role played in the supply of the goods. Even in this scenario, Mr. B is not an agent of M/s. XYZ for the supply of goods in terms of Schedule I.

Scenario 3 - Mr. A, an artist, appoints M/s. B (auctioneer) to auction his painting. M/s. B arranges for the auction and identifies the potential bidders. The highest bid is accepted and the painting is sold to the highest bidder. The invoice for the supply of the painting is issued by M/s. B on the behalf of Mr. A but in his own name and the painting is delivered to the successful bidder. In this scenario, M/s. B is not merely providing auctioneering services, but is also supplying the painting on behalf of Mr. A to the bidder, and has the authority to transfer the title of the painting on behalf of Mr. A. This scenario is covered under Schedule I. A similar situation can exist in case of supply of goods as well where the C&F agent or commission agent takes possession of the goods from the principal and issues the invoice in his own name. In such cases, the C&F/commission agent is an agent of the principal for the supply of goods in terms of Schedule I. The disclosure or non-disclosure of the name of the principal is immaterial in such situations.

Scenario 4 - Mr. A sells agricultural produce by utilizing the services of Mr. B who is a commission agent as per the Agricultural Produce Marketing Committee Act (APMC Act) of the State. Mr. B identifies the buyers and sells the agricultural produce on behalf of Mr. A for which he charges a commission from Mr. A. As Circular No. 57/31/2018-GST per the APMC Act, the commission agent is a person who buys or sells the agricultural produce on behalf of his principal, or facilitates buying and selling of agricultural produce on behalf of his principal and receives, by way of remuneration, a commission or percentage upon the amount involved in such transaction. In cases where the invoice is issued by Mr. B to the buyer, the former is an agent covered under Schedule I. However, in cases where the invoice is issued directly by Mr. A to the buyer, the commission agent (Mr. B) doesn't fall under the category of agent covered under Schedule I.

In Scenario 1 and Scenario 2, Mr. B shall not be liable to obtain registration in terms of clause (vii) of Section 24 of the CGST Act. He, however, would be liable for registration if his aggregate turnover of supply of taxable services exceeds the threshold specified in sub-section (1) of Section 22 of the CGST Act. In Scenario 3, M/s. B shall be liable for compulsory registration in terms of the clause (vii) of Section 24 of the CGST Act. In respect of commission agents in

Scenario 4, Notification No. 12/2017-CT (Rate), dated 24-6-2017 has exempted “services by any APMC or board or services provided by the commission agents for sale or purchase of agricultural produce” from GST. Thus, the „services“ provided by the commission agent for sale or purchase of agricultural produce is exempted. Such commission agents (even when they qualify as agent under Schedule I) are not liable to be registered according to sub-clause (a) of sub-section (1) of Section 23 of the CGST Act, if the supply of the agricultural produce, and/or other goods or services supplied by them are not liable to tax or wholly exempt under GST. However, in cases where the supply of agricultural produce is not exempted and liable to tax, such commission agent shall be liable for compulsory registration under sub-section (vii) of Section 24 of the CGST Act.

* * *

Circular No. 92/11/2019-GST, dated 7-3-2019

Sales Promotion Scheme under GST — Clarification

[Clarification on the aspects of taxability, valuation, availability of Input Tax Credit in the hands of the supplier issues raised with respect to tax treatment of sales promotion schemes under GST]

A - Free samples and gifts:

- (i) It is a common practice among certain sections of trade and industry, such as, pharmaceutical companies which often provide drug samples to their stockists, dealers, medical practitioners, etc. without charging any consideration. As per sub clause (a) of sub-section (1) of section 7 of the said Act, the expression “supply” includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business. Therefore, the goods or services or both which are supplied free of cost (without any consideration) shall not be treated as “supply” under GST (except in case of activities mentioned in Schedule I of the said Act). Accordingly, it is clarified that samples which are supplied free of cost, without any consideration, do not qualify as “supply” under GST, except where the activity falls within the ambit of Schedule I of the said Act.
- (ii) Further, clause (h) of sub-section (5) of section 17 of the said Act provides that ITC shall not be available in respect of goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples. Thus, it is clarified that input tax credit shall not be available to the supplier on the inputs, input services and capital goods to the extent they are used in relation to the gifts or free samples distributed without any consideration. However, where the activity of distribution of gifts or free samples falls within the scope of “supply” on account of the provisions contained in Schedule I of the said Act, the supplier would be eligible to avail of the ITC.

B. Buy one get one free offer:

- (i) Sometimes, companies announce offers like ‘Buy One, Get One free’ For example, “buy one soap and get one soap free” or “Get one tooth brush free along with the purchase of tooth paste”. As per sub-clause (a) of sub-section (1) of section 7 of the said Act, the goods or services which are supplied free of cost (without any consideration) shall not be treated as “supply” under GST (except in case of activities mentioned in Schedule I of the said Act). It may appear at first glance that in case of offers like “Buy One, Get One Free”, one item is being “supplied free of cost” without any consideration. In fact, it is not an individual supply of free goods but a case of two or more individual supplies where a single price is being charged for the entire supply. It can at best be treated as supplying two goods for the price of one.
- (ii) Taxability of such supply will be dependent upon as to whether the supply is a composite supply or a mixed supply and the rate of tax shall be determined as per the provisions of section 8 of the said Act.
- (iii) It is also clarified that ITC shall be available to the supplier for the inputs, input services and capital goods used in relation to supply of goods or services or both as part of such offers.

C. Discounts including ‘Buy more, save more’ offers:

- (i) Sometimes, the supplier offers staggered discount to his customers (increase in discount rate with increase in purchase volume). For example-Get 10 % discount for purchases above `5000/-, 20% discount for purchases above `10,000/- and 30% discount for purchases above `20,000/-. Such discounts are shown on the invoice itself.
- (ii) Some suppliers also offer periodic/year ending discounts to their stockiest, etc. For example-Get additional discount of 1% if you purchase 10000 pieces in a year, get additional discount of 2% if you purchase 15000 pieces in a year. Such discounts are established in terms of an agreement entered into at or before the time of supply though not shown on the invoice as the actual quantum of such discounts gets determined after the supply has been effected and generally at the year end. In commercial parlance, such discounts are colloquially referred to as “volume discounts”. Such discounts are passed on by the supplier through credit notes.
- (iii) It is clarified that discounts offered by the suppliers to customers (including staggered discount under “Buy more, save more” scheme and post supply/volume discounts established before or at the time of supply) shall be excluded to determine the value of supply provided they satisfy the parameters laid down in sub-section (3) of section 15 of the said Act, including the reversal of ITC by the recipient of the supply as is attributable to the discount on the basis of document(s) issued by the supplier.

- (iv) It is further clarified that the supplier shall be entitled to avail the ITC for such inputs, input services and capital goods used in relation to the supply of goods or services or both on such discounts.

D. Secondary Discounts

- (i) These are the discounts which are not known at the time of supply or are offered after the supply is already over. For example, M/s A supplies 10000 packets of biscuits to M/s B at '10/- per packet. Afterwards M/s A re-values it at '9/- per packet. Subsequently, M/s A issues credit note to M/s B for '1/- per packet.
- (ii) The provisions of sub-section (1) of section 34 of the said Act provides as under: "Where one or more tax invoices have been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to exceed the taxable value or tax payable in respect of such supply, or where the goods supplied are returned by the recipient, or where goods or services or both supplied are found to be deficient, the registered person, who has supplied such goods or services or both, may issue to the recipient one or more credit notes for supplies made in a financial year containing such particulars as may be prescribed."
- (iii) Representations have been received from the trade and industry that whether credit note(s) under sub-section (1) of section 34 of the said Act can be issued in such cases even if the conditions laid down in clause (b) of sub-section (3) of section 15 of the said Act are not satisfied. It is hereby clarified that financial/commercial credit note(s) can be issued by the supplier even if the conditions mentioned in clause (b) of sub-section (3) of section 15 of the said Act are not satisfied. In other words, credit note(s) can be issued as a commercial transaction between the two contracting parties.
- (iv) It is further clarified that such secondary discounts shall not be excluded while determining the value of supply as such discounts are not known at the time of supply and the conditions laid down in clause (b) of sub-section (3) of section 15 of the said Act are not satisfied.
- (v) In other words, value of supply shall not include any discount by way of issuance of credit note(s) as explained above in para 2(D)(iii) or by any other means, except in cases where the provisions contained in clause (b) of sub-section (3) of section 15 of the said Act are satisfied.
- (vi) There is no impact on availability or otherwise of ITC in the hands of supplier in this case.

* * *

Circular No. 105/24/2019-GST, dated 28-6-2019

Subject: Clarification on various doubts related to treatment of secondary or post-sale discounts under GST — Regarding

Circular No. 92/11/2019-GST, dated 7th March, 2019 [2019 (22) G.S.T.L. C3] was issued providing clarification on various doubts related to treatment of sales promotion schemes under GST. Post issuance of the said Circular various representations have been received from the trade and industry seeking clarifications in respect of tax treatment in cases of secondary discounts or post sales discount. The matter has been examined in order to ensure uniformity in the implementation of the law across the field formations, the Board, in exercise of its powers conferred under section 168(1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “the CGST Act”) clarifies the issues in succeeding paragraphs.

2. For the purpose of value of supply, post sales discounts are governed by the provisions of clause (b) of sub-section (3) of section 15 of the CGST Act. It is crucial to examine the true nature of discount given by the manufacturer or wholesaler, etc. (hereinafter referred to as “the supplier of goods”) to the dealer. It would be important to examine whether the additional discount is given by the supplier of goods in lieu of consideration for any additional activity/promotional campaign to be undertaken by the dealer.

3. It is clarified that if the post-sale discount is given by the supplier of goods to the dealer without any further obligation or action required at the dealer’s end, then the post sales discount given by the said supplier will be related to the original supply of goods and it would not be included in the value of supply, in the hands of supplier of goods, subject to the fulfilment of provisions of sub-section (3) of section 15 of the CGST Act. However, if the additional discount given by the supplier of goods to the dealer is the post-sale incentive requiring the dealer to do some act like undertaking special sales drive, advertisement campaign, exhibition etc., then such transaction would be a separate transaction and the additional discount will be the consideration for undertaking such activity and therefore would be in relation to supply of service by dealer to the supplier of goods. The dealer, being supplier of services, would be required to charge applicable GST on the value of such additional discount and the supplier of goods, being recipient of services, will be eligible to claim input tax credit (hereinafter referred to as the “ITC”) of the GST so charged by the dealer.

4. It is further clarified that if the additional discount is given by the supplier of goods to the dealer to offer a special reduced price by the dealer to the customer to augment the sales volume, then such additional discount would represent the consideration flowing from the supplier of goods to the dealer for the supply made by dealer to the customer. This additional discount as consideration, payable by any person (supplier of goods in this case) would be liable to be added to the consideration payable by the customer, for the purpose of arriving value of supply, in the hands of the dealer, under section 15 of the CGST Act. The customer, if registered, would be eligible to claim ITC of the tax

charged by the dealer only to the extent of the tax paid by the said customer to the dealer in view of second proviso to sub-section (2) of section 16 of the CGST Act.

5. There may be cases where post-sales discount granted by the supplier of goods is not permitted to be excluded from the value of supply in the hands of the said supplier not being in accordance with the provisions contained in sub-section (3) of section 15 of CGST Act. It has already been clarified *vide Circular No. 92/11/2019-GST*, dated 7th March, 2019 that the supplier of goods can issue financial/commercial credit notes in such cases but he will not be eligible to reduce his original tax liability. Doubts have been raised as to whether the dealer will be eligible to take ITC of the original amount of tax paid by the supplier of goods or only to the extent of tax payable on value net of amount for which such financial/commercial credit notes have been received by him. It is clarified that the dealer will not be required to reverse ITC attributable to the tax already paid on such post-sale discount received by him through issuance of financial/commercial credit notes by the supplier of goods in view of the provisions contained in second proviso to sub-rule (1) of rule 37 of the CGST Rules read with second proviso to sub-section (2) of section 16 of the CGST Act as long as the dealer pays the value of the supply as reduced after adjusting the amount of post-sale discount in terms of financial/commercial credit notes received by him from the supplier of goods plus the amount of original tax charged by the supplier.

CBIC, Circular No.206/18/2023-GST, dated 31.10.2023

Clarifications regarding applicability of GST on certain services – reg.

Based on the recommendations of the GST Council in its 52nd meeting held on 7th October, 2023, at New Delhi, clarification, with reference to GST levy, related to the following issues are being issued through this circular—

- (i) Whether ‘same line of business’ in case of passenger transport service and renting of motor vehicles includes leasing of motor vehicles without operators.
- (ii) Whether GST is applicable on reimbursement of electricity charges received by real estate companies, malls, airport operators etc. from their lessees/occupants.
- (iii) Whether job work for processing of “Barley” into “Malted Barley” attracts GST@5% as applicable to “job work in relation to food and food products” or 18% as applicable on “job work in relation to manufacture of alcoholic liquor for human consumption”.
- (iv) Whether District Mineral Foundations Trusts (DMFTs) set up by the State Governments are Governmental Authorities and thus eligible for the same exemptions from GST as available to any other Governmental Authority.

(v) Whether supply of pure services and composite supplies by way of horticulture/horticulture works (where the value of goods constitutes not more than 25 per cent of the total value of supply) made to CPWD are eligible for exemption from GST under Sr. No. 3 and 3A of Notification no 12/2017-CTR, dated 28.06.2017.

2. Whether ‘same line of business’ in case of passenger transport service and renting of motor vehicles includes leasing of motor vehicles without operators.

2.1 Services of transport of passengers by any motor vehicle (SAC 9964) and renting of motor vehicle designed to carry passengers with operator(SAC 9966), where the cost of fuel is included in the consideration charged from the service recipient attract GST at the rate of 5% with input tax credit of services in the same line of business.

2.2 Same line of business as stated in the notification No. 11/2017-Central Tax (Rate) means “service procured from another service provider of transporting passengers in a motor vehicle or renting of a motor vehicle”.

2.3 It is hereby clarified that input services in the same line of business include transport of passengers (SAC 9964) or renting of motor vehicle with operator (SAC 9966) and not leasing of motor vehicles without operator (SAC 9973) which attracts GST and/or compensation cess at the same rate as supply of motor vehicles by way of sale.

3. Whether GST is applicable on reimbursement of electricity charges received by real estate companies, malls, airport operators etc. from their lessees/occupants.

3.1 Doubts were raised on the applicability of GST on supply of electricity by the real estate companies, malls, airport operators etc., to their lessees or occupants.

3.2 It is clarified that whenever electricity is being supplied bundled with renting of immovable property and/or maintenance of premises, as the case may be, it forms a part of composite supply and shall be taxed accordingly. The principal supply is renting of immovable property and/or maintenance of premise, as the case may be, and the supply of electricity is an ancillary supply as the case may be. Even if electricity is billed separately, the supplies will Constitute a composite supply and therefore, the rate of the principal supply i.e., GST rate on renting of immovable property and/or maintenance of premise, as the case may be, would be applicable.

3.3 However, where the electricity is supplied by the Real Estate Owners, Resident Welfare Associations (RWAs), Real Estate Developers etc., as a pure agent, it will not form part of value of their supply. Further, where they charge for electricity on actual basis that is, they charge the same amount for electricity from their lessees or occupants as charged by the State Electricity Boards or DISCOMs from them, they will be deemed to be acting as pure agent for this supply.

4. Whether job work for processing of “Barley” into “Malted Barley” attracts GST@5% as applicable to "job work in relation to food and food products" or

18% as applicable on "job work in relation to manufacture of alcoholic liquor for human consumption".

4.1 References have been received to clarify whether services by way of job work for conversion of barley into malt attracts GST at 5% prescribed for "job work in relation to all food and food products falling under Chapter 1 to 22 of the customs tariff" or at the rate of 18% prescribed for "services by way of job work in relation to manufacture of alcoholic liquor for human consumption".

4.2 Malt is a food product. It can be directly consumed as part of food preparations or can be used as an ingredient in food products and also used for manufacture of beer and alcoholic liquor for human consumption. However, irrespective of end-use, conversion of barley into malt amounts to job work in relation to food products.

4.3 It is hereby clarified that job work services in relation to manufacture of malt are covered by the entry at Sl. No. 26(i)(f) which covers "job work in relation to all food and food products falling under chapters 1 to 22 of the customs tariff" irrespective of the end use of that malt and attracts 5% GST.

5. Whether District Mineral Foundations Trusts (DMFTs) set up by the State Governments are Governmental Authorities and thus eligible for the same exemptions from GST as available to any other Governmental Authority.

5.1 DMFTs work for the interest and benefit of persons and areas affected by mining related operations by regulating receipt and expenditure from the respective Mineral Development Funds created in the concerned district. They provide services related to drinking water supply, environment protection, health care facilities, education, welfare of women and children, supply of medical equipment etc.

5.2 These activities are similar to activities that are enlisted in Eleventh Schedule and Twelfth Schedule of the Constitution. The ultimate users of the various schemes under DMF are individuals, families, women and children, farmers/producer groups, SHGs of the mining affected areas etc. The services/supplies out of DMF fund are provided free of charge and no consideration is realized from the beneficiaries by DMF against such services.

5.3 Accordingly, it is clarified that DMFT set up by the State Governments are Governmental Authorities and thus eligible for the same exemptions from GST as available to any other Governmental Authority.

6. Whether supply of pure services and composite supplies by way of horticulture/horticulture works (where the value of goods constitutes not more than 25 per cent of the total value of supply) made to CPWD are eligible for exemption from GST under Sr. No. 3 and 3A of Notification no 12/2017-CTR dated 28.06.2017.

6.1 Public parks in government residential colonies, government offices and other public areas are developed and maintained by CPWD.

6.2 Maintenance of community assets, urban forestry, protection of the environment and promotion of ecological aspects are functions entrusted to

Panchayats and Municipalities under Article 243G and 243W read with Sr. No. 29 of 11th Schedule and Sr. No. 8 of 12th Schedule of the constitution.

6.3 Sr. No. 3 and 3A of notification No. 12/2017-CTR exempt pure services and composite supply of goods and services in which value of goods does not constitute more than 25%, that are provided to the Central Government, State Government or Union territory or local authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.

6.4 Accordingly, it is clarified that supply of pure services and composite supplies by way of horticulture/horticulture works (where the value of goods constitutes not more than 25 per cent of the total value of supply) made to CPWD are eligible for exemption from GST under Sr. No. 3 and 3A of Notification no 12/2017-CTR, dated 28.06.2017.

CBIC Circular No. 204/16/2023-GST, dated 27.10.2023

Subject: Clarification on issues pertaining to taxability of personal guarantee and corporate guarantee in GST-reg.

Representations have been received from the trade and field formations seeking clarification on certain issues with respect to taxability of activity of providing personal bank guarantee by Directors to banks for securing credit facilities for the company. Similarly, clarifications are being sought with respect to taxability and valuation of the activity of providing corporate guarantee by a related person to banks/financial institutions for another related person, as well as by a holding company in order to secure credit facilities for its subsidiary company.

2. In order to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”), hereby clarifies the issues as under.

| Sr. No | Issues | Clarification |
|--------|--|---|
| 1 | Whether the activity of providing personal guarantee by the Director of a company to the bank/ financial institutions for sanctioning of credit facilities to the said company without any consideration will be treated as a supply of service or not and whether the same will attract GST or no | As per Explanation (a) to section 15 of CGST Act, the director and the company are to be treated as related persons. As per clause (c) of subsection (1) of section 7 of the CGST Act, 2017, read with S. No. 2 of Schedule I of CGST Act, supply of goods or services or both between related persons, when made in the course or furtherance of business, shall be treated as supply even if made without consideration. Accordingly, the activity of providing |

| Sr. No | Issues | Clarification |
|--------|--------|---|
| | | <p>personal guarantee by the Director to the banks/financial institutions for securing credit facilities for their companies is to be treated as a supply of service, even when made without consideration.</p> <p>Rule 28 of Central Goods and Services Tax Rules, 2017 (hereinafter referred to as “CGST Rules”) prescribes the method for determining the value of the supply of goods or services or both between related parties, other than where the supply is made through an agent. In terms of Rule 28 of CGST Rules, the taxable value of such supply of service shall be the open market value of such supply.</p> <p>RBI has provided guidelines for obtaining personal guarantee of promoters, directors and other managerial personnel of the borrowing concerns vide Para 2.2.9 of its Circular No. RBI/2021-22/121 dated 9th November, 2021, which is reproduced below:</p> <p><i>2.2.9 Guidelines relating to obtaining of personal guarantees of promoters, directors, other managerial personnel, and shareholders of borrowing concerns</i></p> <p>Banks should take personal guarantees of promoters, directors, other managerial personnel or major shareholders for the credit facilities granted to corporates, public or private, only when absolutely warranted after a careful examination of the circumstances of the case and not as a matter of course. In order to identify the circumstances under which the guarantee may or may not be considered necessary, banks</p> |

| <i>Sr. No</i> | <i>Issues</i> | <i>Clarification</i> |
|---------------|---------------|---|
| | | <p>should be guided by the following broad considerations:</p> <p>.....</p> <p>C. Worth of the guarantors, payment of guarantee commission, etc.</p> <p>Where personal guarantees of directors are warranted, they should bear reasonable proportion to the estimated worth of the person. The system of obtaining guarantees should not be used by the directors and other managerial personnel as a source of income from the company. Banks should obtain an undertaking from the borrowing company as well as the guarantors that no consideration whether by way of commission, brokerage fees or any other form, would be paid by the former or received by the latter, directly or indirectly. This requirement should be incorporated in the bank's terms and conditions for sanctioning of credit limits. During the periodic inspections, the bank's inspectors should verify that this stipulation has been complied with. There may, however, be exceptional cases where payment of remuneration may be permitted e.g. where assisted concerns are not doing well and the existing guarantors are no longer connected with the management but continuance of their guarantees is considered essential because the new management's guarantee is either not available or is found inadequate"</p> <p>Accordingly, as per mandate provided by RBI in terms of Para 2.2.9 (C) of RBI's Circular No. RBI/2021-22/121 dated 9th November, 2021, no consideration by way of commission, brokerage fees or any</p> |

| <i>Sr. No</i> | <i>Issues</i> | <i>Clarification</i> |
|---------------|--|--|
| | | <p>other form, can be paid to the director by the company, directly or indirectly, in lieu of providing personal guarantee to the bank for borrowing credit limits. As such, when no consideration can be paid for the said transaction by the company to the director in any form, directly or indirectly, as per RBI mandate, there is no question of such supply/ transaction having any open market value. Accordingly, the open market value of the said transaction/ supply may be treated as zero and therefore, taxable value of such supply may be treated as zero. In such a scenario, no tax is payable on such supply of service by the director to the company.</p> <p>There may, however, be cases where the director, who had provided the guarantee, is no longer connected with the management but continuance of his guarantee is considered essential because the new management's guarantee is either not available or is found inadequate, or there may be other exceptional cases where the promoters, existing directors, other managerial personnel, and shareholders of borrowing concerns are paid remuneration/ consideration in any manner, directly or indirectly. In all these cases, the taxable value of such supply of service shall be the remuneration/ consideration provided to such a person/guarantor by the company, directly or indirectly.</p> |
| 2 | Whether the activity of providing corporate guarantee by a person on behalf of another related person, or by the holding | Where the corporate guarantee is provided by a company to the bank/financial institutions for providing credit facilities to the other |

| <i>Sr. No</i> | <i>Issues</i> | <i>Clarification</i> |
|---------------|--|---|
| | <p>company for sanction of credit facilities to its subsidiary company, to the bank/financial institutions, even when made without any consideration will be treated as a taxable supply of service or not, and if taxable, what would be the valuation of such supply of services</p> | <p>company, where both the companies are related, the activity is to be treated as a supply of service between related parties as per provisions of Schedule I of CGST Act, even when made without any consideration.</p> <p>Similarly, where the corporate guarantee is provided by a holding company, for its subsidiary company, those two entities also fall under the category of 'related persons'. Hence the activity of providing corporate guarantee by a holding company to the bank/financial institutions for securing credit facilities for its subsidiary company, even when made without any consideration, is also to be treated as a supply of service by holding company to the subsidiary company, being a related person, as per provisions of Schedule I of CGST Act. In respect of such supply of services by a person to another related person or by a holding company to a subsidiary company, in form of providing corporate guarantee on their behalf to a bank/financial institution, the taxable value will be determined as per rule 28 of CGST Rules.</p> <p>Considering different practices being followed by the field formations and taxpayers in determining such taxable value, in order to provide uniformity in practices and ease of implementation, sub-rule (2) has been inserted in rule 28 of CGST Rules vide Notification No. 52/2023 dated 26.10.2023, for determining the taxable value of such supply of services between related persons in respect of providing corporate guarantee. Accordingly, consequent</p> |

| <i>Sr. No</i> | <i>Issues</i> | <i>Clarification</i> |
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| | | <p>to insertion of the said sub-rule in rule 28 of CGST Rules, in all such cases of supply of services by a related person to another person or by a holding company to a subsidiary company, in the form of providing corporate guarantee on their behalf to a bank/financial institution, the taxable value of such supply of services, will henceforth be determined as per the provisions of the sub-rule (2) of Rule 28 of CGST Rules, irrespective of whether full ITC is available to the recipient of services or not.</p> <p>It is clarified that the sub-rule (2) of Rule 28 shall not apply in respect of the activity of providing personal guarantee by the Director to the banks/financial institutions for securing credit facilities for their companies and the same shall be valued in the manner provided in S. No. (1) above.</p> |

Appendix 3

Input Tax Credit

Circular No. 33/07/2018-GST [F. No. 267/67/2017-CX.8], dated 23-2-2018

Subject: Directions under section 168 of the CGST Act regarding non-transition of CENVAT credit under Section 140 of CGST Act or non-utilization thereof in certain cases — Reg.

In exercise of the powers conferred under Section 168 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “Act”), for the purposes of uniformity in implementation of the Act, the Central Board of Excise and Customs hereby directs the following.

2. Non-utilization of Disputed Credit carried forward

2.1 Where in relation to a certain CENVAT credit pertaining to which a show cause notice was issued under Rule 14 of the CENVAT Credit Rules, 2004, which has been adjudicated and where in the last adjudication order or the last order-in-appeal, as it existed on 1st July, 2017, it was held that such CENVAT credit is not admissible, then such CENVAT credit (herein and after referred to as “disputed credit”), credited to the electronic credit ledger in terms of sub-section (1), (2), (3), (4), (5) (6) or (8) of Section 140 of the Act, shall not be utilized by a registered taxable person to discharge his tax liability under this Act or under the IGST Act, 2017, till the order-in-original or the last order-in-appeal, as the case may be, holding that disputed credit as inadmissible is in existence.

2.2 During the period, when the last order-in-original or the last order-in-appeal, as the case may be, holding that disputed credit as inadmissible is in operation, if the said disputed credit is utilised, it shall be recovered from the tax payer, with interest and penalty as per the provisions of the Act.

3. Non-transition of Blocked Credit

3.1 In terms of clause (i) of sub-section (1) of Section 140 of the Act, a registered person shall not take in his electronic credit ledger, amount of CENVAT credit as is carried forward in the return relating to the period ending with the day immediately preceding the appointed day which is not eligible under the Act in terms of sub-section (5) of Section 17 (hereinafter referred to as “blocked credit”), such as, telecommunication towers and pipelines laid outside the factory premises.

3.2 If the said blocked credit is carried forward and credited to the electronic credit ledger in contravention of Section 140 of the Act, it shall not be utilized by a registered taxable person to discharge his tax liability under this Act or under the IGST Act, 2017, and shall be recovered from the tax payer with interest and penalty as per the provisions of the Act.

4. In all cases where the disputed credit as defined in terms of para 2.1 or blocked credit under para 3.1 is higher than ₹10 lakhs, the taxpayers shall submit an undertaking to the jurisdictional officer of the Central Government that such credit shall not be utilized or has not been availed as transitional credit, as the case may be. In other cases of transitional credit of an amount lesser than ₹10 lakhs, the directions as above shall apply but the need to submit the undertaking shall not apply.

* * *

Circular No. 35/9/2018-GST, dated 5-3-2018

Subject: Joint Venture — taxable services provided by the members of the Joint Venture (JV) to the JV and vice versa and inter se between the members of the JV — Reg

I am directed to say that in the Service Tax regime, CBEC *vide* Circular No. 179/5/2014-ST issued from F. No. 179/5/2014-ST, dated 24 September, 2014 had clarified that if cash calls are merely transaction in money, then they are excluded from the definition of service provided in Section 65B(44) of the Finance Act, 1994. Whether a cash call is merely a transaction in money and hence not in the nature of consideration for taxable service, would depend on the terms of the Joint Venture Agreement, which may vary from case to case. The Circular clarified that cash calls, sometimes, could be in the nature of advance payments made by members towards taxable services received from joint venture(JV); and that payments made out of cash calls pooled by a JV towards taxable services received from a member or a third party is in the nature of consideration and hence attracts Service Tax. The Circular further stated that JV being an unincorporated temporary association constituted for the limited purpose of carrying out a specified project within a time frame, a comprehensive examination of the various JV agreements (at times, there could be number of inter se agreements between members of the JV) holds the key to understanding of the taxation of transactions involving taxable services between the JV and its members or inter-se between the members of a JV. Therefore, officers in the field formations were advised to carefully examine the leviability of service tax with reference to the specific terms/clauses of each JV agreement.

2. In the Service Tax Law, service was defined as an activity carried out by a person for another for consideration [Section 65B (44) of the Finance Act 1994]. Explanation 3 to the said definition stated than an unincorporated association or a body of persons as the case may be, and a member thereof shall be treated as distinct persons.

3. GST is levied on intra-State and inter-State supply of goods and services. According to section 7 of CGST Act, 2017, the expression “supply” includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business, and includes activities specified in Schedule II to the CGST Act, 2017. The definition of “business” in section 2(17) of CGST Act states that “business” includes

provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members. The term person is defined in section 2(84) of the CGST Act, 2017 to include an association of persons or a body of individuals, whether incorporated or not, in India or outside India. Further, Schedule II of CGST Act, 2017 enumerates activities which are to be treated as supply of goods or as supply of services. It states in para 7 that supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration shall be treated as supply of goods. A conjoint reading of the above provisions of the law implies that supply of services by an unincorporated association or body of persons (AOP) to a member thereof for cash, deferred payment or other valuable consideration shall be treated as supply of services. The above entry in Schedule II is analogous to and draws strength from the provision in Article 366(29A)(e) of the Constitution according to which a tax on the sale or purchase of goods includes a tax on the supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.

4. Therefore, the law with regard to levy of GST on service supplied by member of an unincorporated joint venture (JV) to the JV or to other members of the JV, or by JV to the members, essentially remains the same as it was under service tax law. Thus, it is clarified that the clarification given *vide* Board Circular No. 179/5/2014-ST, dated 24.09.2014 ibid in the context of service tax is applicable for the purpose of levy of GST also. It is reiterated that the question whether cash calls are taxable or not will entirely depend on the facts and circumstances of each case. ‘Cash calls’ are raised by an operating member of the joint venture on other members in proportion to their participating interests in the joint venture (unincorporated) to meet the expenditure on the operations to be carried out as per the approved work programme and budget. Taxability of cash calls can be further explained by the following illustrations:

Illustration A: There are 4 members in the JV including the operating member and each one contributes ₹100 as part of their share. A total amount of ₹400 is collected. The operating member purchases machinery for ₹400 for the JV to be used in oil production.

Illustration B: There are 4 members in the JV including the operating member and each one contributes ₹100 as part of their share. A total amount of ₹400 is collected. The operating member thereafter uses its own machine and performs exploration and production activities on behalf of the JV.

4.1 Illustration A will not be the subject matter of ‘ST/GST’ for the reason that the operating member is not carrying out an activity for another for consideration. In Illustration A, the money paid for purchase of machinery is merely in the nature of capital contribution and is therefore a transaction in money.

4.2 On the other hand, in Illustration B, the operating member uses its own machinery and is therefore providing ‘service’ within the scope of supply of

CGST Act, 2017. This is because in this scenario, the operating member is recovering the cost appropriated towards machinery and services from the other JV members in their participating interest ratio.

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Setting up of an IT Grievance Redressal Mechanism for GST Portal

Circular No. 39/13/2018-GST [F. No. 267/7/2018-CX.8], dated 3-4-2018

Subject: Setting up of an IT Grievance Redressal Mechanism to address the grievances of taxpayers due to technical glitches on GST Portal — Regarding

It has been decided to put in place an IT-Grievance Redressal Mechanism to address the difficulties faced by a section of taxpayers owing to technical glitches on the GST portal and the relief that needs to be given to them. The relief could be in the nature of allowing filing of any Form or Return prescribed in law or amending any Form or Return already filed. The details of the said grievance redressal mechanism are provided below:

2. **Introduction** Where an IT related glitch has been identified as the reason for failure of a class of taxpayer in filing of a return or a form within the time limit prescribed in the law and there are collateral evidences available to establish that the taxpayer has made *bona fide* attempt to comply with the process of filing of form or return, GST Council has delegated powers to the IT Grievance Redressal Committee to approve and recommend to the GSTN the steps to be taken to redress the grievance and the procedure to be followed for implementation of the decision.

3. **Scope** Problems which are proposed to be addressed through this mechanism would essentially be those which relate to Common Portal (GST Portal) and affect a large section of taxpayers. Where the problem relates to individual taxpayer, due to localised issues such as non-availability of internet connectivity or failure of power supply, this mechanism shall not be available.

4. **IT-Grievance Redressal Committee** Any issue which needs to be addressed through this mechanism shall be identified by GSTN and the method of resolution approved by the GST Implementation Committee (GIC) which shall act as the IT Grievance Redressal Committee. In GIC meetings convened to address IT issues or IT glitches, the CEO, GSTN and the DG (Systems), CBEC shall participate in these meetings as special invitees.

5. Nodal officers and identification of issues

5.1 GSTN, Central and State government would appoint nodal officers in requisite number to address the problem a taxpayer faces due to glitches, if any, in the Common Portal. This would be publicized adequately.

5.2 Taxpayers shall make an application to the field officers or the nodal officers where there was a demonstrable glitch on the Common Portal in relation to an identified issue, due to which the due process as envisaged in law could not be completed on the Common Portal.

5.3 Such an application shall enclose evidences as may be needed for an identified issue to establish *bona fide* attempt on the part of the taxpayer to comply with the due process of law.

5.4 These applications shall be collated by the nodal officer and forwarded to GSTN who would on receipt of application examine the same. GSTN shall after verifying its electronic records and the applications received, identify the issue involved where a large section of tax payers are affected. GSTN shall forward the same to the IT Grievance Redressal Committee with suggested solutions for resolution of the problem.

6. Suggested solutions

6.1 GST Council Secretariat shall obtain inputs of the Law Committee, where necessary, on the proposal of the GSTN and call meeting of GIC to examine the proposal and take decision thereon.

6.2 The committee shall examine and approve the suggested solution with such modifications as may be necessary.

6.3 IT-Grievance Redressal Committee may give directions as necessary to GSTN and field formations of the tax administrations for implementation of the decision.

7. Legal issues

7.1 Where an IT related glitch has been identified as the reason for failure of a taxpayer in filing of a return or form prescribed in the law, the consequential fine and penalty would also be required to be waived. GST Council has delegated the power to the IT Grievance Redressal Committee to recommend waiver of fine or penalty, in case of an emergency, to the Government in terms of Section 128 of the CGST Act, 2017 under such mitigating circumstances as are identified by the committee. All such notifications waiving fine or penalty shall be placed before GST Council.

7.2 Where adequate time is available, the issue of waiver of fee and penalty shall be placed before the GST Council with recommendation of the IT-Grievance Redressal Committee.

8. Resolution of stuck TRAN-1s and filing of GSTR-3B.

8.1 A large number of taxpayers could not complete the process of **TRAN-1** filing either at the stage of original or revised filing as they could not digitally authenticate the **TRAN-1s** due to IT related glitches. As a result, a large number of such **TRAN-1s** are stuck in the system. GSTN shall identify such taxpayers who could not file **TRAN-1** on the basis of electronic audit trail. It has been decided that all such taxpayers, who tried but were not able to complete **TRAN-1** procedure (original or revised) of filing them on or before 27-12-2017 due to IT-glitch, shall be provided the facility to complete TRAN-1 filing. It is clarified that the last date for filing of **TRAN-1** is not being extended in general and only these identified taxpayers shall be allowed to complete the process of filing **TRAN-1**.

8.2 The taxpayer shall not be allowed to amend the amount of credit in **TRAN-1** during this process vis-à-vis the amount of credit which was recorded by the taxpayer in the **TRAN-1**, which could not be filed. If needed, GSTN may request field formations of Centre and State to collect additional document/ data etc. or verify the same to identify taxpayers who should be allowed this procedure.

8.3 GSTN shall communicate directly with the taxpayers in this regard and submit a final report to GIC about the number of **TRAN-1s** filed and submitted through this process.

8.4 The taxpayers shall complete the process of filing TRAN 1 stuck due to IT glitches, as discussed above, by 30th April 2018 and the process of completing filing of GSTR 3B which could not be filed for such **TRAN 1** shall be completed by 31st May 2018.

9. The decisions of the Hon'ble High Courts of Allahabad, Bombay etc., where no case specific decision has been taken, may be implemented in-line with the procedure prescribed above, subject to fulfillment of the conditions prescribed therein. Where these conditions are not satisfied, Hon'ble Courts may be suitably informed and if needed review or appeal may be filed.

10. Trade may be suitably informed and difficulty if any in implementation of the circular may be brought to the notice of the Board.

* * *

Recovery of wrongly availment of CENVAT Credit — Inadmissible of Transitional Credit

Circular No. 42/16/2018-GST, dated 13-4-2018

Subject: Clarification regarding procedure for recovery of arrears under the existing law and reversal of inadmissible input tax credit — Regarding.

Kind attention is invited to the provisions of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the CGST Act) relating to the recovery of arrears of Central Excise Duty/Service Tax and CENVAT credit thereof, CENVAT credit carried forward erroneously and related interest, penalty or late fee payable arising as a result of the proceedings of assessment, adjudication, appeal etc. initiated before, on or after the appointed date under the provisions of the existing law. In this regard, representations have been received seeking clarification on the procedure for recovery of such arrears in the GST regime.

The issues have been examined and to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under Section 168(1) of the Central Goods and Services Tax Act, 2017, (hereinafter referred to as the "CGST Act") hereby specifies the procedure to be followed for recovery of arrears arising out of proceedings under the existing law.

Legal provisions relating to the recovery of arrears of central excise duty and service tax and CENVAT credit thereof arising out of proceedings under the existing law (Central Excise Act, 1944 and Chapter V of the Finance Act, 1994)

- (i) Recovery of arrears of wrongly availed CENVAT Credit: In case where any proceeding of appeal, review or reference relating to a claim for CENVAT credit had been initiated, whether before, on or after the appointed day, under the existing law, any amount of such credit becomes recoverable, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under the CGST Act [*Section 142(6)(b) of the CGST Act refers*].
- (ii) Recovery of CENVAT Credit carried forward wrongly: CENVAT credit of central excise duty/service tax availed under the existing law may be carried forward in terms of transitional provisions as per Section 140 of the CGST Act subject to the conditions prescribed therein. Any credit which is not admissible in terms of Section 140 of the CGST Act shall not be allowed to be transitioned or carried forward and the same shall be recovered as an arrear of tax under Section 79 of the CGST Act.
- (iii) Recovery of arrears of central excise duty and service tax:
 - (a) Where in pursuance of an assessment or adjudication proceedings instituted, whether before, on or after the appointed day, under the existing law, any amount of tax, interest, fine or penalty becomes recoverable, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under the CGST Act [*Section 142(8)(a) of the CGST Act refers*].
 - (b) If due to any proceedings of appeal, review or reference relating to output duty or tax liability initiated, whether before, on or after the appointed day, under the existing law, any amount of output duty or tax becomes recoverable, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under the CGST Act. [*Section 142(7)(a) of the CGST Act refers*].
- (iv) Recovery of arrears due to revision of return under the existing law: Where any return, furnished under the existing law, is revised after the appointed day and if, pursuant to such revision, any amount is found to be recoverable or any amount of CENVAT credit is found to be inadmissible, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under the CGST Act [*Section 142(9)(a) of the CGST Act refers*].

4. In view of the above legal provisions, recovery of central excise duty/service tax and CENVAT credit thereof arising out of the proceedings under the existing law, unless recovered under the existing law, and that of inadmissible transitional credit, is required to be made as an arrear of tax under the CGST Act. The following procedure is hereby prescribed for the recovery of arrears:

4.1 Recovery of central excise duty, service tax or wrongly availed CENVAT credit thereof under the existing law and inadmissible transitional credit:

- (a) The CENVAT credit of central excise duty or service tax wrongly carried forward as transitional credit shall be recovered as central tax liability to be paid through the utilization of amounts available in the

electronic credit ledger or electronic cash ledger of the registered person, and the same shall be recorded in Part II of the Electronic Liability Register (*FORM GST PMT-01*).

- (b) The arrears of central excise duty, service tax or wrongly availed CENVAT credit thereof under the existing law arising out of any of the situations discussed in para 3 above, shall, unless recovered under the existing law, be recovered as central tax liability to be paid through the utilization of amounts available in the electronic credit ledger or electronic cash ledger of the registered person, and the same shall be recorded in Part II of the Electronic Liability Register (*FORM GST PMT-01*).

4.2 Recovery of interest, penalty and late fee payable:

- (a) The arrears of interest, penalty and late fee in relation to CENVAT credit wrongly carried forward, arising out of any of the situations discussed in para 3 above, shall be recovered as interest, penalty and late fee of central tax to be paid through the utilization of the amount available in electronic cash ledger of the registered person and the same shall be recorded in Part II of the Electronic Liability Register (*FORM GST PMT-01*).
- (b) The arrears of interest, penalty and late fee in relation to arrears of central excise duty, service tax or wrongly availed CENVAT credit thereof under the existing law arising out of any of the situations discussed in para 3 above, shall, unless recovered under the existing law, be recovered as interest, penalty and late fee of central tax to be paid through the utilization of the amount available in the electronic cash ledger of the registered person and the same shall be recorded in Part II of the Electronic Liability Register (*FORM GST PMT-01*).

4.3 Payment of central excise duty & service tax on account of returns filed for the past period: The registered person may file Central Excise/Service Tax return for the period prior to 1st July, 2017 by logging onto www.aces.gov.in and make payment relating to the same through EASIEST portal (*cbec-easiest.gov.in*), as per the practice prevalent for the period prior to the introduction of GST. However, with effect from 1st of April, 2018, the return filing shall continue on www.aces.gov.in but the payment shall be made through the ICEGATE portal. As the registered person shall be automatically taken to the payment portal on filing of the return, the user interface remains the same for him.

4.4 Recovery of arrears from assessees under the existing law in cases where such assessees are not registered under the CGST Act, 2017: Such arrears shall be recovered in cash, under the provisions of the existing law and the payment of the same shall be made as per the procedure mentioned in para 4.3 supra.

Circular No. 45/19/2018-GST, dated 30-5-2018

Subject: Clarifications on refund related issues – Reg.

The Board *vide* Circular No. 17/17/2017-GST, dated 15th November 2017, No. 24/24/2017-GST, dated 21st December 2017 and No. 37/11/2018-GST, dated 15th March, 2018 has laid down the procedure for manual filing and processing of different types of refund claims under GST and clarified the exports related refund issues.

2. Representations have been received seeking clarification on certain refund related issues. In order to clarify these issues and with a view to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred by Section 168(1) of the Central Goods and Services Tax Act, 2017 (CGST Act for short) hereby clarifies the issues raised as below:

3. Claim for refund filed by an Input Service Distributor, a person paying tax under Section 10 or a non-resident taxable person:

3.1 Doubts have been raised in case of claims for refund filed by an Input Service Distributor (ISD for short), a person paying tax under Section 10 of the CGST Act (composition taxpayer for short) or a non-resident taxable person in light of para 2.0 of Circular No. 24/24/2017-GST, dated 21-12-2017 which mandates that the refund claim for a tax period may be filed only after filing the details in **FORM GSTR-1** for the said tax period and that it is also to be ensured that a valid return in **FORM GSTR-3B** has been filed for the last tax period before the one in which the refund application is being filed.

3.2 In this regard, attention is invited to sub-section (1) of Section 37 of the CGST Act read with Rule 59 of the Central Goods and Services Tax Rules, 2017 (CGST Rules for short) which mandates that every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of Section 10 or Section 51 or Section 52, shall furnish the details of outward supplies of goods or services or both effected during a tax period in **FORM GSTR-1**. Further, as per sub-section (2) of Section 39 of the CGST Act read with Rule 62 of the CGST Rules, a composition taxpayer is required to furnish the return in **FORM GSTR-4**; as per sub-section (4) of Section 39 of the CGST Act read with Rule 65 of the CGST Rules, an ISD is required to furnish the return in **FORM GSTR-6** and as per sub-section (5) of Section 39 of the CGST Act read with Rule 63 of the CGST Rules, a non-resident taxable person is required to furnish the return in **FORM GSTR-5**.

3.3 Thus, it is clarified that in case of a claim for refund of balance in the electronic cash ledger filed by an ISD or a composition taxpayer; and the claim for refund of balance in the electronic cash and/or credit ledger by a non-resident taxable person, the filing of the details in **FORM GSTR-1** and the return in **FORM GSTR-3B** is not mandatory. Instead, the return in **FORM GSTR-4** filed by a composition taxpayer, the details in **FORM GSTR-6** filed by an ISD and the return in **FORM GSTR-5** filed by a non-resident taxable person shall be sufficient for claiming the said refund.

4. Application for refund of integrated tax paid on export of services and supplies made to a Special Economic Zone developer or a Special Economic Zone unit:

4.1 It has been represented that while filing the return in **FORM GSTR-3B** for a given tax period, certain registered persons committed errors in declaring the export of services on payment of integrated tax or zero rated supplies made to a Special Economic Zone developer or a Special Economic Zone unit on payment of integrated tax. They have shown such supplies in the Table under column 3.1(a) instead of showing them in column 3.1(b) of **FORM GSTR-3B** whilst they have shown the correct details in Table 6A or 6B of **FORM GSTR-1** for the relevant tax period and duly discharged their tax liabilities. Such registered persons are unable to file the refund application in **FORM GST RFD-01A** for refund of integrated tax paid on the export of services or on supplies made to a SEZ developer or a SEZ unit on the GST common portal because of an in-built validation check in the system which restricts the refund amount claimed (integrated tax/cess) to the amount of integrated tax/cess mentioned under column 3.1(b) of **FORM GSTR-3B** (zero rated supplies) filed for the corresponding tax period.

4.2 In this regard, it is clarified that for the tax periods commencing from 1-7-2017 to 31-3-2018, such registered persons shall be allowed to file the refund application in **FORM GST RFD-01A** on the common portal subject to the condition that the amount of refund of integrated tax/cess claimed shall not be more than the aggregate amount of integrated tax/cess mentioned in the Table under columns 3.1(a), 3.1(b) and 3.1(c) of **FORM GSTR-3B** filed for the corresponding tax period.

5. Refund of unutilized input tax credit of compensation cess availed on inputs in cases where the final product is not subject to the levy of compensation cess:

5.1 Doubts have been raised whether an exporter is eligible to claim refund of unutilized input tax credit of compensation cess paid on inputs, where the final product is not leviable to compensation cess. For instance, cess is levied on coal, which is an input for the manufacture of aluminum products, whereas cess is not levied on aluminum products.

5.2 In this regard, Section 16(2) of the Integrated Goods and Services Tax Act, 2017 (IGST Act for short) states that, subject to the provisions of Section 17(5) of the CGST Act, credit of input tax may be availed for making zero rated supplies. Further, as per Section 8 of the Goods and Services Tax (Compensation to States) Act, 2017, (hereafter referred to as the Cess Act), all goods and services specified in the Schedule to the Cess Act are leviable to cess under the Cess Act; and *vide* Section 11(2) of the Cess Act, Section 16 of the IGST Act is mutatis mutandis made applicable to inter-State supplies of all such goods and services. Thus, it implies that all supplies of such goods and services are zero rated under the Cess Act. Moreover, as Section 17(5) of the CGST Act does not restrict the availment of input tax credit of compensation cess on coal, it is

clarified that a registered person making zero rated supply of aluminum products under bond or LUT may claim refund of unutilized credit including that of compensation cess paid on coal.

5.3 Such registered persons may also make zero-rated supply of aluminum products on payment of integrated tax but they cannot utilize the credit of the compensation cess paid on coal for payment of integrated tax in view of the proviso to Section 11(2) of the Cess Act, which allows the utilization of the input tax credit of cess, only for the payment of cess on the outward supplies. Accordingly, they cannot claim refund of compensation cess in case of zero-rated supply on payment of Integrated Tax.

6. Whether bond or Letter of Undertaking (LUT) is required in the case of zero rated supply of exempted or non-GST goods and whether refund can be claimed by the exporter of exempted or non-GST goods?

6.1 As per Section 16(2) of the IGST Act, credit of input tax may be availed for making zero rated supplies, notwithstanding that such supply is an exempt supply. Whereas, as per Section 2(47) of the CGST Act, exempt supply includes non-taxable supply. Further, as per Section 16(3) of the IGST Act, a registered person making zero rated supply shall be eligible to claim refund when he either makes supply of goods or services or both under bond or letter of undertaking (LUT) or makes such supply on payment of integrated tax.

6.2 However, in case of zero rated supply of exempted or non-GST goods, the requirement for furnishing a bond or LUT cannot be insisted upon. It is thus, clarified that in respect of refund claims on account of export of non-GST and exempted goods without payment of integrated tax; LUT/bond is not required. Such registered persons exporting non GST goods shall comply with the requirements prescribed under the existing law (i.e. Central Excise Act, 1944 or the VAT law of the respective State) or under the Customs Act, 1962, if any.

6.3 Further, the exporter would be eligible for refund of unutilized Input Tax Credit of Central Tax, State Tax, Union Territory Tax, Integrated Tax and Compensation Cess in such cases.

7. What is the scope of the restriction imposed by Rule 96(10) of the CGST Rules, regarding non-availment of the benefit of Notification Nos. 48/2017-C.T., dated the 18-10-2017, 40/2017-C.T. (Rate), dated 23-10-2017, 41/2017-I.T. (Rate), dated 23-10-2017, 78/2017-Cus., dated 13-10-2017 or 79/2017-Cus., dated 13-10-2017.

7.1 Sub-rule (10) of Rule 96 of the CGST Rules seeks to prevent an exporter, who is receiving goods from suppliers availing the benefit of certain specified notifications under which they supply goods without payment of tax or at reduced rate of tax, from exporting goods under payment of integrated tax. This is to ensure that the exporter does not utilise the input tax credit availed on other domestic supplies received for making the payment of integrated tax on export of goods.

7.2 However, the said restriction is not applicable to an exporter who has procured goods from suppliers who have not availed the benefits of the specified

notifications for making their outward supplies. Further, the said restriction is also not applicable to an exporter who has procured goods from suppliers who have, in turn, received goods from registered persons availing the benefits of these notifications since the exporter did not directly procure these goods without payment of tax or at reduced rate of tax.

7.3 Thus, the restriction under sub-rule (10) of Rule 96 of the CGST Rules is only applicable to those exporters who are directly receiving goods from those suppliers who are availing the benefit under Notification No. 48/2017-C.T., dated the 18th October, 2017, Notification No. 40/2017-C.T. (Rate), dated the 23rd October, 2017, or Notification No. 41/2017-I.T. (Rate), dated the 23rd October, 2017 or Notification No. 78/2017-Cus., dated the 13th October, 2017 or Notification No. 79/2017-Cus., dated the 13th October, 2017.

7.4 Further, there might be a scenario where a manufacturer might have imported capital goods by availing the benefit of Notification No. 78/2017-Cus., dated 13-10-2017 or 79/2017-Cus., dated 13-10-2017. Thereafter, goods manufactured from such capital goods may be supplied to an exporter. It is hereby clarified that this restriction does not apply to such inward supplies of an exporter.

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Recovery of wrongly availment of CENVAT Credit — Inadmissible of Transitional Credit

Circular No. 58/32/2018-GST [CBEC-20/16/4/2018-GST], dated 4-9-2018

Subject: Recovery of arrears of wrongly availed CENVAT credit under the existing law and inadmissible transitional credit — Regarding

Various representations have been received seeking clarification on the process of recovery of arrears of wrongly availed CENVAT credit under the existing law and CENVAT credit wrongly carried forward as transitional credit in the GST regime. In order to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under Section 168(1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the ‘CGST Act’), hereby specifies the process of recovery of the said arrears and inadmissible transitional credit in the succeeding paragraphs.

2. The Board *vide* Circular No. 42/16/2018-GST, dated 13th April, 2018, has clarified that the recovery of arrears arising under the existing law shall be made as central tax liability to be paid through the utilization of the amount available in the electronic credit ledger or electronic cash ledger of the registered person, and the same shall be recorded in Part II of the Electronic Liability Register (*FORM GST PMT-01*).

3. Currently, the functionality to record this liability in the electronic liability register is not available on the common portal. Therefore, it is clarified that as an alternative method, taxpayers may reverse the wrongly availed CENVAT credit under the existing law and Circular No. 58/32/2018-GST, Page 2 of 2 inadmissible transitional credit through Table 4(B)(2) of FORM GSTR-3B. The

applicable interest and penalty shall apply on all such reversals which shall be paid through entry in column 9 of Table 6.1 of **FORM GSTR-3B**.

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Transitional arrangement of ITC — Cenvat credit of eligible duties under Section 140 of CGST Act — Clarification

Circular No. 87/06/2019-GST [F. No. 267/80/2018-CX.8], dated 2-1-2019

Subject: Central Goods and Services Tax (Amendment) Act, 2018 - Clarification regarding section 140(1) of the CGST Act, 2017 — Regarding.

Attention is invited to sub-section (a) of Section 28 of the CGST (Amendment) Act, 2018 (No. 31 of 2018) which provides that Section 140(1) of the CGST Act, 2017 be amended with retrospective effect to allow transition of CENVAT credit under the existing law viz. Central Excise and Service Tax law, only in respect of “eligible duties”. In this regard, doubts have been expressed as to whether the expression “eligible duties” would include CENVAT credit of Service Tax within its scope or not.

2. Therefore, in exercise of powers conferred under Section 168 of the Central Goods and Services Act (hereinafter referred to as “Act”), for the purposes of uniformity in the implementation of the Act, the Central Board of Indirect Taxes and Customs hereby directs the following:

3.1 The CENVAT credit of service tax paid under Section 66B of the Finance Act, 1994 was available as transitional credit under Section 140(1) of the CGST Act and that legal position has not changed due to amendment of Section 140(1) on account of following reasons:

- (i) The amendment in provisions of Section 140(1) and the explanations to Section 140 need to be read harmoniously such that neither any provision of the amendment becomes otiose nor does the legislative intent of the amendment get defeated.
- (ii) The intention behind the amendment of Section 140(1) to include the expression “eligible duties” has been indicated in the “Rationale/ Remarks” column (at Sl. No. 37) of the draft proposals for amending the GST law which was uploaded in the public domain for comments. It is clear that the transition of credit of taxes paid under Section 66B of the Finance Act, 1994 was never intended to be disallowed under Section 140(1) and therefore no such remark was present in the document.
- (iii) Under tax statutes, the word “duties” is used interchangeably with the word “taxes” and in the present context, the two words should not be read in a disharmonious manner.

3.2 Thus, expression “eligible duties” in Section 140(1) which are allowed to be transitioned would cover within its fold the duties which are listed as “eligible duties” at sl. no. (i) to (vii) of explanation 1, and “eligible duties and taxes” at sl. no. (i) to (viii) of explanation 2 to Section 140, since the expression “eligible duties and taxes” has not been used elsewhere in the Act.

3.3 The expression “eligible duties” under Section 140(1) does not in any way refer to the condition regarding goods in stock as referred to in *Explanation 1* to Section 140 or to the condition regarding inputs and input services in transit, as referred to in *Explanation 2* to Section 140.

4. Further, it has been decided not to notify the clause (i) of sub-section (b) of Section 28 and clause (i) of sub-section (c) of Section 28 of CGST (Amendment) Act, 2018 which link *Explanation 1* and *Explanation 2* of Section 140 to Section 140(1). This would ensure that the credit allowed to be transitioned under Section 140(1) is not linked to credit of goods in stock, as provided under Explanation 1, and credit of goods and services in transit, as provided under Explanation 2. However, the duties and taxes for which transition is allowed shall be governed by para 3.2 above.

5. No transition of credit of cesses, including cess which is collected as additional duty of customs under sub-section (1) of Section 3 of the Customs Tariff Act, 1975, would be allowed in terms of Explanation 3 to Section 140, inserted *vide* sub-section (d) of Section 28 of CGST Amendment Act, 2018 which shall become effective from the date the same is notified giving it retrospective effect.

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Circular No. 96/15/2019-GST, dated 28-3-2019

Subject: Clarification in respect of transfer of input tax credit in case of death of sole proprietor – Reg

Doubts have been raised whether sub-section (3) of section 18 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”) provides for transfer of input tax credit which remains unutilized to the transferee in case of death of the sole proprietor. As per sub-rule (1) of rule 41 of the Central Goods and Services Rules, 2017 (hereinafter referred to as “CGST Rules”), the registered person (transferor of business) can file FORM GST ITC-02 electronically on the common portal along with a request for transfer of unutilized input tax credit lying in his electronic credit ledger to the transferee. Further, clarification has also been sought regarding procedure of filing of FORM GST ITC-02 in case of death of the sole proprietor. In order to clarify these issues and to ensure uniformity in the implementation of the provisions of the law, the Board, in exercise of its powers conferred by section 168 (1) of the CGST Act, hereby clarifies the issues raised as below.

2. Clause (a) of sub-section (1) of section 29 of the CGST Act provides that reason of transfer of business includes “death of the proprietor”. Similarly, for uniformity and for the purpose of sub-section (3) of section 18, sub-section (3) of section 22, sub-section (1) of section 85 of the CGST Act and sub-rule (1) of rule 41 of the CGST Rules, it is clarified that transfer or change in the ownership of business will include transfer or change in the ownership of business due to death of the sole proprietor.

3. In case of death of sole proprietor if the business is continued by any person being transferee or successor, the input tax credit which remains un-

utilized in the electronic credit ledger is allowed to be transferred to the transferee as per provisions and in the manner stated below—

- (a) Registration liability of the transferee/successor: As per provisions of sub-section (3) of section 22 of the CGST Act, the transferee or the successor, as the case may be, shall be liable to be registered with effect from the date of such transfer or succession, where a business is transferred to another person for any reasons including death of the proprietor. While filing application in FORM GST REG-01 electronically in the common portal the applicant is required to mention the reason to obtain registration as “death of the proprietor”.
- (b) Cancellation of registration on account of death of the proprietor: Clause (a) of subsection (1) of section 29 of the CGST Act, allows the legal heirs in case of death of sole proprietor of a business, to file application for cancellation of registration in FORM GST REG-16 electronically on common portal on account of transfer of business for any reason including death of the proprietor. In FORM GST REG-16, reason for cancellation is required to be mentioned as “death of sole proprietor”. The GSTIN of transferee to whom the business has been transferred is also required to be mentioned to link the GSTIN of the transferor with the GSTIN of transferee.
- (c) Transfer of input tax credit and liability: In case of death of sole proprietor, if the business is continued by any person being transferee or successor of business, it shall be construed as transfer of business. Sub-section (3) of section 18 of the CGST Act, allows the registered person to transfer the unutilized input tax credit lying in his electronic credit ledger to the transferee in the manner prescribed in rule 41 of the CGST Rules, where there is specific provision for transfer of liabilities. As per sub-section (1) of section 85 of the CGST Act, the transferor and the transferee/successor shall jointly and severally be liable to pay any tax, interest or any penalty due from the transferor in cases of transfer of business “in whole or in part, by sale, gift, lease, leave and license, hire or in any other manner whatsoever”. Furthermore, sub-section (1) of section 93 of the CGST Act provides that where a person, liable to pay tax, interest or penalty under the CGST Act, dies, then the person who continues business after his death, shall be liable to pay tax, interest or penalty due from such person under this Act. It is therefore clarified that the transferee/successor shall be liable to pay any tax, interest or any penalty due from the transferor in cases of transfer of business due to death of sole proprietor.
- (d) Manner of transfer of credit: As per sub-rule (1) of rule 41 of the CGST Rules, a registered person shall file FORM GST ITC-02 electronically on the common portal with a request for transfer of unutilized input tax credit lying in his electronic credit ledger to the transferee, in the event of sale, merger, de-merger, amalgamation, lease or transfer or change in the

ownership of business for any reason. In case of transfer of business on account of death of sole proprietor, the transferee/successor shall file FORM GST ITC-02 in respect of the registration which is required to be cancelled on account of death of the sole proprietor. FORM GST ITC-02 is required to be filed by the transferee/successor before filing the application for cancellation of such registration. Upon acceptance by the transferee/successor, the un-utilized input tax credit specified in FORM GST ITC-02 shall be credited to his electronic credit ledger.

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Circular No. 123/42/2019-GST, dated 11-11-2019

Subject: Restriction in availment of input tax credit in terms of sub-rule (4) of rule 36 of CGST Rules, 2017 – reg.

Sub-rule (4) to rule 36 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the CGST Rules) has been inserted *vide* notification No. 49/2019-Central Tax, dated 09.10.2019. The said sub-rule provides restriction in availment of input tax credit (ITC) in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers under sub-section (1) of section 37 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the CGST Act).

2. To ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under section 168(1) of the CGST Act hereby clarifies various issues in succeeding paragraphs.

3. The conditions and eligibility for the ITC that may be availed by the recipient shall continue to be governed as per the provisions of Chapter V of the CGST Act and the rules made thereunder. This being a new provision, the restriction is not imposed through the common portal and it is the responsibility of the taxpayer that credit is availed in terms of the said rule and therefore, the availment of restricted credit in terms of sub-rule (4) of rule 36 of CGST Rules shall be done on self-assessment basis by the tax payers. Various issues relating to implementation of the said sub-rule have been examined and the clarification on each of these points is as under:—

| Sl. No | Issue | Clarification |
|--------|--|---|
| 1. | What are the invoices/debit notes on which the restriction under rule 36(4) of the CGST Rules shall apply? | The restriction of availment of ITC is imposed only in respect of those invoices/debit notes, details of which are required to be uploaded by the suppliers under sub-section (1) of section 37 and which have not been uploaded. Therefore, taxpayers may avail full ITC in respect of IGST paid on import, documents issued under RCM, credit received from ISD etc. which are outside the ambit of sub-section |

| Sl. No | Issue | Clarification |
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| | | (1) of section 37, provided that eligibility conditions for availment of ITC are met in respect of the same. The restriction of 36(4) will be applicable only on the invoices/debit notes on which credit is availed after 09.10.2019. |
| 2. | Whether the said restriction is to be calculated supplier wise or on consolidated basis? | The restriction imposed is not supplier wise. The credit available under sub-rule (4) of rule 36 is linked to total eligible credit from all suppliers against all supplies whose details have been uploaded by the suppliers. Further, the calculation would be based on only those invoices which are otherwise eligible for ITC. Accordingly, those invoices on which ITC is not available under any of the provision (say under sub-section (5) of section 17) would not be considered for calculating 20 per cent. of the eligible credit available. |
| 3. | FORM GSTR-2A being a dynamic document, what would be the amount of input tax credit that is admissible to the taxpayers for a particular tax period in respect of invoices/ debit notes whose details have not been uploaded by the suppliers? | The amount of input tax credit in respect of the invoices/debit notes whose details have not been uploaded by the suppliers shall not exceed 20% of the eligible input tax credit available to the recipient in respect of invoices or debit notes the details of which have been uploaded by the suppliers under sub- section (1) of section 37 as on the due date of filing of the returns in FORM GSTR-1 of the suppliers for the said tax period. The taxpayer may have to ascertain the same from his auto populated FORM GSTR 2A as available on the due date of filing of FORM GSTR-1 under sub-section (1) of section 37. |
| 4. | How much ITC a registered tax payer can avail in his FORM GSTR-3B in a month in case the details of some of the invoices have not been uploaded by the suppliers | Sub-rule (4) of rule 36 prescribes that the ITC to be availed by a registered person in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers under subsection (1) of section 37, shall not exceed 20 per cent. |

| Sl. No | Issue | Clarification |
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| | under subsection (1) of section 37. | of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers under subsection (1) of section 37. The eligible ITC that can be availed is explained by way of illustrations, in a tabulated form, below. In the illustrations, say a taxpayer “R” receives 100 invoices (for inward supply of goods or services) involving ITC of ₹ 10 lakhs, from various suppliers during the month of Oct, 2019 and has to claim ITC in his FORM GSTR-3B of October, to be filed by 20th Nov, 2019. |
| 5. | When can balance ITC be claimed in case availment of ITC is restricted as per the provisions of rule 36(4)? | The balance ITC may be claimed by the taxpayer in any of the succeeding months provided details of requisite invoices are uploaded by the suppliers. He can claim proportionate ITC as and when details of some invoices are uploaded by the suppliers provided that credit on invoices, the details of which are not uploaded (under sub-section (1) of section 37) remains under 20 per cent of the eligible input tax credit, the details of which are uploaded by the suppliers. Full ITC of balance amount may be availed, in present illustration by “R”, in case total ITC pertaining to invoices the details of which have been uploaded reaches ₹8.3 lakhs (₹ 10 lakhs/1.20). In other words, taxpayer may avail full ITC in respect of a tax period, as and when the invoices are uploaded by the suppliers to the extent Eligible ITC/1.2. The same is explained for Case No. 1 and 2 of the illustrations provided at Sl. No. 4 above as under: Case 1 “R” may avail balance ITC of ₹ 2.8 lakhs in case suppliers upload details of some of the invoices for the tax period involving ITC of ₹ 2.3 lakhs out of invoices involving ITC of ₹ 4 lakhs |

| Sl. No | Issue | Clarification |
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| | | details of which had not been uploaded by the suppliers. [₹ 6 lakhs + ₹ 2.3 lakhs = ₹8.3 lakhs] Case 2 “R” may avail balance ITC of ₹1.6 lakhs in case suppliers upload details of some of the invoices involving ITC of ₹1.3 lakhs out of outstanding invoices involving ₹ 3 lakhs. [₹7 lakhs + ₹ 1.3 lakhs = ₹8.3 lakhs] |

* * *

5% restriction of ITC not applicable to imports/RCM:

CBI&C, Vide Circular No. 123 /42/2019-GST dated 11-11-2019 had clarified as follows:

- (a) The restriction does not apply to IGST paid on imports, document issued under RCM, credit received from ISD etc.
- (b) The restriction is not supplier wise.
- (c) The limit of 5% (earlier 20% during 9-10-2019 to 31-12-2019 & 10% during 1-1-2020 to 31-12-2020 and 5% w.e.f. 1-1-2021) is of ‘total eligible credit’ and not where ITC is not available at all.
- (d) The invoices furnished by supplier upto date filing of GSTR-1 by supplier [i.e. 11th of each month] will only be considered.
- (e) Balance credit will be available when tax invoices are furnished by supplier.

For example, if the ITC as per tax invoices and debit notes uploaded by supplier is ₹100 in his GSTR-1, the recipient can avail ITC of ₹100 plus upto ₹5 in respect of tax invoices and debit notes received by recipient but not uploaded by supplier in his GSTR-1.

Since similar provisions in SGST Rules also, the limit of 5% should apply separately for CGST, SGST/UTGST and IGST and not total ITC.

Reversal of ITC not required if Post sale discounts offered:

CBI&C circular No. 92/11/2019-GST, dated 7-3-2019 at para D, it is clearly states that the recipient of goods or services can avail entire ITC of GST charged by supplier in his original invoices in case of post sales discount-view reiterated in para 5 of CBI& C circular No. 105/24/2019-GST, dated 28-6-2019.

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Instruction No. 02/2021-22 IGST-Investigational, dated 22-9-2021

Subject: Issuance of SCNs in time Bound Manner — Regarding.

A detailed analysis to pursue trends in cases of GST evasion & fraudulent ITC availment booked viz-a-viz number of SCNs issued against for the FY 2017-18 [w.e.f. July, 2017], 2018-19 & 2019-20, have been made and it is observed that in GST evasion cases booked and in the Fraudulent ITC cases booked, during the above mentioned period, SCNs have been issued only in few cases.

2.1 Apparently, cases of ITC frauds or GST evasion are covered under the provisions of Section 74 of CGST Act, 2017 [the extended period clause]. However, there may be certain other situations where issuance of a notice under Section 73 of the CGST Act, 2017, is intended.

2.2 Kind attention is invited to sub-section (2) & sub-section (10) of the Section 73 of the CGST Act, 2017, which read as under:

(2) The proper officer shall issue the notice under sub-section (1) at least three months prior to the time limit specified in sub-section (10) for issuance of order.

(10) The proper officer shall issue the order under sub-section (9) within three years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within three years from the date of erroneous refund.

2.3 Attention is also invited to sub-section (2) & sub-section (10) of the Section 74 of the CGST Act, 2017, which read as under:

(2) The proper officer shall issue the notice under sub-section (1) at least six months prior to the time limit specified in sub-section (10) for issuance of order.

(10) The proper officer shall issue the order under sub-section (9) within a period of five years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within five years from the date of erroneous refund.

3. Further, the last dates of filing of the *Annual Return" under Section 44 of the CGST Act, 2017, for the Financial Years 2017-18, 2018-19 & 2019-20 are as below:

| Sr. No | Period | Last date to file Annual Return |
|--------|---------|---|
| 1 | 2017-18 | 05th & 7th February, 2020 (Notification no. 06/2020-Central Tax) dated 03.02.2020 |
| 2 | 2018-19 | 31st December, 2020 (Notification no. 80/2020-Central Tax) dated 28.10.2020 |
| 3 | 2019-20 | 31st March, 2021 (Notification no. 04/2021-Central Tax) dated 28.02.2021 |

4. Board has examined the matter in the background of issuance of SCNs in number meagre of cases booked/detected as mentioned above. It may be seen that the last date for filing the Annual Returns for the FYs of 2017-18, 2018-19 & 2019-20 is already over. As a result, the time limit of three years/five years for issuance of orders under Section 73 & Section 74 of the CGST Act, 2017 has already kicked in. If the issuance of SCNs is pushed to close proximity of the end dates/last dates, it may leave very little time with the adjudicating authority to pass orders within stipulated period mentioned in sub-section (10) of Section 73/ Section 74. This might result in a situation where either the adjudicating

authority is not able to pass orders within prescribed time period or quality of adjudication suffers. It is felt that the present situation warrants for extra efforts on the part of field formations and strict monitoring at supervisory level.

5. Accordingly, Board desires that Principal Director General/Director General(s)/Principal Chief Commissioner(s)/Chief Commissioner(s) within their jurisdiction may take stock of the pending investigation cases/other cases which warrant issuance of show cause notices and take appropriate action to ensure timely completion of investigation(s) and issuance of SCNs well before the last date. The respective Pr. Chief Commissioners/Chief Commissioners may draw an action plan so that no case is pending investigation beyond one year. Needless to mention that once SCN is issued, timely adjudication must follow.

* * *

Circular No. 160/16/2021-GST, dated 20-9-2021

Subject: Clarification in respect of certain GST related issues - reg.

| Sl. No | Issue | Clarification |
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| 1 | <p>Section 16 (4), as amended with effect from 01.01.2021, provides that a registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier.</p> <p>Doubts have been raised seeking following clarification:</p> <ol style="list-style-type: none"> 1. Which of the following dates are relevant to determine the ‘financial year’ for the purpose of section 16(4): <ol style="list-style-type: none"> (a) date of issuance of debit note, or (b) date of issuance of underlying invoice 2. Whether any availment of input tax credit, on or after | <p>1. With effect from 01.01.2021, section 16(4) of the CGST Act, 2017 was amended <i>vide</i> the Finance Act, 2020, so as to delink the date of issuance of debit note from the date of issuance of the underlying invoice for purposes of availing input tax credit. The amendment made is shown as below:</p> <p>“A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or <u>invoice relating to such</u> debit note pertains or furnishing of the relevant annual return, whichever is earlier.”</p> <p>As can be seen, the words “invoice relating to such” were omitted w.e.f. 01.01.2021.</p> <p>2. The intent of law as specified in the Memorandum explaining the Finance Bill, 2020 states that “Clause 118 of the Bill seeks to amend sub-section (4) of section 16</p> |

| Sl. No | Issue | Clarification |
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| | 01.01.2021, in respect of debit notes issued either prior to or after 01.01.2021, will be governed by the provisions of the amended section 16(4), or the amended provision will be applicable only in respect of the debit notes issued after 01.01.2021? | <p>of the Central Goods and Services Tax Act so as to delink the date of issuance of debit note from the date of issuance of the underlying invoice for purposes of availing input tax credit.</p> <p>3. Accordingly, it is clarified that:</p> <p>(a) w.e.f. 01.01.2021, in case of debit notes, the date of issuance of debit note (not the date of underlying invoice) shall determine the relevant financial year for the purpose of section 16(4) of the CGST Act.</p> <p>(b) The availment of ITC on debit notes in respect of amended provision shall be applicable from 01.01.2021. Accordingly, for availment of ITC on or after 01.01.2021, in respect of debit notes issued either prior to or after 01.01.2021, the eligibility for availment of ITC will be governed by the amended provision of section 16(4), whereas any ITC availed prior to 01.01.2021, in respect of debit notes, shall be governed under the provisions of section 16(4), as it existed before the said amendment on 01.01.2021</p> <p>Illustration 1. A debit note dated 07.07.2021 is issued in respect of the original invoice dated 16.03.2021. As the invoice pertains to F.Y. 2020-21, the relevant financial year for availment of ITC in respect of the said invoice in terms of section 16(4) of the CGST shall be 2020-21. However, as the debit note has been issued in FY 2021-22, the relevant financial year for availment of ITC in respect of the said debit note shall</p> |

| Sl. No | Issue | Clarification |
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| | | <p>be 2021-22 in terms of amended provision of section 16(4) of the CGST Act.</p> <p>Illustration 2. A debit note has been issued on 10.11.2020 in respect an invoice dated 15.07.2019. As per amended provision of section 16(4), the relevant financial year for availment of input tax credit on the said debit note, on or after 01.01.2021, will be FY 2020-21 and accordingly, the registered person can avail ITC on the same till due date of furnishing of FORM GSTR-3B for the month of September, 2021 or furnishing of the annual return for FY 2020-21, whichever is earlier.</p> |
| 2 | Whether carrying physical copy of invoice is compulsory during movement of goods in cases where suppliers have issued invoices in the manner prescribed under rule 48 (4) of the CGST Rules, 2017 (i.e. in cases of e-invoice). | <p>1. Rule 138A (1) of the CGST Rules, 2017 inter-alia, provides that the person in charge of a conveyance shall carry— (a) the invoice or bill of supply or delivery challan, as the case may be; and (b) a copy of the e-way bill or the e-way bill number, either physically or mapped to a Radio Frequency Identification Device embedded on to the conveyance in such manner as may be notified by the Commissioner.</p> <p>2. Further, rule 138A (2) of CGST Rules, after being amended <i>vide</i> notification No. 72/2020-Central Tax dated 30.09.2020, states that “In case, invoice is issued in the manner prescribed under sub-rule (4) of rule 48, the Quick Reference (QR) code having an embedded Invoice Reference Number (IRN) in it, may be produced electronically, for verification by the proper officer in lieu of the physical copy of such tax invoice”</p> |

| Sl. No | Issue | Clarification |
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| | | <p>3. A conjoint reading of rules 138A (1) and 138A (2) of CGST Rules, 2017 clearly indicates that there is no requirement to carry the physical copy of tax invoice in cases where e-invoice has been generated by the supplier. After amendment, the revised rule 138A (2) states in unambiguous words that whenever e-invoice has been generated, the Quick Reference (QR) code, having an embedded Invoice Reference Number (IRN) in it, may be produced electronically for verification by the proper officer in lieu of the physical copy of such tax invoice</p> <p>4. Accordingly, it is clarified that there is no need to carry the physical copy of tax invoice in cases where invoice has been generated by the supplier in the manner prescribed under rule 48(4) of the CGST Rules and production of the Quick Response (QR) code having an embedded Invoice Reference Number (IRN) electronically, for verification by the proper officer, would suffice.</p> |
| 3 | Whether the first proviso to section 54(3) of CGST/SGST Act, prohibiting refund of unutilized ITC is applicable in case of exports of goods which are having NIL rate of export duty. | <p>1. The term ‘subjected to export duty’ used in first proviso to section 54(3) of the CGST Act, 2017 means where the goods are actually leviable to export duty and suffering export duty at the time of export. Therefore, goods in respect of which either NIL rate is specified in Second Schedule to the Customs Tariff Act, 1975 or which are fully exempted from payment of export duty by virtue of any customs notification or which are not covered under Second Schedule to the Customs Tariff Act,</p> |

| Sl. No | Issue | Clarification |
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| | | <p>1975, cannot be considered to be subjected to any export duty under Customs Tariff Act, 1975. 2.</p> <p>2. Accordingly, it is clarified that only those goods which are actually subjected to export duty i.e., on which some export duty has to be paid at the time of export, will be covered under the restriction imposed under section 54(3) from availment of refund of accumulated ITC. Goods, which are not subject to any export duty and in respect of which either NIL rate is specified in Second Schedule to the Customs Tariff Act, 1975 or which are fully exempted from payment of export duty by virtue of any customs notification or which are not covered under Second Schedule to the Customs Tariff Act, 1975, would not be covered by the restriction imposed under the first proviso to section 54(3) of the CGST Act for the purpose of availment of refund of accumulated ITC.</p> |

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Circular No. 171/03/2022-GST, dated 06-07-2022

Subject: Clarification on various issues relating to applicability of demand and penalty provisions under the Central Goods and Services Tax Act, 2017 in respect of transactions involving fake invoices — Reg

A number of cases have come to notice where the registered persons are found to be involved in issuing tax invoice, without actual supply of goods or services or both (hereinafter referred to as “fake invoices”), in order to enable the recipients of such invoices to avail and utilize input tax credit (hereinafter referred to as “ITC”) fraudulently. Representations are being received from the trade as well as the field formations seeking clarification on the issues relating to applicability of demand and penalty provisions under the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”), in respect of such transactions involving fake invoices. In order to clarify these issues and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the CGST Act, hereby clarifies the issues detailed hereunder.

| Sl. No | Issues | Clarification |
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| 1. | In case where a registered person “A” has issued tax invoice to another registered person “B” without any underlying supply of goods or services or both, whether such transaction will be covered as “supply” under section 7 of CGST Act and whether any demand and recovery can be made from ‘A’ in respect of the said transaction under the provisions of section 73 or section 74 of CGST Act. Also, whether any penal action can be taken against registered person ‘A’ in such cases. | Since there is only been an issuance of tax invoice by the registered person ‘A’ to registered person ‘B’ without the underlying supply of goods or services or both, therefore, such an activity does not satisfy the criteria of “supply”, as defined under section 7 of the CGST Act. As there is no supply by ‘A’ to ‘B’ in respect of such tax invoice in terms of the provisions of section 7 of CGST Act, no tax liability arises against ‘A’ for the said transaction, and accordingly, no demand and recovery is required to be made against ‘A’ under the provisions of section 73 or section 74 of CGST Act in respect of the same. Besides, no penal action under the provisions of section 73 or section 74 is required to be taken against ‘A’ in respect of the said transaction. The registered person ‘A’ shall, however, be liable for penal action under section 122 (1)(ii) of the CGST Act for issuing tax invoices without actual supply of goods or services or both. |
| 2 | A registered person “A” has issued tax invoice to another registered person “B” without any underlying supply of goods or services or both. ‘B’ avails input tax credit on the basis of the said tax invoice. B further issues invoice along with underlying supply of goods or services or both to his buyers and utilizes ITC availed on the basis of the above mentioned invoices issued by ‘A’, for payment of his tax liability in respect of his said outward supplies. Whether ‘B’ will be liable for the demand and recovery of the said ITC, along with | Since the registered person ‘B’ has availed and utilized fraudulent ITC on the basis of the said tax invoice, without receiving the goods or services or both, in contravention of the provisions of section 16(2)(b) of CGST Act, he shall be liable for the demand and recovery of the said ITC, along with penal action, under the provisions of section 74 of the CGST Act, along with applicable interest under provisions of section 50 of the said Act. Further, as per provisions of section 75(13) of CGST Act, if penal action for fraudulent availment or utilization of ITC is taken against ‘B’ under section 74 of CGST Act, no penalty for the same act, i.e. for the said fraudulent availment or utilization of ITC, can be imposed on |

| Sl. No | Issues | Clarification |
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| | penal action, under the provisions of section 73 or section 74 or any other provisions of the CGST Act. | 'B' under any other provisions of CGST Act, including under Section 122. |
| 3 | A registered person 'A' has issued tax invoice to another registered person 'B' without any underlying supply of goods or services or both. 'B' avails input tax credit on the basis of the said tax invoice and further passes on the said input tax credit to another registered person 'C' by issuing invoices without underlying supply of goods or services or both. Whether 'B' will be liable for the demand and recovery and penal action, under the provisions of section 73 or section 74 or any other provisions of the CGST Act | In this case, the input tax credit availed by 'B' in his electronic credit ledger on the basis of tax invoice issued by 'A', without actual receipt of goods or services or both, has been utilized by 'B' for passing on of input tax credit by issuing tax invoice to 'C' without any underlying supply of goods or services or both. As there was no supply of goods or services or both by 'B' to 'C' in respect of the said transaction, no tax was required to be paid by 'B' in respect of the same. The input tax credit availed by 'B' in his electronic credit ledger on the basis of tax invoice issued by 'A', without actual receipt of goods or services or both, is ineligible in terms of section 16 (2)(b) of the CGST Act. In this case, there was no supply of goods or services or both by 'B' to 'C' in respect of the said transaction and also no tax was required to be paid in respect of the said transaction. Therefore, in these specific cases, no demand and recovery of either input tax credit wrongly/fraudulently availed by 'B' in such case or tax liability in respect of the said outward transaction by 'B' to 'C' is required to be made from 'B' under the provisions of section 73 or section 74 of CGST Act. However, in such cases, 'B' shall be liable for penal action both under section 122(1)(ii) and section 122(1)(vii) of the CGST Act, for issuing invoices without any actual supply of goods and/or services as also for taking/utilizing input tax credit without actual receipt of goods and/or services. |

2. The fundamental principles that have been delineated in the above scenarios may be adopted to decide the nature of demand and penal action to be taken against a person for such unscrupulous activity. Actual action to be taken against a person will depend upon the specific facts and circumstances of the case which may involve complex mixture of above scenarios or even may not be covered by any of the above scenarios. Any person who has retained the benefit of transactions specified under sub-section (1A) of section 122 of CGST Act, and at whose instance such transactions are conducted, shall also be liable for penal action under the provisions of the said sub-section. It may also be noted that in such cases of wrongful/fraudulent availment or utilization of input tax credit, or in cases of issuance of invoices without supply of goods or services or both, leading to wrongful availment or utilization of input tax credit or refund of tax, provisions of section 132 of the CGST Act may also be invokable, subject to conditions specified therein, based on facts and circumstances of each case.

* * *

Instruction No. 1/2022-23 (GST-Investigation), dated 25-5-2022

Subject: Deposit of tax during the course of search, inspection or investigation — Regarding.

During the course of search, inspection or investigation, sometimes the taxpayers opt for deposit of their partial or full GST liability arising out of the issue pointed out by the department during the course of such search, inspection or investigation by furnishing DRC-03. Instances have been noticed where some of the taxpayers after voluntarily depositing GST liability through DRC-03 have alleged use of force and coercion by the officers for making ‘recovery’ during the course of search or inspection or investigation. Some of the taxpayers have also approached Hon’ble High Courts in this regard.

2. The matter has been examined. Board has felt the necessity to clarify the legal position of voluntary payment of taxes for ensuring correct application of law and to protect the interest of the taxpayers. It is observed that under CGST Act, 2017 a taxpayer has an option to deposit the tax voluntarily by way of submitting DRC-03 on GST portal. Such voluntary payments are initiated only by the taxpayer by logging into the GST portal using its login id and password. Voluntary payment of tax before issuance of show cause notice is permissible in terms of provisions of Section 73(5) and Section 74(5) of the CGST Act, 2017. This helps the taxpayers in discharging their admitted liability, self-ascertained or as ascertained by the tax officer, without having to bear the burden of interest under Section 50 of CGST Act, 2017 for delayed payment of tax and may also save him from higher penalty imposable on him subsequent to issuance of show cause notice under Section 73 or Section 74, as the case may be.

3. It is further observed that recovery of taxes not paid or short paid, can be made under the provisions of Section 79 of CGST Act, 2017 only after following due legal process of issuance of notice and subsequent confirmation of demand by issuance of adjudication order. No recovery can be made unless the amount becomes payable in pursuance of an order passed by the adjudicating authority or

otherwise becomes payable under the provisions of CGST Act and rules made therein. Therefore, there may not arise any situation where “recovery” of the tax dues has to be made by the tax officer from the taxpayer during the course of search, inspection or investigation, on account of any issue detected during such proceedings. However, the law does not bar the taxpayer from voluntarily making payment of any tax liability ascertained by him or the tax officer in respect of such issues, either during the course of such proceedings or subsequently.

4. Therefore, it is clarified that there may not be any circumstance necessitating ‘recovery’ of tax dues during the course of search or inspection or investigation proceedings. However, there is also no bar on the taxpayers for voluntarily making the payments on the basis of ascertainment of their liability on non-payment/short payment of taxes before or at any stage of such proceedings. The tax officer should however, inform the taxpayers regarding the provisions of voluntary tax payments through DRC-03.

5. Pr. Chief Commissioners/Chief Commissioners, CGST Zones and Pr. Director General, DGGI are advised that in case, any complaint is received from a taxpayer regarding use of force or coercion by any of their officers for getting the amount deposited during search or inspection or investigation, the same may be enquired at the earliest and in case of any wrongdoing on the part of any tax officer, strict disciplinary action as per law may be taken against the defaulting officers.

* * *

Circular No. 182/14/2022-GST, dated 10-11-2022

Subject: Clarification on Guidelines for verifying the Transitional Credit in light of the order of the Hon'ble Supreme Court in the *Union of India v Filco Trade Centre Pvt. Ltd.*, SLP(C) No. 32709-32710/2018, order dated 22.07.2022 & 02.09.2022

Attention is invited to the directions issued by the Hon'ble Supreme Court *vide* order dated 22.07.2022 in the matter of *Union of India v Filco Trade Centre Pvt. Ltd.*, SLP(C) No. 32709-32710/2018. The operative portion of the judgment is as follows:

- “1. Goods and Service Tax Network (GSTN) is directed to open common portal for filing concerned forms for availing Transitional Credit through TRAN-1 and TRAN-2 for two months i.e. w.e.f. 01.09.2022 to 31.10.2022.
2. Considering the judgments of the High Courts on the then prevailing peculiar circumstances, any aggrieved registered assessee is directed to file the relevant form or revise the already filed form irrespective of whether the taxpayer has filed writ petition before the High Court or whether the case of the taxpayer has been decided by Information Technology Grievance Redressal Committee (ITGRC).
3. GSTN has to ensure that there are no technical glitch during the said time.

4. *The concerned officers are given 90 days thereafter to verify the veracity of the claim/transitional credit and pass appropriate orders thereon on merits after granting appropriate reasonable opportunity to the parties concerned.*
5. *Thereafter, the allowed Transitional credit is to be reflected in the Electronic Credit Ledger.*
6. *If required GST Council may also issue appropriate guidelines to the field formations in scrutinizing the claims. The Special Leave Petitions are disposed of accordingly. Pending applications, if any, also stand disposed of.”*

1.2. Subsequently in Miscellaneous Application No. 1545-1546/2022 in SLP(C) No. 32709-32710/2018, Hon’ble Supreme Court *vide* order dated 2nd September, 2022 has *inter alia* ordered as follows:

“The time for opening the GST Common Portal is extended for a further period of four weeks from today. It is clarified that all questions of law decided by the respective High Courts concerning Section 140 of the Central Goods and Service Tax Act, 2017 read with the corresponding Rule/Notification or direction are kept open.”

2. As is clear from the above, the Hon’ble Court has directed that the common portal be opened for filing prescribed forms for availing Transitional Credit through TRAN-1 and TRAN-2 for two months from 01.10.2022 to 30.11.2022 for the aggrieved registered assessee (henceforth, referred as ‘applicant’). The Transitional Credit claimed by the applicant shall be credited in his electronic credit ledger to the extent allowed by the jurisdictional tax officer through an order after carrying out necessary verifications. As per the Hon’ble Court’s order, the said verification has to be carried out within 90 days after completion of the above window of two months, i.e. within 90 days from 01.12.2022 i.e. up to 28.02.2023.

2.1 It is to be noted that while allowing the applicant to file/revise TRAN-1/TRAN-2 during this window of 2 months, Hon’ble Supreme Court has kept all questions of law open.

2.2 It may be mentioned that Hon’ble Supreme Court has only allowed filing of TRAN 1/TRAN-2 or revising the TRAN-1/TRAN-2 already filed by the applicant and has not allowed the applicant to file revised returns under the existing laws.

3. Reference is also invited to the Board’s Circular No. 180/12/2022, dated 09.09.2022 *vide* which guidelines have been issued for the applicants for filing new TRAN-1/TRAN-2 or revising the already filed TRAN-1/TRAN-2 on the common portal.

4. To ensure uniformity in the implementation of the directions of the Hon’ble Supreme Court across field formations, the Board, in exercise of its powers conferred by section 168(1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”), hereby issues the following guidelines for verifying the Transitional Credit.

5. Verification of the Transitional Credit

5.1 The jurisdictional tax officers can access the TRAN-1/TRAN-2 filed/revised by the applicant on their back office systems (which is the CBIC-AIO portal for the central tax officers, the respective State portal for MODEL-1 States and BO portal for MODEL 2 States). Further, a self-certified downloaded copy of TRAN-1/TRAN-2 filed/revised by the applicant shall also be made available to the jurisdictional tax officer by the said applicant as mentioned in Para 4.5 of Circular 180/12/2022, dated 09.09.2022.

5.2 The verification of the transitional credit shall be conducted by the jurisdictional tax officer who will pass an appropriate order regarding the veracity of the claim filed by the applicant, based on all the facts and the provisions of the law. In respect of TRAN-1/TRAN-2 filed/revised by the applicant under the administrative control of the central tax authorities, such verification and issuance of order shall be done by the jurisdictional officer of central tax, whereas in respect of TRAN-1/TRAN-2 filed/revised by the applicant under the administrative control of the state tax authorities, the same shall be done by the jurisdictional officer of state tax. The jurisdictional tax officer shall start the verification process immediately on availability of TRAN-1/TRAN-2 filed/revised by the applicant on the back office system or on receipt of self-certified downloaded copy of the same from the applicant, whichever is earlier. It is needless to mention that principles of natural justice shall be followed in the process of passing the order relating to allowance or disallowance of the Transitional Credit.

5.3 The jurisdictional tax officer shall, on the basis of declaration made by the applicant in the format specified in **Annexure A** to Circular no. 180/12/2022 dated 09.09.2022, and on the basis of data available on the back office system, shall check whether the applicant had earlier filed TRAN-1/ TRAN-2 or not. In cases where TRAN-1/TRAN-2 had already been filed by the applicant earlier, the tax officer shall check whether there is any change from the earlier filed TRAN-1/TRAN-2 or not. In case, there is no change from the earlier filed TRAN-1/TRAN-2, then such claim of transitional credit is liable for rejection by the tax officer, through a reasoned order, after providing due reasonable opportunity to the applicant.

5.3.1 In other cases, the jurisdictional tax officer shall proceed for verification of claim of transitional credit made by the applicant in FORM TRAN-1/TRAN-2. In this regard, in respect of transitional credit pertaining to central tax, he may refer to the guidelines detailed in **Annexure I** to this circular. In respect of verification of transitional credit pertaining to the State Tax/Union territory Tax, the tax officer may refer to the guidelines issued by the relevant state/UT, if any.

5.3.2 There may be cases where the transitional credit claim filed/revised by the applicant may have components of both central tax and state/UT tax. In such cases, where the applicant is under the jurisdiction of central tax officer and where the transitional credit claimed has component of state/Union Territory tax

also, the jurisdictional central tax officer shall refer the said claim for verification of component of state/UT tax to his counterpart state/UT tax officer. For this purpose, he shall share the list of GSTINs/ARNs with the counterpart officer, in respect of which verification report is needed from him, on a weekly basis, along with an intimation of the same to the nodal officer of central tax as well as state/UT tax referred in **Para 6.1 below** through his official email ID or physically. Similar action, as above, shall also be taken by the jurisdictional state/UT tax officers in cases where the applicant is under the jurisdiction of state/UT tax officer and where the transitional credit claimed has component of central tax also.

5.3.3 The jurisdictional tax officer shall, in parallel, continue the verification of the remaining portion of the transitional credit at his end.

5.3.4 The jurisdictional tax officer and the counterpart tax officer shall verify the transitional credit claimed under the CGST or the SGST head, as the case may be, by referring to the guidelines detailed in **Annexure I** to this circular for transitional credit pertaining to central tax and the guidelines issued by the relevant state/UT for verification of transitional credit pertaining to the State Tax/Union territory Tax, as applicable. While conducting the verification, the officer must also check whether any adjudication or appeal proceedings in TRAN-1/TRAN-2 related matter are pending/concluded against the applicant. In such cases, where any adjudication or appellate proceedings have been initiated against the applicant in respect of TRAN-1/TRAN-2, the officer should take a note of the relevant facts in the notice/order, and the grounds/reasons for inadmissibility of transitional credit, if any, in the said notice/order.

5.3.5 In respect of verification done by the counterpart officer, after verification, he will prepare a verification report, in the format detailed in **Annexure-II** of this circular, specifying the amount of transitional credit which may be allowed to be credited to the electronic credit ledger of the applicant and the amount which is liable for rejection, along with detailed reasons/grounds on which the said amount is liable to be rejected. Such duly signed verification report shall be sent by the counterpart officer to the jurisdictional tax officer at the earliest, though generally not later than ten days from the date of receipt of the request from the jurisdictional officer. In case, where the adjudication or appeal proceedings in respect of TRAN-1/TRAN-2 related matter are pending/concluded against the applicant, the counterpart officer shall categorically bring out the relevant facts in his/her verification report along with his detailed findings, admissibility/inadmissibility, reasons of inadmissibility thereof and the copy of the relevant notice and/or orders.

5.3.6 For the purpose of verification of the claim of the transitional credit, the jurisdictional tax officer as well as the counterpart tax officer, if required, may call for relevant records including requisite documents/returns/invoices, as the case may be, from the applicant.

5.3.7 After receiving the verification report from the counterpart officer, the jurisdictional tax officer shall decide upon the admissibility of the credit claimed

by the applicant. In case the jurisdictional tax officer finds that the transitional credit claimed by the applicant is partly or wholly inadmissible as per the provisions of the Act and the rules thereof, then a notice shall be issued by the jurisdictional tax officer to the applicant preferably within a period of seven days from the receipt of report from the counterpart officer, seeking explanation of the applicant as to why the said credit claimed by him should not be denied wholly/partly, as the case may be. The applicant shall also be provided an opportunity of personal hearing by the jurisdictional tax officer in such cases. If required, the jurisdictional tax officer may seek comments of the counterpart officer on the submissions made by the applicant in so far as the said submission relates to the tax (central or State) being administered by such counterpart officer.

5.3.8 After considering the facts of the case, including verification report received from the counterpart officer, submissions made by the applicant and the comments, if any, of the counterpart officer on the same, the jurisdictional tax officer shall proceed to pass a reasoned order, preferably within a period of fifteen days from the date of personal hearing, specifying the amount of transitional credit allowed to be transferred to the electronic credit ledger of the applicant and upload a pdf copy of the said order, on the common portal for crediting the amount of allowed transitional credit to the electronic credit ledger

of the applicant. In any case, such order shall be passed within a period of 90 days from 01.12.2022 i.e. up to 28.02.2023.

5.3.9 Where the amount credited to the electronic credit ledger pursuant to the originally filed TRAN-1/TRAN-2 exceeds the amount of credit admissible in terms of the revised TRAN-1/TRAN-2 filed by the applicant, such excess credit is liable to be demanded and recovered from the applicant, along with interest and penalty, in accordance with the provisions of Chapter XV of the Act and the rules made thereunder.

5.3.10 GSTN will also issue a separate advisory for entering the details on the portal by the tax officers.

5.3.11 It may be noted that consequent to reorganization of the state of Jammu & Kashmir and merger of the Union territories of Dadra and Nagar Haveli & Daman and Diu, the taxpayers of UT of Ladakh and the earlier UT of Daman and Diu have been allotted new GSTINs. Accordingly, the taxpayers of Ladakh and Daman and Diu can file/revise TRAN-1/TRAN-2 only through their newly allotted GSTINs. It is, therefore, advised that the concerned jurisdictional tax officers should take into consideration transitional credit, if any, claimed by such taxpayers under their previous GSTINs.

6. Modalities of coordination between central tax authorities and state tax authorities

6.1 It is to be noted that all the Zonal Principal Chief Commissioner/Chief Commissioners (PCCs/CCs) of Central Tax and Chief Commissioners/Commissioners of Commercial Taxes (CCCTs/CCTs) of various states/UTs shall

appoint nodal officer(s) in their respective formations immediately for proper co-ordination between central and state/UT authorities for verification of transitional credit claims and shall make available the details of the said nodal officers, along with their phone numbers and email IDs, to the counterpart tax authority. The nodal officers shall ensure that the verification reports/comments sought by the jurisdictional tax officers are being sent in a timely manner by the counterpart officers in their formations.

6.2 It is the responsibility of the Zonal Principal Chief Commissioner/Chief Commissioners (PCCs/CCs) of Central Tax and Chief Commissioners/Commissioners of Commercial Taxes (CCCTs/CCTs) of various states/UTs to regularly monitor the progress made in this regard so that the timelines mentioned in the Hon'ble Supreme Court's order dated 22.07.2022 and 02.09.2022 are strictly adhered to by the field formations.

7. Where any communication is required to be made by the central tax officer with the applicant for the purpose of verification of TRAN-1/TRAN-2, through a mode other than through the portal, the same should be made with the use of DIN, as per the guidelines mentioned in the CBIC Circular No. 122/41/2019-GST, dated 5th November, 2019.

8. Difficulties, if any, in implementation of these instructions may be informed to the Board (gst-cbec@gov.in).

GUIDANCE NOTE FOR VERIFICATION OF CGST TRANSITIONAL CREDIT CLAIMED BY THE APPLICANT IN TRAN-1/TRAN-2

1. Description of Entries in TRAN-1 Table

In the Form TRAN 1 there are only **six entries** which decide all the **CGST credit** which is posted in the electronic credit ledger. These entries are briefly described below. It is advised that the full text of law be referred for better understanding of the issue.

| S. No. | Table No. in TRAN-1 | Provision in CGST Act | Indicative list of nature of Credit |
|-----------|-------------------------|------------------------------------|---|
| 1. | Col. 6 in table 5(a) | 140(1), 140(4)(a) and 140(9) | This table captures detail of the CENVAT credit carried forward in the return (ER-1/2/3 or ST-3) relating to the period ending with 30.06.2017, subject to conditions specified in section 140(1) of CGST Act, by the manufacturers/service providers. |
| 2. | Column 11 of table 6(a) | 140(2) | This table captures details of unavailed credit of capital goods in the pre-GST era. Capital Goods credit was allowed to be availed in two installments of |

| S. No. | Table No. in TRAN-1 | Provision in CGST Act | Indicative list of nature of Credit | |
|-----------|------------------------|--------------------------------------|--|--|
| | | | 50% each. This table is meant to be used by the taxpayers who have availed a portion of CENVAT credit on capital goods through ER or ST return and now intend to avail remaining credit in respect of capital goods which has not been availed through the ER or ST return. The said amount of credit should have been admissible as input tax credit under GST law as well as under existing law. | |
| 3. | Table 7(a) | Column (6) in Entry 7A in Table 7(a) | 140(3), 140(4)(b), 140(6) and 140(7) | This table pertains to credit claim by new taxpayers or taxpayers who were either not registered or were not part of CENVAT Credit chain earlier. Here, Credit can be claimed in TRAN-1 in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day based on invoice/ document evidencing payment of duty (including CTD), subject to fulfillment of other conditions specified in section 140(3), 140(4)(b), 140(6) and 140(7) as the case may be. |
| | | Column (6) in Entry 7B in Table 7(a) | Proviso to Section 140 (3) and Rule 117(4) of CGST Rules | This table pertains to credit claim by new taxpayers (e.g. traders) who were not manufacturers or service providers. Deemed credit @ 60% of Central Tax applicable where CGST is 9% or more, and 40% where CGST is less than 9% can be availed. The provision applies where the |

| S. No. | Table No. in TRAN-1 | Provision in CGST Act | Indicative list of nature of Credit |
|-----------|--------------------------|--|--|
| | | | assessee is not in possession of an invoice or any other documents evidencing payment of duty in respect of inputs only . <i>[In this case the Electronic Credit Ledger gets populated through TRAN-2 and not through TRAN 1].</i> |
| 4. | Column (8) in Table 7(b) | 140(5), 140(7) | This table captures transitional credit taken on such inputs or input services which were received after 1st of July, 2017 but taxes on which were paid under the existing law (Goods/Services in Transit). It does not apply to capital goods. This table also captures credit distributed by the Input Service Distributor. |
| 5. | Column 9 in Table 8 | 140(8) | This table pertains to Centrally Registered unit , the CENVAT credit carried forward in their last return is captured in table 5(a) and a part or full of such credit can be distributed through table 8. The credit distributed through column 9 gets credited in the electronic credit ledger of the receivers and a corresponding debit entry is made in the ledger of the Centrally registered unit. |
| 6. | Column (7) in Table 11 | Section 142 (11)(c) read with Rule 118 of CGST Rules | Transition of credit in respect of supplies which attracted both VAT and Service Tax in pre-GST era and where VAT and Service Tax both were paid, before 1st July 2017 , on any supply but the supply is made after 1st July, 2017 . The taxable person is entitled to take as CGST credit, the service tax |

| S. No. | Table No. in TRAN-1 | Provision in CGST Act | Indicative list of nature of Credit |
|-----------|------------------------|--------------------------|---|
| | | | paid under the existing law to the extent of supplies made after 1st July, 2017 as he would be liable to pay CGST in respect of such supplies. (VAT credit cannot be taken as Service tax credit and vice versa). |

CHECKS FOR VERIFICATION OF ENTRIES IN TRAN-1 TABLE:

As a matter of assistance, following checks are suggested in relation to the entries provided in various tables of TRAN 1. The list of checks is not exhaustive but is indicative only based on provisions of law, the likely error and the inputs received from the field formations.

Checks for Table 5(a): 3.1.1 **Check 1:** Verify that the credit has been taken against closing balance of CENVAT credit in ER-1/2/3 or ST-3. Credit can be taken only where the last return was filed and credit taken in Table 5(a) should not be more than closing balance of credit in ER-1/2/3 or ST-3 minus the education/secondary education cess/KKC/SBC.

3.1.2 **Check 2:** Credit of taxes not covered in the definition of eligible duties in section 140 cannot be availed. Example: Krishi Kalyan Cess, Education Cess, clean energy cess, etc.

Credit of VAT and PLA balance is not allowed as transitional credit.

3.1.3 **Check 3:** Check that returns have been filed for last 6 months. An assessee filing TRAN-1 and taking credit in table 5(a) should have—

- (a) Filed ER-1 or ER-2 regularly between Jan, 2017 and June, 2017 or
- (b) Filed ER-3 for period ending March, 2017 and June, 2017 or
- (c) Filed ST-3 for period ending March, 2017 and June, 2017.

This check should be performed liberally where many units have merged into one registration or a single unit has been split into many (Centralized registration cases/LUT units) in GST. Compliance by any of the merging unit which was filing the returns in the pre-GST would entitle the new unit to avail credit in relation to that merging unit.

Checks for Table 6(a):

4.1 **Check 4:** Check that in table 6 only credit on capital goods not availed in any return is taken. If second installment of any capital goods credit is taken through return in table 5(a) and again the details are filled in table 6, it would lead to double credit getting taken. For example, the second installment of capital goods credit where first installment credit was availed in 2016-17 and second installment can be availed in the financial year 2017-18, provided the second installment was not availed in any of the returns filed in the first quarter of 2017-18 under Central Excise or Service Tax. If no credit was availed earlier, credit of entire amount cannot be availed through this Table. In respect of invoices involving large credit, due verification as deemed fit may be done.

Checks for Table 7(a), Entry 7A:

5.1 Check 5: In cases where the credit is being shown by an assessee who was registered in Central Excise or Service on account of inputs relating to exempted goods, carefully check whether the assessee has followed the provisions of rule 6 of CENVAT Credit Rules in the period prior to GST.

Case I: Only exempted goods/services were being manufactured or provided: Rule 6(2) of CENVAT Credit Rules did not allow any credit in the CENVAT register if only exempted goods were being manufactured. No credit can flow from return in relation to inputs in such cases. The entry in table 5(a) therefore should be NIL. The apportionment of credit on inputs and complete reversal thereof under rule 6 of CENVAT Credit Rules took place at the time of removal of goods. Therefore, in such cases only credit of inputs and inputs contained in semi-finished which existed in stock on the day of the transition and for which conditions prescribed in clause (i) to (v) of section 140(3) are satisfied would be available. Where the stock shown is very high, verification using VAT return or any other collateral document where stocks are declared can be done.

Case II: Exempted and non-exempted goods/services were being manufactured or provided: Rule 6(3) of the CENVAT Credit Rules provided the procedure for apportionment of credit relating to taxable goods/services and reversal of credit relating to exempted goods/services. Credit in table 5(a) would flow from the return in such cases. It should be checked that the return reflects credit after application of rule 6(3) of CENVAT Credit Rules. The reversal in terms of rule 6(3) was required to be done at the time of removal of finished goods. Therefore some credit in Table 7A can arise for such inputs which were in stock and which not attributed till the date of the transition to either exempted goods or non-exempted goods. To avail credit on such inputs, other conditions prescribed in clause (i) to (v) of section 140(3) are required to be satisfied. Where the stock shown is very high, verification using VAT return or any other collateral document, where stocks were declared, can be done.

5.2: Check 6: In cases where a new taxpayer has availed credit using Credit Transfer Document, check that CTD issued by the manufacturer exists and CTD has been issued in terms of rule 15(2) of CCR, 2017 read with notification no. 21/2017-CE (NT), dated 30.06.2017 (Capital Goods having value more than ₹ 25,000, goods to be identifiable by a distinct number etc.) e.g.: Dealers of new car.

Checks for Table 7(a), Entry 7B:

6.1 Check 7: Check that credits on stock declared on which credit can be claimed in terms of rule 117(4) of the CGST Rules, 2017 are reasonable. Where the stock declared in very high, stock declared in VAT return or any other collateral document, where stocks were declared, may be cross-checked. It may be noted that credit of this stock would be available on sale being made and TRAN 2 return being filed. It is reiterated that electronic credit ledger would get populated through TRAN-2 and not through TRAN-1.

6.2 Check 8: Check that the assessee has not declared this stock in any other table or has not availed this credit from any other table, say table 5(a). Where the person availing credit through TRAN 2, for which stock is declared in this table, is a trader, no credit can exist in any other table which pertains to credit to taxpayers who were registered earlier [e.g. Table 5(a)].

Checks for Table 7(b):

8.1 Check 9: Check that the duty paying document exist and take confirmation from the taxpayer that the duty or the tax paying document were recorded in the books of account of such person as per the conditions prescribed in law. Where goods under movement are shown in exorbitant quantity, transport verification may be considered. It should also be checked that the conditions for availing ISD credit as prescribed in law are satisfied.

Checks for Table 8:

9.1 Check 10: Centralized registered units have distributed their credit through table 8. The units receiving the credit were not required to file TRAN 1 to receive this credit. The receiving units have got credit on the basis of credit distributed by the centrally registered unit. Check that receiving units have not filed TRAN 1 to avail this credit as this would lead to double credit to receiving unit. Also take confirmation from the centrally registered unit that resultant credit in the ledger of the distributing centrally registered unit was reduced by the amount of credit distributed through Table 8.

10. Check for Table 11:

10.1 Check 11: Check that the service tax claimed as credit was indeed paid under the existing law and supplies were indeed made after 1st July, 2017. Credit of VAT cannot be taken as CGST credit and *vice versa*.

11. General check:

11.1 Check 12: Check that credit which is being claimed through TRAN 1/TRAN-2 is not taken through return in FORM GSTR-3B. This can lead to double credit being taken.

11.2 Clarifications issued vide circular no. 33/07/2018-GST dated 23.02.2018 regarding disputed credit and blocked credit may be followed during the verification process of the transitional credit.

* * *

Circular No. 183/15/2022-GST, dated 27-12-2022

Subject: Clarification to deal with difference in Input Tax Credit (ITC) availed in FORM GSTR-3B as compared to that detailed in FORM GSTR-2A for FY 2017-18 and 2018-19 – reg.

Section 16 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”) provides for eligibility and conditions for availing Input Tax Credit (ITC). During the initial period of implementation of GST, during the **financial years 2017-18 and 2018-19**, in many cases, the suppliers have failed to furnish the correct details of outward supplies in their FORM GSTR-1, which has led to certain deficiencies or discrepancies in FORM GSTR-

2A of their recipients. However, the concerned recipients may have availed input tax credit on the said supplies in their returns in FORM GSTR-3B. The discrepancies between the amount of ITC availed by the registered persons in their returns in FORM GSTR-3B and the amount as available in their FORM GSTR-2A are being noticed by the tax officers during proceedings such as scrutiny/audit/investigation, etc. due to such credit not flowing to FORM GSTR-2A of the said registered persons. Such discrepancies are considered by the tax officers as representing ineligible ITC availed by the registered persons, and are being flagged seeking explanation from the registered persons for such discrepancies and/or for reversal of such ineligible ITC.

2. It is mentioned that FORM GSTR-2A could not be made available to the taxpayers on the common portal during the initial stages of implementation of GST. Further, restrictions regarding availment of ITC by the registered persons upto certain specified limit beyond the ITC available as per FORM GSTR-2A were provided under rule 36(4) of Central Goods and Services Tax Rules, 2017 (hereinafter referred to as "CGST Rules") only with effect from 9th October, 2019. However, the availability of ITC was subjected to restrictions and conditions specified in Section 16 of CGST Act from 1st July, 2017 itself. In view of this, various representations have been received from the trade as well as the tax authorities, seeking clarification regarding the manner of dealing with such discrepancies between the amount of ITC availed by the registered persons in their FORM GSTR-3B and the amount as available in their FORM GSTR-2A during **FY 2017-18 and FY 2018-19**.

3. In order to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under section 168(1) of the CGST Act, hereby clarifies as follows:

| S. No. | Scenario | Clarification |
|--------|--|--|
| (a) | Where the supplier has failed to file FORM GSTR-1 for a tax period but has filed the return in FORM GSTR-3B for said tax period, due to which the supplies made in the said tax period do not get reflected in FORM GSTR-2A of the recipients. | In such cases, the difference in ITC claimed by the registered person in his return in FORM GSTR-3B and that available in FORM GSTR-2A may be handled by following the procedure provided in para 4 below. |
| (b) | Where the supplier has filed FORM GSTR-1 as well as return in FORM GSTR-3B for a tax period, but has failed to report a particular supply in FORM GSTR-1, due to which the said supply does not get reflected in | In such cases, the difference in ITC claimed by the registered person in his return in FORM GSTR-3B and that available in FORM GSTR-2A may be handled by following the procedure provided in para 4 below. |

| S. No. | Scenario | Clarification |
|--------|--|--|
| | FORM GSTR-2A of the recipient. | |
| (c) | Where supplies were made to a registered person and invoice is issued as per Rule 46 of CGST Rules containing GSTIN of the recipient, but supplier has wrongly reported the said supply as B2C supply, instead of B2B supply, in his FORM GSTR-1, due to which the said supply does not get reflected in FORM GSTR-2A of the said registered person. | In such cases, the difference in ITC claimed by the registered person in his return in FORM GSTR-3B and that available in FORM GSTR-2A may be handled by following the procedure provided in para 4 below. |
| (d) | Where the supplier has filed FORM GSTR-1 as well as return in FORM GSTR-3B for a tax period, but he has declared the supply with wrong GSTIN of the recipient in FORM GSTR-1. | In such cases, the difference in ITC claimed by the registered person in his return in FORM GSTR-3B and that available in FORM GSTR-2A may be handled by following the procedure provided in para 4 below. In addition, the proper officer of the actual recipient shall intimate the concerned jurisdictional tax authority of the registered person, whose GSTIN has been mentioned wrongly, that ITC on those transactions is required to be disallowed, if claimed by such recipients in their FORM GSTR-3B. However, allowance of ITC to the actual recipient shall not depend on the completion of the action by the tax authority of such registered person, whose GSTIN has been mentioned wrongly, and such action will be pursued as an independent action. |

4. The proper officer shall first seek the details from the registered person regarding all the invoices on which ITC has been availed by the registered person in his FORM GSTR 3B but which are not reflecting in his FORM GSTR 2A. He shall then ascertain fulfillment of the following conditions of Section 16 of CGST Act in respect of the input tax credit availed on such invoices by the said registered person:

- (i) that he is in possession of a tax invoice or debit note issued by the supplier or such other tax paying documents;
- (ii) that he has received the goods or services or both;
- (iii) that he has made payment for the amount towards the value of supply, along with tax payable thereon, to the supplier.

Besides, the proper officer shall also check whether any reversal of input tax credit is required to be made in accordance with section 17 or section 18 of CGST Act and also whether the said input tax credit has been availed within the time period specified under sub-section (4) of section 16 of CGST Act.

4.1 In order to verify the condition of clause (c) of sub-section (2) of Section 16 of CGST Act that tax on the said supply has been paid by the supplier, the following action may be taken by the proper officer:

4.1.1 In case, where difference between the ITC claimed in FORM GSTR-3B and that available in FORM GSTR 2A of the registered person in respect of a supplier for the said financial year exceeds ₹ 5 lakh, the proper officer shall ask the registered person to produce a certificate for the concerned supplier from the Chartered Accountant (CA) or the Cost Accountant (CMA), certifying that supplies in respect of the said invoices of supplier have actually been made by the supplier to the said registered person and the tax on such supplies has been paid by the said supplier in his return in FORM GSTR 3B. Certificate issued by CA or CMA shall contain UDIN. UDIN of the certificate issued by CAs can be verified from ICAI website <https://udin.icai.org/search-udin> and that issued by CMAs can be verified from ICMAI website <https://eicmai.in/udin/VerifyUDIN.aspx>.

4.1.2 In cases, where difference between the ITC claimed in FORM GSTR-3B and that available in FORM GSTR 2A of the registered person in respect of a supplier for the said financial year is upto ₹ 5 lakh, the proper officer shall ask the claimant to produce a certificate from the concerned supplier to the effect that said supplies have actually been made by him to the said registered person and the tax on said supplies has been paid by the said supplier in his return in FORM GSTR 3B.

4.2 However, it may be noted that for the period **FY 2017-18**, as per proviso to section 16(4) of CGST Act, the aforesaid relaxations shall not be applicable to the claim of ITC made in the **FORM GSTR-3B** return filed after the due date of furnishing return for the month of September, 2018 till the due date of furnishing return for March, 2019, if supplier had not furnished details of the said supply in his **FORM GSTR-1** till the due date of furnishing **FORM GSTR 1** for the month of March, 2019.

5. It may also be noted that the clarifications given hereunder are case specific and are applicable to the *bona fide* errors committed in reporting during **FY 2017-18 and 2018-19**. Further, these guidelines are clarificatory in nature and may be applied as per the actual facts and circumstances of each case and shall not be used in the interpretation of the provisions of law.

6. These instructions will apply only to the ongoing proceedings in scrutiny/audit/investigation, etc. for **FY 2017-18 and 2018-19** and not to the completed proceedings. However, these instructions will apply in those cases for **FY 2017-18 and 2018-19** where any adjudication or appeal proceedings are still pending.

* * *

Circular No. 184/16/2022-GST, dated 27-12-2022

Subject: Clarification on the entitlement of input tax credit where the place of supply is determined in terms of the proviso to sub-section (8) of section 12 of the Integrated Goods and Services Tax Act, 2017 – reg.

Attention is invited to sub-section (8) of section 12 of Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as “IGST Act”) which provides for the place of supply of services by way of transportation of goods, including by mail or courier, where location of the supplier as well as the recipient of services is in India. As per clause (a) of the aforesaid sub-section, the place of supply of services by way of transportation of goods, including by mail or courier, to a registered person shall be the location of such registered person. However, the proviso to the aforesaid sub-section which was inserted *vide* the Integrated Goods and Services Tax (Amendment) Act, 2018 w.e.f. 01.02.2019 provides that where the transportation of goods is to a place outside India, the place of supply of the said service shall be the place of destination of such goods. In such cases, as the place of supply of services, as per the proviso to sub-section (8) of section 12 of IGST Act, is the concerned foreign destination and not the State where the recipient is registered under GST, doubts are being raised regarding the availability of input tax credit of the said services to the recipient located in India.

2. In order to clarify this issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168(1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”), hereby clarifies the issues as under:

| Sl. No. | Issue | Clarification |
|----------------|---|---|
| 1. | In case of supply of services by way of transportation of goods, including by mail or courier, where the transportation of goods is to a place outside India, and where the supplier and recipient of the said supply of services are located in India, what would be the place of supply of the said services? | The place of supply of services by way of transportation of goods, including by mail or courier, where both the supplier and the recipient are located in India, is determined in terms of sub-section (8) of section 12 of the IGST Act which reads as follows: <i>“(8) The place of supply of services by way of transportation of goods, including by mail or courier to,—</i> <i>(a) a registered person, shall be the location of such person;</i> |

| Sl. No. | Issue | Clarification |
|------------|---|---|
| | | <p>(b) a person other than a registered person, shall be the location at which such goods are handed over for their transportation:</p> <p>Provided that where the transportation of goods is to a place outside India, the place of supply shall be the place of destination of such goods".</p> <p>Hence, in case of supply of services by way of transportation of goods, including by mail or courier, where the transportation of goods is to a place outside India, and where the supplier and recipient of the said supply of services are located in India, the place of supply is the concerned foreign destination where the goods are being transported, in accordance with the proviso to the sub-section (8) of section 12 of IGST Act, which was inserted <i>vide</i> the Integrated Goods and Services Tax (Amendment) Act, 2018 w.e.f. 01.02.2019.</p> <p>Illustration:</p> <p>X is a person registered under GST in the state of West Bengal who intends to export goods to a person Y located in Singapore. X avails the services for transportation of goods by air to Singapore from an air cargo operator Z, who is also registered under GST in the state of West Bengal.</p> <p>In this case, the place of supply of the services provided by Z to X is the place of destination of goods i.e., Singapore, in terms of the proviso to sub-section (8) of section 12 of IGST Act.</p> |
| 2. | In the case given in Sl. No. 1, whether the supply of services will be treated as inter-State supply or intra-State supply? | The aforesaid supply of services would be considered as inter-State supply in terms of sub-section (5) of section 7 of the IGST Act since the location of the supplier is in India and the place of supply is outside India. Therefore, integrated tax (IGST) would be chargeable on the said supply of services. |

| Sl. No. | Issue | Clarification |
|--------------------|--|--|
| | | In respect of the illustration given in Sl. No. 1. above, Z would charge IGST from X in terms of sub-section (5) of section 7 of the IGST Act, for supply of services by way of transportation of goods. |
| 3. | In the case given in Sl. No. 1, whether the recipient of service of transportation of goods would be eligible to avail input tax credit in respect of the said input service of transportation of goods? | <p>Section 16 of the CGST Act lays down the eligibility and conditions for taking input tax credit whereas, section 17 of the CGST Act provides for apportionment of credit and blocked credits under circumstances specified therein. The said provisions of law do not restrict availment of input tax credit by the recipient located in India if the place of supply of the said input service is outside India. Thus, the recipient of service of transportation of goods shall be eligible to avail input tax credit in respect of the IGST so charged by the supplier, subject to the fulfilment of other conditions laid down in section 16 and 17 of the CGST Act.</p> <p>In the illustration given in Sl. No. 1 above, X would be eligible to take input tax credit of IGST in respect of supply of services received by him from Z, subject to the fulfilment of other conditions laid down in section 16 and 17 of the CGST Act.</p> |
| 4. | In the case mentioned at Sl. No. 1, what state code has to be mentioned by the supplier of the said service of transportation of goods, where the transportation of goods is to a place outside India, while reporting the said supply in FORM GSTR-1 ? | The supplier of service shall report place of supply of such service by selecting State code as '96-Foreign Country' from the list of codes in the drop-down menu available on the portal in FORM GSTR-1 . |

3. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

4. Difficulty, if any, in implementation of the above instructions may please be brought to the notice of the Board.

Circular No.193/05/2023-GST dated 17-07-2023

Subject: Clarification to deal with difference in Input Tax Credit (ITC) availed in FORM GSTR-3B as compared to that detailed in FORM GSTR-2A for the period 01.04.2019 to 31.12.2021.

Attention is invited to Circular No. 183/15/2022-GST dated 27th December, 2022, vide which clarification was issued for dealing with the difference in Input Tax Credit (ITC) availed in FORM GSTR-3B as compared to that detailed in FORM GSTR-2A for FY 2017-18 and 2018-19, subject to certain terms and conditions.

2. Even though the availability of ITC was subjected to restrictions and conditions specified in Section 16 of Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act") from 1st July, 2017 itself, restrictions regarding availment of ITC by the registered persons up to certain specified limit beyond the ITC available as per FORM GSTR-2A were provided under rule 36(4) of Central Goods and Services Tax Rules, 2017 (hereinafter referred to as "CGST Rules") only with effect from 9th October 2019. W.e.f. 09.10.2019, the said rule allowed availment of Input tax credit by a registered person in respect of invoices or debit notes, the details of which have not been furnished by the suppliers under sub-section (1) of section 37, in FORM GSTR-1 or using the invoice furnishing facility (IFF), to the extent not exceeding 20 per cent. of the eligible credit available in respect of invoices or debit notes the details of which have been furnished by the suppliers under sub-section (1) of section 37 of CGST Act in FORM GSTR-1 or using the IFF. The said limit was brought down to 10% w.e.f. 01.01.2020 and further reduced to 5% w.e.f. 01.01.2021. The said rule was intended to allow availment of due credit in cases where the suppliers may have delayed in furnishing the details of outward supplies. Further, w.e.f. 01.01.2022, consequent to insertion of clause (aa) to sub-section (2) of section 16 of the CGST Act, ITC can be availed only up to the extent communicated in FORM GSTR-2B.

3.1 As discussed above, rule 36(4) of CGST Rules allowed additional credit to the tune of 20%, 10% and 5%, as the case may be, during the period from 09.10.2019 to 31.12.2019, 01.01.2020 to 31.12.2020 and 01.01.2021 to 31.12.2021 respectively, subject to certain terms and conditions, in respect of invoices/supplies that were not reported by the concerned suppliers in their FORM GSTR-1 or IFF, leading to discrepancies between the amount of ITC availed by the registered persons in their returns in FORM GSTR-3B and the amount as available in their FORM GSTR-2A. It may, however, be noted that such availment of input tax credit was subject to the provisions of clause (c) of sub-section (2) of section 16 of the CGST Act which provides that ITC cannot be availed unless tax on the said supply has been paid by the supplier. In this context, it is mentioned that rule 36(4) of CGST Rules was a facilitative measure and availment of ITC in accordance with rule 36(4) was subject to fulfilment of conditions of section 16 of CGST Act including those of clause (c) of sub-section (2) thereof regarding payment of tax by the supplier on the said supply.

3.2 Though the matter of dealing with difference in Input Tax Credit (ITC) availed in FORM GSTR-3B as compared to that detailed in FORM GSTR-2A has been clarified for FY 2017-18 and 2018-19 vide Circular No. 183/15/2022-GST, dated 27th December, 2022, various representations have been received seeking clarification regarding the manner of dealing with such discrepancies between the amount of ITC availed by the registered persons in their FORM GSTR-3B and the amount as available in their FORM GSTR-2A during the period from 01.04.2019 to 31.12.2021.

4. In order to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under section 168(1) of the CGST Act, hereby clarifies as follows:

- (i) Since rule 36(4) came into effect from 09.10.2019 only, the guidelines provided by Circular No. 183/15/2022-GST dated 27th December, 2022 shall be applicable, in toto, for the period from 01.04.2019 to 08.10.2019.
- (ii) In respect of period from 09.10.2019 to 31.12.2019, rule 36(4) of CGST Rules permitted availment of Input tax credit by a registered person in respect of invoices or debit notes, the details of which have not been furnished by the suppliers under sub-section (1) of section 37, in FORM GSTR-1 or using IFF to the extent not exceeding 20 per cent. of the eligible credit available in respect of invoices or debit notes, the details of which have been furnished by the suppliers under sub-section (1) of section 37 in FORM GSTR-1 or using IFF. Accordingly, the guidelines provided by Circular No. 183/15/2022-GST dated 27th December, 2022 shall be applicable for verification of the condition of clause (c) of sub-section (2) of Section 16 of CGST Act for the said period, subject to the condition that availment of Input tax credit by the registered person in respect of invoices or debit notes, the details of which have not been furnished by the suppliers under sub-section (1) of section 37, in FORM GSTR-1 or using IFF shall not exceed 20 per cent. of the eligible credit available in respect of invoices or debit notes the details of which have been furnished by the suppliers under sub-section (1) of section 37 in FORM GSTR-1 or using IFF. This is clarified through an illustration below.

Illustration—

Consider a case where the total amount of ITC available as per FORM GSTR-2A of the registered person was Rs. 3,00,000, whereas, the amount of ITC availed in FORM GSTR-3B by the said registered person during the corresponding tax period was Rs. 5,00,000. However, as per rule 36(4) of CGST Rules as applicable during the said period, the said registered person was not allowed to avail ITC in excess of an amount of Rs $3,00,000 \times 1.2 = \text{Rs.} 3,60,000/-$

In the above case, the ITC of Rs 1,40,000 which has been availed in excess of Rs. 3,60,000 shall not be admissible as per rule 36(4) of CGST Rules as applicable during the said period even if the requisite certificate

as prescribed in Circular No. 183/15/2022-GST dated 27.12.2022 is submitted by the registered person. Therefore, ITC availed in FORM GSTR-3B in excess of that available in FORM GSTR-2A up to an amount of Rs 60,000 only (i.e. 3,60,000-3,00,000) can be allowed subject to production of the requisite certificates as per Circular No. 183/15/2022-GST dated 27.12.2022

- (iii) similarly, for the period from 01.01.2020 to 31.12.2020, when rule 36(4) of CGST Rules allowed additional credit to the tune of 10% in excess of that reported by the suppliers in their FORM GSTR-1 or IFF, the guidelines provided by Circular No. 183/15/2022-GST dated 27th December, 2022 shall be applicable, for verification of the condition of clause (c) of sub-section (2) of Section 16 of CGST Act for the said period, subject to the condition that availment of Input tax credit by the registered person in respect of invoices or debit notes, the details of which have not been furnished by the suppliers under sub-section (1) of section 37, in FORM GSTR-1 or using the IFF shall not exceed 10 per cent. of the eligible credit available in respect of invoices or debit notes the details of which have been furnished by the suppliers under sub-section (1) of section 37 in FORM GSTR-1 or using the IFF.
- (iv) Further, for the period from 01.01.2021 to 31.12.2021, when rule 36(4) of CGST Rules allowed additional credit to the tune of 5% in excess of that reported by the suppliers in their FORM GSTR-1 or IFF, the guidelines provided by Circular No. 183/15/2022-GST dated 27th December, 2022 shall be applicable, for verification of the condition of clause (c) of sub-section (2) of Section 16 of CGST Act for the said period, subject to the condition that availment of Input tax credit by the registered person in respect of invoices or debit notes, the details of which have not been furnished by the suppliers under sub-section (1) of section 37, in FORM GSTR-1 or using the IFF shall not exceed 5 per cent. of the eligible credit available in respect of invoices or debit notes the details of which have been furnished by the suppliers under sub-section (1) of section 37 in FORM GSTR-1 or using the IFF.

5. is further clarified that consequent to insertion of clause (aa) to sub-section (2) of section 16 of the CGST Act and amendment of rule 36(4) of CGST Rules w.e.f. 01.01.2022, no ITC shall be allowed for the period 01.01.2022 onwards in respect of a supply unless the same is reported by his suppliers in their FORM GSTR-1 or using IFF and is communicated to the said registered person in FORM GSTR-2B.

6. Further, it may be noted that proviso to rule 36(4) of CGST Rules was inserted vide Notification No. 30/2020-CT dated 03.04.2020 to provide that the condition of rule 36(4) shall be applicable cumulatively for the period February to August, 2020 and ITC shall be adjusted on cumulative basis for the said months in the return for the tax period of September 2020. Similarly, second proviso to rule 36(4) of CGST Rules was substituted vide Notification No. 27/2021-

CT dated 01.06.2021 to provide that the condition of rule 36(4) shall be applicable cumulatively for the period April to June, 2021 and ITC shall be adjusted on cumulative basis for the said months in the return for the tax period of June 2021. The same may be taken into consideration while determining the amount of ITC eligibility for the said tax periods.

7. It may also be noted that these guidelines are clarificatory in nature and may be applied as per the actual facts and circumstances of each case and shall not be used in the interpretation of the provisions of law.

8. These instructions will apply only to the ongoing proceedings in scrutiny/audit/investigation, etc. for the period 01.04.2019 to 31.12.2021 and not to the completed proceedings. However, these instructions will apply in those cases during the period 01.04.2019 to 31.12.2021 where any adjudication or appeal proceedings are still pending.

Circular No. 195/07/2023-GST, dated 07-07-2023

Subject: Clarification on availability of ITC in respect of warranty replacement of parts and repair services during warranty period

Representations have been received from trade and industry that as a common trade practice, the original equipment manufacturers/suppliers offer warranty for the goods/services supplied by them. During the warranty period, replacement goods/services are supplied to customers free of charge and as such no separate consideration is charged and received at the time of replacement. It has been represented that suitable clarification may be issued in the matter as unnecessary litigation is being caused due to contrary interpretations by the investigation wings and field formations in respect of GST liability as well as liability to reverse ITC against such supplies of replacement of parts and repair services during the warranty period without any consideration from the customers.

2 The matter has been examined. In order to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under section 168(1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the CGST Act), hereby clarifies as follows:

| Sr. No. | Issue | Clarification |
|---------|---|---|
| 1 | There are cases where the original equipment manufacturer offers warranty for the goods supplied by him to the customer and provides replacement of parts and/ or repair services to the customer during the warranty period, without separately charging any consideration at the time of such replacement/ repair | The value of original supply of goods (provided along with warranty) by the manufacturer to the customer includes the likely cost of replacement of parts and/or repair services to be incurred during the warranty period, on which tax would have already been paid at the time of original supply of goods As such, where the manufacturer provides replacement of parts and/or repair |

| Sr. No. | Issue | Clarification |
|---------|---|--|
| | services. Whether GST would be payable on such replacement of parts or supply of repair services, without any consideration from the customer, as part of warranty. | services to the customer during the warranty period, without separately charging any consideration at the time of such replacement/repair services, no further GST is chargeable on such replacement of parts and/or repair service during warranty period. However, if any additional consideration is charged by the manufacturer from the customer, either for replacement of any part or for any service, then GST will be payable on such supply with respect to such additional consideration. |
| 2 | Whether in such cases, the manufacturer is required to reverse the input tax credit in respect of such replacement of parts or supply of repair services as part of warranty, in respect of which no additional consideration is charged from the customer? | In such cases, the value of original supply of goods (provided along with warranty) by the manufacturer to the customer includes the likely cost of replacement of parts and/or repair services to be incurred during the warranty period. Therefore, these supplies cannot be considered as exempt supply and accordingly, the manufacturer, who provides replacement of parts and/or repair services to the customer during the warranty period, is not required to reverse the input tax credit in respect of the said replacement parts or on the repair services provided |
| 3 | whether GST would be payable on replacement of parts and/or repair services provided by a distributor without any consideration from the customer, as part of warranty on behalf of the manufacturer? | There may be instances where a distributor of a company provides replacement of parts and/or repair services to the customer as part of warranty on behalf of the manufacturer and no separate consideration is charged by such distributor in respect of the said replacement and/or repair services from the customer. In such cases, as no consideration is being charged by the distributor from the customer, no GST would be payable by |

| Sr. No. | Issue | Clarification |
|---------|--|--|
| | | the distributor on the said activity of providing replacement of parts and/ or repair services to the customer. However, if any additional consideration is charged by the distributor from the customer, either for replacement of any part or for any service, then GST will be payable on such supply with respect to such additional consideration |
| 4 | In the above scenario where the distributor provides replacement of parts to the customer as part of warranty on behalf of the manufacturer, whether any supply is involved between the distributor and the manufacturer and whether the distributor would be required to reverse the input tax credit in respect of such replacement of parts | <p>(a) There may be cases where the distributor replaces the part(s) to the customer under warranty either by using his stock or by purchasing from a third party and charges the consideration for the part(s) so replaced from the manufacturer, by issuance of a tax invoice, for the said supply made by him to the manufacturer. In such a case, GST would be payable by the distributor on the said supply by him to the manufacturer and the manufacturer would be entitled to avail the input tax credit of the same, subject to other conditions of CGST Act. In such case, no reversal of input tax credit by the distributor is required in respect of the same.</p> <p>(b) There may be cases where the distributor raises a requisition to the manufacturer for the part(s) to be replaced by him under warranty and the manufacturer then provides the said part(s) to the distributor for the purpose of such replacement to the customer as part of warranty. In such a case, where the manufacturer is providing such part(s) to the distributor for replacement to the customer during the warranty period, without separately charging any consideration at the time of such replacement, no GST is payable on such replacement of parts by the</p> |

| Sr. No. | Issue | Clarification |
|---------|---|---|
| | | <p>manufacturer. Further, no reversal of ITC is required to be made by the manufacturer in respect of the parts so replaced by the distributor under warranty.</p> <p>(c) There may be cases where the distributor replaces the part(s) to the customer under warranty out of the supply already received by him from the manufacturer and the manufacturer issues a credit note in respect of the parts so replaced subject to provisions of sub-section (2) of section 34 of the CGST Act. Accordingly, the tax liability may be adjusted by the manufacturer, subject to the condition that the said distributor has reversed the ITC availed against the parts so replaced.</p> |
| 5 | There the distributor provides repair service, in addition to replacement of parts or otherwise, to the customer without any consideration, as part of warranty, on behalf of the manufacturer but charges the manufacturer for such repair services either by way of issue of tax invoice or a debit note, whether GST would be payable on such activity by the distributor? | <p>In such scenario, there is a supply of service by the distributor and the manufacturer is the recipient of such supply of repair services in accordance with the provisions of sub-clause (a) of clause (93) to section 2 of the CGST Act, 2017.</p> <p>Hence, GST would be payable on such provision of service by the distributor to the manufacturer and the manufacturer would be entitled to avail the input tax credit of the same, subject to other conditions of CGST Act.</p> |
| 6 | Sometimes companies provide offers of Extended warranty to the customers which can be availed at the time of original supply or just before the expiry of the standard warranty period. Whether GST would be payable in both the cases? | <p>(a) If a customer enters in to an agreement of extended warranty with the manufacturer at the time of original supply, then the consideration for such extended warranty becomes part of the value of the composite supply, the principal supply being the supply of goods, and GST would be payable accordingly.</p> |

| Sr. No. | Issue | Clarification |
|---------|-------|---|
| | | (b) However, in case where a consumer enters into an agreement of extended warranty at any time after the original supply, then the same is a separate contract and GST would be payable by the service provider, whether manufacturer or the distributor or any third party, depending on the nature of the contract (i.e. whether the extended warranty is only for goods or for services or for composite supply involving goods and services) |

Appendix 4 Imports of Goods

Circular No. 38/2018-Cus., dated 18-10-2018

Subject: Procedure to be followed in cases of manufacturing or other operations undertaken in bonded warehouses under Section 65 of the Customs Act - Reg.

Section 65 of the Customs Act, 1962 (hereinafter referred to as, “the Customs Act”) provides for manufacturing as well as carrying out other operations in a bonded warehouse.

2. Under Section 65, the Board has prescribed “Manufacture and Other Operations in Warehouse Regulations, 1966” (MOOWR, 1966). These regulations provide for an application seeking permission under Section 65, conditions of the bond to be executed by the licensee, maintenance of accounts, conduct of special audit and cancellation/suspension of permission etc.

3. While Regulation (3) provides for the data elements to be obtained from the applicant seeking permission “to undertake any manufacturing process or other operations”, no form has been prescribed. For the sake of uniformity, ease of doing business and exercising due diligence in grant of permission under Section 65, the form of application to be filed by an applicant before the jurisdictional Principal Commissioner/Commissioner of Customs is prescribed as in Annexure-A.

3.1 It is to be noted that an applicant desirous of manufacturing or carrying out other operations in a bonded warehouse under Section 65 read with MOOWR, 1966 must also have the premises licensed as a private bonded warehouse under Section 58 of the Customs Act. As part of ease of doing business and in order to avoid duplication in the process of approvals, the form of application (Annexure-A) has been so designed that the process for seeking grant of license as a private bonded warehouse as well as permission to carry out manufacturing or other operations stands integrated into a single form. The warehouse in which Section 65 permission is granted shall also be declared by the Licensee as the principal/additional place of business for the purposes of GST.

4. Post the Finance Act, 2016 effecting amendments to Chapter IX of the Customs Act, 1962, the Warehouse (Custody and Handling of Goods) Regulations, 2016 were notified on 14th May 2016 and Circular No. 25/2016-Cus., dated 8th June 2016 was issued, which collectively enjoins that licensees shall maintain accounts of receipt and removal in prescribed formats in digital

form and furnish the same to the bond officer on monthly basis digitally. Therefore, a licensee carrying out manufacturing or other operations in a bonded warehouse under Section 65 becomes obligated to maintain accounts as per MOOWR, 1966 and at the same time also maintain records as private bonded warehouse. For the ease of doing business, it has been decided that a licensee operating under Section 65, shall not be required to maintain two sets of records. Henceforth, the licensees manufacturing or carrying out other operations in a bonded warehouse shall be required to maintain records as per the form prescribed under this Circular (Annexure B), which combines data elements required under MOOWR, 1966 and Warehouse (Custody and Handling of Goods) Regulations, 2016. Sub-section (2) of Section 59 of the Customs Act requires the owner of the warehoused goods to execute a triple duty bond for the warehoused goods. Such bond shall be executed in the form prescribed under this Circular as per Annexure C.

5. To the extent that the resultant product manufactured or worked upon in a bonded warehouse is exported, the licensee shall have to file a shipping bill and follow the procedure prescribed under the Warehoused Goods (Removal) Regulations 2016 for transport of goods from the warehouse to the customs station of export. A GST invoice shall also be issued for such removal. In such a case, no duty is required to be paid in respect of the imported goods contained in the resultant product as per the provisions of Section 69 of the Customs Act.

6. To the extent that the resultant product whether emerging out of manufacturing or other operations in the warehouse is cleared for domestic consumption, such a transaction squarely falls within the ambit of "supply" under Section 7 of the Central Goods and Service Tax Act, 2017 (hereinafter referred to as the, "CGST Act"). It would therefore be taxable in terms of Section 9 of the CGST Act, 2017 or Section 5 of the Integrated Goods and Services Tax Act, 2017 depending upon the supply being intra-state or inter-state. The resultant product will thus be supplied from the warehouse under the cover of GST invoice on the payment of appropriate GST and compensation cess, if any. As regards import duties payable on the imported goods contained in so much of the resultant products are concerned, same shall be paid at the time of supply of the resultant product from the warehouse for which the licensee shall have to file an ex-bond Bill of entry and such transactions shall be duly reflected in the accounts prescribed under Annexure-B.

7. For waste or refuse arising out of manufacture and other operations in relation to the resultant products cleared for home consumption, import duty on the quantity of the warehoused goods contained in such waste or refuse shall be paid as per clause (b) to sub-section (2) of Section 65.

8. For waste or refuse arising out of manufacture and other operations in relation to the resultant products cleared for export, where import duty on the waste or refuse is paid as per proviso to clause (a) to sub-section (2) of Section 65, the same shall be deposited manually through a Challan. The records maintained as per Annexure-B would be sufficient for accountal of such goods.

9. It may be noted that units operating under Section 65 read with Section 58 of the Customs Act, are entitled to import capital goods, machinery, inputs etc. by following the provisions under Ch IX. In so far as domestic procurement is concerned, applicable rates of taxes shall be payable and exemptions, if any, can also be availed. By virtue of simply being a unit operating under Section 65, they shall not be entitled to procure goods domestically, without payment of taxes. The records in respect of such domestically procured goods shall be indicated in the form for accounts (*Annexure B*).

9.1 Since the warehouse operating under Section 65 also functions as a warehouse licensed under Section 58, the licensees can import goods and clear them as such, under Section 68 or Section 69 of the Act, on payment of applicable duty, fine and penalty, if any, along with interest as per sub-section (2) of Section 61 of the Act. The licensees shall also be required to maintain to submit monthly returns in "Form B" as prescribed under Circular No. 25/2016-Cus., dated 8th June 2016 for such purposes.

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Electronic sealing — Deposit in and removal of goods from Customs bonded Warehouses

Circular No. 39/2018-Customs, dated 23-10-2018

Subject: Electronic sealing – Deposit in and removal of goods from Customs bonded Warehouses, clarification - Regarding.

Circular 19/2018-Cus., dated 18th June 2018 was issued by the Board to introduce electronic sealing for deposit in and removal of goods from Customs bonded Warehouses. In this connection, requests have been received from the trade that for warehouse to warehouse transfer, the owner of the goods should be allowed to procure a RFID seal from the destination warehouse instead of originating warehouse.

2. The same has been examined. As per para 4.5(d) of Circular 19/2018-Cus., any importer permitted to remove goods for deposit in a warehouse shall obtain a RFID seal from the warehouse, where the goods are to be deposited. Thus, the RFID seals are to be procured from the destination warehouse. Allowing the owner of the goods to procure a RFID seal from the destination warehouse also obviate the need for development of any universal application by all vendors or the need for procuring multiple readers by warehouse owners. Therefore, even in case of warehouse to warehouse transfer, it is clarified that the RFID seals shall be procured from the destination warehouse.

Appendix 5

Refund under GST

Circular No. 24/24/2017-GST (F. No. 349/58/2017-GST), dated 21-12-2017

Subject: Manual filing and processing of refund claims on account of inverted duty structure, deemed exports and excess balance in electronic cash ledger — Regarding

Due to the non-availability of the refund module on the common portal, it has been decided by the competent authority, on the recommendations of the Council, that the applications/documents/forms pertaining to refund claims on account of inverted duty structure (including supplies in terms of Notification Nos. 40/2017-C.T. (Rate) and 41/2017-I.T. (Rate) both dated 23-10-2017), deemed exports and excess balance in electronic cash ledger shall be filed and processed manually till further orders. In this regard, the Board, in exercise of its powers conferred under Section 168(1) of the Central Goods and Services Tax Act, 2017 hereby clarifies that the provisions of Circular No. 17/17/2017-GST, dated 15-11-2017 shall also be applicable to the following types of refund inasmuch as they pertain to the method of filing of the refund claim and its processing which is consistent with the relevant provisions of the CGST Act, 2017 (hereafter referred to as ‘the CGST Act’) and the CGST Rules, 2017 (hereafter referred to as ‘the CGST Rules’):—

- (i) refund of unutilized input tax credit where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies) of goods or services or both except those supplies which are notified by the Government on the recommendations of the Council [*Section 54(3) of the CGST Act refers*];
- (ii) refund of tax on the supply of goods regarded as deemed exports; and
- (iii) refund of balance in the electronic cash ledger.

2. It is clarified that refund claims in respect of zero-rated supplies and on account of inverted duty structure, deemed exports and excess balance in electronic cash ledger shall be filed for a tax period on a monthly basis in **FORM GST RFD-01A**. However, in case registered persons having aggregate turnover of up to ₹1.5 crore in the preceding financial year or the current financial year are opting to file **FORM GSTR-1** quarterly (Notification No. 57/2017-C.T., dated 15-11-2017 refers), such persons shall apply for refund on a quarterly basis. Further, it is stated that the refund claim for a tax period may be filed only 2 after filing the details in **FORM GSTR-1** for the said tax period. It is also to be ensured that a valid return in **FORM GSTR-3B** has been filed for the last tax period before the one in which the refund application is being filed. Since the

date of furnishing of **FORM GSTR-1** from July, 2017 onwards has been extended while the dates of furnishing of **FORM GSTR 2** and **FORM GSTR 3** for such period are yet to be notified, it has been decided by the competent authority to sanction refund of provisionally accepted input tax credit at this juncture. However, the registered persons applying for refund must give an undertaking to the effect that the amount of refund sanctioned would be paid back to the Government with interest in case it is found subsequently that the requirements of clause (c) of sub-section (2) of Section 16 read with sub-section (2) of Sections 42 of the CGST Act have not been complied with in respect of the amount refunded. This undertaking should be submitted manually along with the refund claim till the same is available in **FORM RFD-01A** on the common portal.

3. In case of refund claim arising due to inverted duty structure, the following statements - Statement 1 and Statement 1A of **FORM GST RFD-01A** have to be filled:— Statement-1 [rule 89(5)] Refund Type: ITC accumulated due to inverted tax structure [clause (ii) of first proviso to Section 54(3)]

4. Whereas, the Government has issued notification No. 48/2017-C.T., dated 18-10-2017 under Section 147 of the CGST Act wherein certain supplies of goods have been notified as deemed export. Further, the third proviso to Rule 89(1) of the CGST Rules allows the recipient or the supplier to apply for refund of tax paid on such deemed export supplies. In case such refund is sought by the supplier of deemed export supplies, the documentary evidences as specified in notification No. 49/2017-C.T., dated 18-10-2017 are also required to be furnished which includes an undertaking by the recipient of deemed export supplies that he shall not claim the refund in respect of such supplies and that no input tax credit on such supplies has been availed of by him. The undertaking should be submitted manually along with the refund claim. Similarly, in case the refund is filed by the recipient of deemed export supplies, an undertaking by the supplier of deemed export supplies that he shall not claim the refund in respect of such supplies is also required to be furnished manually. The procedure regarding procurement of supplies of goods from DTA by Export Oriented Unit (EOU)/ Electronic Hardware Technology Park (EHTP) Unit/Software Technology Park (STP) Unit/Bio-Technology Parks (BTP) Unit under deemed export as laid down in Circular No. 14/14/2017-GST, dated 6-11-2017 needs to be complied with.

4.1 Further, as per the provisions of rule 89(2)(g) of the CGST Rules, the following statement 5B of **FORM GST RFD-01A** is required to be furnished for claiming refund on supplies declared as deemed exports:-Statement 5B [Rule 89(2)(g)] Refund type : On account of deemed exports

It is reiterated that para 2.5 of Circular No. 17/17/2017-GST, dated 15-11-2017 may be referred to in order to ascertain the jurisdictional proper officer to whom the manual application for refund is to be submitted. Where any amount claimed as refund is rejected under Rule 92 of the CGST Rules, either fully or partly, the amount debited, to the extent of rejection, shall be re-credited to the electronic credit ledger by an order made in **FORM GST RFD-1B** until the

FORM GST PMT-03 is available on the common portal. Further, the payment of the sanctioned refund amount shall be made only by the respective tax authority of the Central or State Government. Thus, the refund order issued either by the Central tax authority or the State tax/UT tax authority shall be communicated to the concerned counter-4 part tax authority within seven working days for the purpose of payment of the relevant sanctioned refund amount of tax or cess, as the case may be. This time limit of seven working days is also applicable to refund claims in respect of zero-rated supplies being processed as per Circular No. 17/17/2017-GST, dated 15-11-2017 as against the time limit of three days prescribed in para 4 of the said Circular. It must be ensured that the timelines specified under Section 54(7) and Rule 91(2) of the CGST Rules for the sanction of refund are adhered to.

6. In order to facilitate sanction of refund amount of central tax and State tax by the respective tax authorities, it has been decided that both the Central and State Tax authority shall nominate nodal officer(s) for the purpose of liaisoning through a dedicated e-mail id. Where the amount of central tax and State tax refund is ordered to be sanctioned provisionally by the Central tax authority and a sanction order is passed in accordance with the provisions of Rule 91(2) of the CGST Rules, the Central tax authority shall communicate the same, through the nodal officer, to the State tax authority for making payment of the sanctioned refund amount in relation to State tax and vice versa. The aforesaid communication shall primarily be made through e-mail attaching the scanned copies of the sanction order [**FORM GST RFD-04** and **FORM GST RFD-06**], the application for refund in FORM GST RFD-01A and the Acknowledgement Receipt Number (ARN). Accordingly, the jurisdictional proper officer of Central or State Tax, as the case may be, shall issue **FORM GST RFD-05** and send it to the DDO for onward transmission for release of payment. After release of payment by the respective PAO to the applicant's bank account, the nodal officer of Central tax and State tax authority shall inform each other. The manner of communication as referred earlier shall be followed at the time of final sanctioning of the refund also.

7. In case of refund claim for the balance amount in the electronic cash ledger, upon filing of **FORM GST RFD-01A** as per the procedure laid down in para 2.4 of Circular No. 17/17/2017-GST, dated 15-11-2017, the amount of refund claimed shall get debited in the electronic cash ledger.

8. It is also clarified that the drawback of all taxes under GST (Central Tax, Integrated Tax, State/Union Territory Tax) should not have been availed while claiming refund of accumulated ITC under Section 54(3)(ii) of the CGST Act. A declaration to this effect forms part of **FORM GST RFD-01A** as well.

Refund on UNI Agencies*Circular No. 43/17/2018-GST, dated 13-4-2018***Subject: Queries regarding processing of refund applications for UIN agencies.**

The Board *vide* Circular No. 36/10/2017, dated 13th March, 2018 clarified and specified the detailed procedure for UIN refunds. After issuance of the Circular, a number of queries and representations have been received regarding the processing of refund to agencies which have been allotted UINs. In order to clarify some of the issues and to ensure uniformity in the implementation of the provisions of the law across field formations, the Board, in exercise of its powers conferred under Section 168 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act") hereby clarifies the following issues:

2. Providing statement of invoices while submitting the refund application:
2.1 The procedure for filing a refund application has been outlined under Rule 95 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as "the CGST Rules") which provides for filing of refund on a quarterly basis in **FORM RFD-10** along with a statement of inward invoices in **FORM GSTR-11**. It has come to the notice of the Board that the print version of **FORM GSTR-11** generated by the system does not have invoice-wise details. Therefore, it is clarified that till the system generated **FORM GSTR-11** does not have invoice-level details, UIN agencies are requested to manually furnish a statement containing the details of all the invoices on which refund has been claimed, along with refund application.

2.2 Further, the officers are advised not to request for original or hard copy of the invoices unless necessary.

3. No mention of UINs on Invoices:

3.1 It has been represented that many suppliers did not record the UINs on the invoices of supplies of goods or services to UIN agencies. It is hereby clarified that the recording of UIN on the invoice is a necessary condition under rule 46 of the CGST Rules, 2017. If suppliers, vendors are not recording the UINs, action may be initiated against them under the provisions of the CGST Act, 2017.

3.2 Further, in cases where, UIN has not been recorded on the invoices pertaining to refund claim for the quarters of July-September 2017, October – December 2017 and January-March 2018, a one-time waiver is being given by the Government, subject to the condition that copies of such invoices will be submitted to the jurisdictional officers and will be attested by the authorized representative of the UIN agency. Field officers are advised that the terms of Notification No. 16/2017-C.T. (Rate) dated 28th June 2017 and corresponding notifications under the Integrated Goods and Services Tax Act, 2017, Union Territory Goods and Services Tax Act, 2017 and respective State Goods and Services Tax Acts should be satisfied while processing such refund claims.

Clarification on certain refund issues

Circular No. 59/33/2018-GST [F. No. 349/21/2016-GST], dated 4-9-2018

Subject: Clarification on refund related issues — Regarding Various representations have been received seeking clarification on issues relating to refund

In order to clarify these issues and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by Section 168(1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”), hereby clarifies the issues as detailed hereunder:

2. Submission of invoices for processing of claims of refund:

2.1 It was clarified *vide* Circular No. 37/11/2018-GST dated, 15th March, 2018 that since the refund claims were being filed in a semi-electronic environment and the processing was completely based on the information provided by the claimants, it becomes necessary that invoices are scrutinized. Accordingly, it was clarified that the invoices relating to inputs, input services and capital goods were to be submitted for processing of claims for refund of integrated tax where services are exported with payment of integrated tax; and invoices relating to inputs and input services were to be submitted for processing of claims for refund of input tax credit where goods or services are exported without payment of integrated tax.

2.2 In this regard, trade and industry have represented that such requirement is cumbersome and increases their compliance cost, especially where the number of invoices is large.

2.3 In view of the difficulties being faced by the claimants of refund, it has been decided that the refund claim shall be accompanied by a print-out of **FORM GSTR-2A** of the claimant for the relevant period for which the refund is claimed. The proper officer shall rely upon **FORM GSTR-2A** as an evidence of the accounted of the supply by the corresponding supplier in relation to which the input tax credit has been availed by the claimant. It may be noted that there may be situations in which **FORM GSTR-2A** may not contain the details of all the invoices relating to the input tax credit availed, possibly because the supplier’s **FORM GSTR-1** was delayed or not filed. In such situations, the proper officer may call for the hard copies of such invoices if he deems it necessary for the examination of the claim for refund. It is emphasized that the proper officer shall not insist on the submission of an invoice (either original or duplicate) the details of which are present in **FORM GSTR-2A** of the relevant period submitted by the claimant.

2.4 The claimant shall also submit the details of the invoices on the basis of which input tax credit had been availed during the relevant period for which the refund is being claimed, in the format enclosed as Annexure-A manually along with the application for refund claim in **FORM GST RFD-01A** and the Application Reference Number (ARN). The claimant shall also declare the

eligibility or otherwise of the input tax credit availed against the invoices related to the claim period in the said Annexure for enabling the proper officer to determine the same.

3. System validations in calculating refund amount.

3.1 Currently, in case of refund of unutilized input tax credit (ITC for short), the common portal calculates the refundable amount as the least of the following amounts:

- (a) The maximum refund amount as per the formula in Rule 89(4) or Rule 89(5) of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the “CGST Rules”) [formula is applied on the consolidated amount of ITC, i.e. Central tax + State tax/Union Territory tax + Integrated tax + Cess (wherever applicable)];
- (b) The balance in the electronic credit ledger of the claimant at the end of the tax period for which the refund claim is being filed after the return for the said period has been filed; and
- (c) The balance in the electronic credit ledger of the claimant at the time of filing the refund application.

3.2 After calculating the least of the three amounts, as detailed above, the equivalent amount is to be debited from the electronic credit ledger of the claimant in the following order : (a) Integrated tax, to the extent of balance available; b) Central tax and State tax/Union Territory tax, equally to the extent of balance available and in the event of a shortfall in the balance available in a particular electronic credit ledger (say, Central tax), the differential amount is to be debited from the other electronic credit ledger (i.e., State tax/Union Territory tax, in this case).

3.3 The procedure described in para 3.2 above, however, is not presently available on the common portal. Till the time such facility is made available on the common portal, the taxpayers are advised to follow the order as explained above for all refund applications filed after the date of issue of this Circular. However, for applications already filed and pending with the tax authorities, where this order is not adhered to by the claimant, no adverse view may be taken by the tax authorities.

3.4 The above system validations are being clarified so that there is no ambiguity in relation to the process through which an application in **FORM GST RFD-01A** is generated.

3.5 Further, it may be noted that the refund application can be filed only after the electronic credit ledger has been debited in the manner specified in para 3.2 (read with para 3.3) above, and the ARN is generated on the common portal.

4. Re-credit of electronic credit ledger in case of rejection of refund claim:

4.1 In case of rejection of claim for refund of unutilized input tax credit on account of ineligibility of the said credit under sub-sections (1), (2) or (5) of Section 17 of the CGST Act, or under any other provision of the Act and rules

made thereunder the proper officer shall order for the rejected amount to be re-credited to the electronic credit ledger of the claimant using **FORM GST RFD-01B**. For recovery of this amount, a demand notice shall have to be simultaneously issued to the claimant under Section 73 or 74 of the CGST Act, as the case may be. In case the demand is confirmed by an order issued under sub-section (9) of Section 73, or sub-section (9) of Section 74 of the CGST Act, as the case may be, the said amount shall be added to the electronic liability register of the claimant through **FORM GST DRC07**. Alternatively, the claimant can voluntarily pay this amount, along with interest and penalty, if applicable, before service of the demand notice, and intimate the same to the proper officer in **FORM GST DRC-03** in accordance with sub-section (5) of Section 73 or sub-section (5) of Section 74 of the CGST Act, as the case may be, read with sub-rule (2) of rule 142 of the CGST Rules. In such cases, the need for serving a demand notice will be obviated.

4.2 In case of rejection of claim for refund of unutilized input tax credit, on account of any reason other than the eligibility of credit, the rejected amount shall be re-credited to the electronic credit ledger of the claimant using **FORM GST RFD-01B** only after the receipt of an undertaking from the claimant to the effect that he shall not file an appeal against the said rejection or in case he files an appeal, the same is finally decided against the claimant, as has been laid down in Rule 93 of the CGST Rules.

4.3 Consider an example where against a refund claim of ₹100, only ₹80 is sanctioned (₹15 is rejected on account of ineligible ITC and ₹5 is rejected on account of any other reason). As described above, ₹15 would be re-credited with simultaneous issue of notice under Section 73 or 74 of the CGST Act for recovery of ineligible ITC. ₹5 would be re-credited (through **FORM GST RFD-01B**) only after the receipt of an undertaking from the claimant to the effect that he shall not file an appeal or in case he files an appeal, the same is finally decided against the claimant.

5. Scope of rule 96(10) of the CGST Rules:

5.1 Rule 96(10) of the CGST Rules, as amended retrospectively by Notification No. 39/2018-C.T., dated 4-9-2018 provides that registered persons, including importers, who are directly purchasing/importing supplies on which the benefit of reduced tax incidence or no tax incidence under certain specified notifications has been availed, shall not be eligible for refund of integrated tax paid on export of goods or services. For example, an importer (X) who is importing goods under the benefit of Advance Authorization/EPCG, is directly purchasing/importing supplies on which the benefit of reduced/Nil incidence of tax under the specified notifications has been availed. In this case, the restriction under rule 96(10) of the CGST Rules is applicable to X. However, if X supplies the said goods, after importation, to a domestic buyer (Y), on payment of full tax, then Y can rightfully export these goods under payment of integrated tax and claim refund of the integrated tax so paid. However, in the said example if Y purchases these goods from X after availing the benefit of specified notifications,

then Y also will not be eligible to claim refund of integrated tax paid on export of goods or services.

5.2 Overall, it is clarified that the restriction under Rule 96(10) of the CGST Rules, as amended retrospectively by Notification No. 39/2018-C.T., dated 4-9-2018, applies only to those purchasers/importers who are directly purchasing/importing supplies on which the benefit of certain notifications, as specified in the said sub-rule, has been availed.

6. Disbursal of refund amount after sanctioning by the proper officer:

6.1 A few cases have come to notice where a tax authority, after receiving a sanction order from the counterpart tax authority (Centre or State), has refused to disburse the relevant sanctioned amount calling into question the validity of the sanction order on certain grounds. e.g. a tax officer of one administration has sanctioned, on a provisional basis, 90 per cent. of the amount claimed in a refund application for unutilized ITC on account of exports. On receipt of the provisional sanction order, the tax officer of the counterpart administration has observed that the provisional refund of input tax credit has been incorrectly sanctioned for ineligible input tax credit and has therefore, refused to disburse the tax amount pertaining to the same.

6.2 It is clarified that the remedy for correction of an incorrect or erroneous sanction order lies in filing an appeal against such order and not in withholding of the disbursement of the sanctioned amount. If any discrepancy is noticed by the disbursing authority, the same should be brought to the notice of the counterpart refund sanctioning authority, the concerned counterpart reviewing authority and the nodal officer, but the disbursal of the refund should not be withheld. It is hereby clarified that neither the State nor the Central tax authorities shall refuse to disburse the amount sanctioned by the counterpart tax authority on any grounds whatsoever, except under sub-section (11) of Section 54 of the CGST Act. It is further clarified that any adjustment of the amount sanctioned as refund against any outstanding demand against the claimant can be carried out by the refund disbursing authority if not already done by the refund sanctioning authority.

7. Status of refund claim after issuance of deficiency memo:

7.1 Rule 90(3) of the CGST Rules provides that where any deficiencies in the application for refund are noticed, the proper officer shall communicate the deficiencies to the claimant in **FORM GST RFD-03**, requiring him to file a fresh refund application after rectification of such deficiencies. Further, Rule 93(1) of the CGST Rules provides that where any deficiencies have been communicated under Rule 90(3), the amount debited under Rule 89(3) shall be recrated to the electronic credit ledger. Therefore, the intent of the law is very clear that in case a deficiency memo in **FORM GST RFD-03** has been issued, the refund claim will have to be filed afresh.

It has been learnt that certain field formations are issuing show cause notices to the claimants in cases where the refund application is not re-submitted after

the issuance of a deficiency memo. These show-cause-notices are being subsequently adjudicated and orders are being passed in **FORM GST RFD-04/06**. It is clarified that show-cause-notices are not required to be issued where deficiency memos have been issued. A refund application which is re-submitted after the issuance of a deficiency memo shall have to be treated as a fresh application. No order in **FORM GST RFD-04/06** can be issued in respect of an application against which a deficiency memo has been issued and which has not been resubmitted subsequently.

8. Treatment of refund applications where the amount claimed is less than rupees one thousand:

8.1 Sub-section (14) of Section 54 of the CGST Act provides that no refund under sub-section (5) or sub-section (6) of Section 54 shall be paid to an applicant, if the amount is less than one thousand rupees. Circular No. 59/33/2018-GST

8.2 In this regard, it is clarified that the limit of rupees one thousand shall be applied for each tax head separately and not cumulatively. The limit would not apply in cases of refund of excess balance in the electronic cash ledger. All field formations are requested to reject claims of refund from the electronic credit ledger for less than one thousand rupees and recredit such amount by issuing an order in **FORM GST RFD-01B**.

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Refund Claims filed by UIN

Circular No. 63/37/2018-GST [F. No. 349/48/2017-GST], dated 14-9-2018

Subject: Clarification regarding processing of refund claims filed by UIN entities – Regarding

The Board *vide* Circulars No. 36/10/2018-GST, dated 13th March, 2018 and No. 43/17/2018- GST dated 13th April, 2018 has specified the detailed procedure for filing and processing of refund applications by UIN entities (Embassy/Mission/Consulate/United Nations Organizations/Specified International Organizations). Various representations have been received on certain issues pertaining to the processing of such refund claims. In order to clarify these issues and to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under Section 168 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as CGST Act) hereby clarifies the said issues as below:

2. Non-compliance with letter of reciprocity, Notifications No. 13/2017-I.T. (Rate), No. 16/2017-C.T. (Rate) and No. 16/2017-U.T.T. (Rate) all dated 28th June, 2017 and corresponding notifications under the respective State Goods and Services Tax Acts provide for examination of the refund claims in accordance with the letter of reciprocity issued by the Ministry of External Affairs (hereinafter referred to as MEA). Generally, these letters of reciprocity have certain conditions specified on the basis of which refunds have to be processed

and sanctioned. For example, letters may specify the minimum value of goods or services or the end use of such goods or services (official or personal purposes).

2.1 It has been observed that many UIN entities are claiming the refund on all invoices irrespective of whether or not they are eligible for the same as per the reciprocity letter issued by MEA. It is observed that such claims are attested/signed by Diplomats/Consulars and authorized signatories of the Consulates or Embassies of the foreign countries.

3. UIN entities have been advised to submit a statement of invoices and hard copies of only those invoices wherein the UIN is not mentioned *vide* Circular No. 43/17/2018-GST dated 13th April, 2018. Further, refund processing officers have been advised not to request for original or hard copy of the invoices unless necessary. However, it is observed that the delay in processing of the UIN refunds is primarily due to the non-furnishing of the hard copy of the invoices by the UIN entities and the statement of invoices as specified in paragraph 2.1 of Circular No. 43/17/2018-GST, dated 13-4-2018. It may be noted that the same are needed in order to determine the eligibility for grant of refund in accordance with the reciprocity letter issued by MEA. Further, it has been observed that in some cases, the Certificate and Undertaking submitted by the UIN entities is not in accordance with Notifications No. 13/2017– Integrated Tax (Rate), 16/2017-C.T. (Rate) and No. 16/2017-U.T.T. (Rate) all dated 28th June, 2017 and corresponding notifications under the respective State Goods and Services Tax Acts.

4. In order to expedite the processing of the refund applications filed by the UIN entities, the following formats/documents are hereby specified:

4.1 Refund Checklist: In order to bring in uniformity in the processing of the refund claims, a checklist has been specified in Annexure A. All UIN entities may refer to this checklist while filing the refund claims.

4.2 *Certificate*: A sample certificate to be submitted by Embassy/Mission/Consulate is enclosed as Annexure-B and that to be submitted by United Nations Organizations/Specified International Organizations is enclosed as Annexure-B-1.

4.3 *Undertaking*: A sample undertaking to be submitted by Embassy/Mission/Consulate is enclosed as Annexure-C and that to be submitted by United Nations Organizations/Specified International Organizations is enclosed as Annexure-C-1. 4.4 Statement of Invoices: The detailed statement of invoices shall be submitted in the format specified in Annexure-D.

5. Prior Permission letter for GST refund for purchase of vehicles: MEA *vide* letter F. No. D-II/451/12(5)/2017, dated 21-6-2018 has informed that it is mandatory to enclose the copy of ‘Prior Permission Letter’ issued by the Protocol Special Section of MEA at the time of submission of GST refund for purchase of vehicle by the foreign representatives. Accordingly, it is advised that UIN entities must submit the copy of the ‘Prior Permission letter’ and mention the same in the

covering letter while applying for GST refund on purchase of vehicles to avoid delay in processing of refunds.

6. Non-availability of refunds to personnel and officials of United Nations and other International organizations: It is hereby clarified that the personnel and officials of United Nations and other International organizations are not eligible to claim refund under Notifications No. 13/2017-I.T. (Rate), No.16/2017-C.T. (Rate) and No. 16/2017-U.T.T. (Rate) all dated 28th June, 2017 and corresponding notifications under the respective State Goods and Services Tax Acts. However, the eligibility of refund for the personnel and officials posted in the Embassy/Mission/Consulate shall be determined based on the principle of reciprocity.

7. Waiver from recording UIN in the invoices for the months of April, 2018 to March, 2019: A one-time waiver is hereby given from recording the UIN on the invoices issued by the suppliers pertaining to the refund claims filed for the quarters from April, 2018 to March, 2019, subject to the condition that the copies of such invoices which are attested by the authorized representative of the UIN entity shall be submitted to the jurisdictional officer.

8. Format of Monthly report: Circular No. 36/10/2018-GST dated 13th March, 2018 provides for a monthly report to be furnished to the Principal Director General of Goods and Services Tax by the 30th of the succeeding month. The report shall now be furnished in a new format as specified in Annexure E.

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Clarification of certain refund issues

*Circular No. 70/44/2018-GST [F. No. CBEC/20/16/04/2018-GST],
dated 26-10-2018*

Subject: Clarification on certain issues related to refund – Regarding

The Board is in receipt of representations seeking clarification on certain issues relating to refund. In order to clarify these issues and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by Section 168(1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the “CGST Act”), hereby clarifies the issues as detailed hereunder:

2. Status of refund claim after issuance of deficiency memo and re-credit of electronic credit ledger:

2.1 Para 7.1 of Circular No. 59/33/2018-GST, dated the 4th September, 2018 clarifies the intent of law in cases where a deficiency memo is issued in respect of a refund claim. In para 7.2 of the said circular, the practise being followed in the field formations was elaborated and it was clarified that show cause notices are not required to be issued (and consequently no orders are required to be issued in **FORM GST RFD-04/06**) in cases where refund application is not resubmitted after the issuance of a deficiency memo (in **FORM GST RFD-03**). It was also clarified that once a deficiency memo has been issued against an

application for refund, the amount of Input Tax Credit debited under sub-rule (3) of Rule 89 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the “CGST Rules”) is required to be recrated to the electronic credit ledger of the applicant by using **FORM GST RFD-01B** and the taxpayer is expected to file a fresh application for refund.

2.2 The issue has been re-examined and it has been observed that presently the common portal does not allow a taxpayer to file a fresh application for refund once a deficiency memo has been issued against an earlier refund application for the same period. Therefore, it is clarified that till the time such facility is developed, taxpayers would be required to submit the rectified refund application under the earlier Application Reference Number (ARN) only. Thus, it is reiterated that when a deficiency memo in **FORM GST RFD-03** is issued to taxpayers, re-credit in the electronic credit ledger (using **FORM GST RFD-01B**) is not required to be carried out and the rectified refund application would be accepted by the jurisdictional tax authorities with the earlier ARN itself. It is further clarified that a suitable clarification would be issued separately for cases in which such re-credit has already been carried out.

3. Allowing exporters who have received capital goods under EPCG to claim refund of IGST paid on exports:

3.1 Sub-rule (10) of Rule 96 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as “said sub-rule”), restricts exporters from availing the facility of claiming refund of IGST paid on exports in certain scenarios. It was intended that exporters availing benefit of certain notifications would not be eligible to avail the facility of such refund. However, representations have been received requesting that exporters who have received capital goods under the Export Promotion Capital Goods Scheme (hereinafter referred to as “EPCG Scheme”), should be allowed to avail the facility of claiming refund of the IGST paid on exports. GST Council, in its 30th meeting held in New Delhi on 28th September, 2018, had accorded approval to the proposal of suitably amending the said sub-rule along with sub-rule (4B) of rule 89 of the CGST Rules prospectively in order to enable such exporters to avail the said facility. Notification No. 54/2018-C.T., dated the 9th October, 2018 has been issued to carry out the changes recommended by the GST Council. Alongside the amendment carried out in the said sub-rule through the notification No. 39/2018-Central Tax dated 4th September, 2018 has been rescinded *vide* notification No. 53/2018-C.T., dated the 9th October, 2018.

3.2 For removal of doubts, it is clarified that the net effect of these changes would be that any exporter who himself/herself imported any inputs/capital goods in terms of Notification Nos. 78/2017-Cus. and 79/2017-Cus. both dated 13th October, 2017 shall be eligible to claim refund of the IGST paid on exports till the date of the issuance of the Notification No. 54/2018-C.T., dated the 9th October, 2018 referred to above.

3.3 Further, after the issuance of Notification No. 54/2018-C.T., dated the 9th October, 2018, exporters who are importing goods in terms of Notification Nos.

78/2017-Cus. and 79/2017-Cus. both dated 13th October, 2017 would not be eligible for refund of IGST paid on exports as provided in the said sub-rule. However, exporters who are receiving capital goods under the EPCG scheme, either through import in terms of notification No. 79/2017-Cus., dated 13th October, 2017 or through domestic procurement in terms of Notification No. 48/2017-C.T., dated 18th October, 2017, shall continue to be eligible to claim refund of IGST paid on exports and would not be hit by the restrictions provided in the said sub-rule. All clarifications issued in this regard *vide* any Circular issued earlier are hereby superseded.

* * *

Refund of Compensation Cess

Circular No. 68/42/2018-GST [F. No. 354/360/2018-TRU], dated 5-10-2018

Subject: Notifications issued under CGST Act, 2017 applicable to Goods and Services Tax (Compensation to States) Act, 2017

Representations have been received by the Board regarding the entitlement of UN and specified international organizations, foreign diplomatic mission or consular posts, diplomatic agents and consular offices post therein to refund of Compensation Cess payable on intra-State and inter-State supply of goods or services or both received by them.

2. The issue has been examined. Section 55 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as 'CGST Act') provides that the Government may, on the recommendation of the council, specify UN agencies and organizations notified under the UNPI Act 1947, Consulates, Embassies of foreign countries and any other person to be entitled to claim refund of the taxes paid on the notified supplies of goods and services, subject to such conditions and restrictions as may be prescribed. Notification No. 16/2017-C.T. (Rate), dated 28-6-2017 has been issued specifying UN and specified international organizations, foreign diplomatic missions or consular posts in India, or diplomatic agents or career consular officers posted therein for the purposes of the said section.

3. Section 11 of the Goods and Services Tax (Compensation to States) Act, 2017 (hereinafter referred to as 'the Compensation Cess Act'), provides that provisions of CGST Act and IGST Act apply in relation to levy and collection of Compensation Cess. Further, Section 9(2) of the Compensation Cess Act provides that for all the purposes of claiming refunds, except the form to be filed, the provisions of the CGST Act and the rules made thereunder, shall apply in relation to the levy and collection of Compensation Cess. Therefore, notifications issued under the CGST Act except those prescribing rate or granting exemptions, are applicable for the purpose of the Compensation Cess Act.

4. Accordingly, Notification No. 16/2017-C.T. (Rate), dated 28-6-2017 shall be applicable for the purposes of refund of Compensation Cess to UN and specified international organizations, foreign diplomatic missions or consular posts in India, or diplomatic agents or career consular officers posted therein.

5. In view of the above, it is clarified that UN and specified international organizations, foreign diplomatic missions or consular posts in India, or diplomatic agents or career consular officers posted therein, having being specified under Section 55 of the CGST Act, 2017, are entitled to refund of Compensation Cess payable on intra-State and inter-State supply of goods or services or both received by them subject to the same conditions and restrictions, mutatis mutandis, as prescribed in Notification No. 16/2017-C.T. (Rate), dated 28-6-2017.

* * *

Cases where IGST refunds have not been granted due to claiming higher rate of Drawback OR where higher rate and lower rate were identical

Circular No. 37/2018-Cus., dated 9-10-2018

Subject: Cases where IGST refunds have not been granted due to claiming higher rate of Drawback OR where higher rate and lower rate were identical - Regarding

Numerous representations have been received from exporters, export associations, regarding cases where IGST refunds have not been granted because higher rate of drawback has been claimed or where higher rate and lower rate were identical.

The issue has been examined extensively in this Ministry. The legal provisions related to Drawback claims are as under:

2.1 Notes and condition (II) of Notf. No. 131/2016-Cus. (N.T.), dated 31-10-2016 as amended by Notf. No. 59/2017-Cus. (N.T.), dated 29-6-2017, under which All Industry Rates of Drawback had been notified and which were applicable for availing composite rates during period in question (i.e. 1-7-2017 to 30-9-2017), prescribed that 'The rates and caps of drawback specified in columns (4) and (5) of the said Schedule shall not be applicable to export of a commodity or product if such commodity or product is—

(d) exported claiming refund of the Integrated goods and services tax paid on such exports'.

2.2 Notes and Condition (12A) of Notfn. No. 131/2016-Cus. (N.T.), dated 31-10-2016 as amended by Notfn. No. 59/2017-Cus. (N.T.), dated 29-6-2017 and 73/2017-Cus. (N.T.), dated 26-7-2017 prescribed that

"The rates and caps of drawback specified in columns (4) and (5) of the said Schedule shall be applicable to export of a commodity or product if the exporter satisfies the following conditions, namely.—

(ii) If the goods are exported on payment of integrated goods and services tax, the exporter shall declare that no refund of integrated goods and services tax paid on export product shall be claimed.

2.3 In terms of Rules 12 and 13 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, the shipping bill itself is treated as claim for drawback in terms of the declarations made on the shipping bill.

2.4 The declarations required in terms of above Notes and Conditions and provisions of the Drawback Rules are made electronically in the EDI System. When composite drawback rate was claimed (by declaring suffix A or C with Drawback serial number), exporter was required to tick DBK002 and DBK003 declarations in the shipping bills. In fact, for period 1-7-2017 to 26-7-2017, a manual declaration was also required to be given as the changes made on 26-7-2017 were made applicable for exports made from 1-7-2017 onwards.

2.5 By declaring drawback serial number suffixed with A or C and by making above stated declarations, the exporters consciously relinquished their IGST/ITC claims.

3. It has been noted that exporters had availed the option to take drawback at higher rate in place of IGST refund out of their own volition. Considering the fact that exporters have made aforesaid declaration while claiming the higher rate of drawback, it has been decided that it would not be justified allowing exporters to avail IGST refund after initially claiming the benefit of higher drawback. There is no justification for re-opening the issue at this stage.

* * *

Circular No. 17/17/2017, dated 15-11-2017

Refund of IGST/Input Tax Credit...

On GST refund

Exporters have been complaining about delay in grant of refunds pertaining to Integrated Goods and Services Tax (IGST) paid on goods exported out of India and similarly Input Tax credit (ITC) on exports. There are media reports with exaggerated estimations of refund amounts which are held up for the period July to October 2017. It is clarified that the quantum of IGST refund claims as filed through shipping bills during the period July to October 2017, is approximately ₹ 6500 Crores and the quantum of refund of unutilized credit on inputs or input services, as per the RFD 01A applications filed on GSTN portal, is to the tune of ₹ 30 Crores.

Refund of IGST

With regard to IGST paid on goods exported out of India, majority of refund claims for exports made in July, 2017 where due have been sanctioned. Refund claims of IGST paid for exports made in August, September and October 2017 are being sanctioned seamlessly wherever returns have been accurately filed. The prerequisites for sanction of refund of IGST paid are filing of GSTR 3 B and table 6A of GSTR 1 on the GSTN portal and Shipping Bill on Customs EDI system by the exporter. It is essential that exporters should ensure that there is no discrepancy in the information furnished in Table 6A of GSTR 1 and the Shipping Bill. It has been observed that certain common errors such as incorrect Shipping Bill number in GSTR1, mis-match of invoice number and IGST amount paid, wrong bank account etc. are being committed by exporters while filing their returns. These errors are the sole reason for delay in grant of refunds, or rejection thereof. While information has been made available to Exporters on the

ICEGATE portal if they are registered, they may also contact jurisdictional Customs authorities to check the errors they have committed in furnishing information in GST returns and Shipping Bill, and rectify them at the earliest. As the Customs system is designed to automatically grant refunds without involvement of any officer by matching information that is furnished on GSTN portal and Customs system, the onus is on the exporters to fill in all the details accurately. Exporters may therefore take due precaution to ensure that no errors creep in while filing Table 6A of GSTR 1 of August 2017 and onwards. The facility for filing GSTR 1 for August 2017 would also be ready by 4th December 2017. In case of wrong entries made in July, Table 9 of GSTR 1 of August month would allow amendments to GSTR 1 of July 2017.

Refund of Input Tax Credit

As far as refund of the unutilized input tax credit on inputs or input services used in making exports is concerned, exporters shall file an application in **FORM GST RFD-01A** on the common portal where the amount claimed as refund shall get debited from the electronic credit ledger of the exporter to the extent of the claim. Thereafter, a proof of debit (ARN-Acknowledgement Receipt Number) shall be generated on the GSTN portal, which is to be mentioned on the print out of the **FORM GST RFD-01A** and to be submitted manually 2 to the jurisdictional officer. The exporters may ensure that all the necessary documentary evidences are submitted along with the **Form GST RFD 01A** for timely sanction of refund. Exporters are therefore advised to immediately file (a) Table 6A and **GSTR 3B**, if not already done, for processing of IGST refund (b) RFD 01A on GSTN portal for refund of the unutilized input tax credit on inputs or input services used in making exports and (c) **GSTR 1** for August 2017 for amending details provided in July **GSTR 1** wherever required. Government has taken various measures to alleviate the difficulty and is committed to providing speedy disbursal.

* * *

Refund related issues — Clarification

Circular No. 79/53/2018-GST dated 31-12-2018

Subject: Clarification on refund related issues - Regarding

Various representations have been received seeking clarification on various issues relating to refund. In order to clarify these issues and to ensure uniformity in the implementation of the provisions of law across field formations, the Board, in exercise of its powers conferred by Section 168(1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”), hereby clarifies the issues detailed hereunder:

Physical submission of refund claims with jurisdictional proper officer:

2. Due to the non-availability of the complete electronic refund module, a work around was prescribed *vide Circular No. 17/17/2017-GST, dated 15-11-2017 [2017 (6) G.S.T.L. C61]* and *Circular No. 24/24/2017-GST, dated 21-12-2017 [2017 (7) G.S.T.L. C27]*, wherein a taxpayer was required to file **FORM**

GST RFD-01A on the common portal, generate the Application Reference Number (ARN), take print-outs of the same, and submit it physically in the office of the jurisdictional proper officer, along with all the supporting documents. It has been learnt that this requirement of physical submission of documents in the jurisdictional tax office is causing undue hardship to the taxpayers. Therefore, in order to further simplify the refund process, the following instructions, in partial modification of the aforesaid circulars, are issued:

- (a) All documents/undertaking/statements to be submitted along with the claim for refund in **FORM GST RFD-01A** shall be uploaded on the common portal at the time of filing of the refund application. Circular No. 59/33/2018-GST, dated 4-9-2018 [2018 (16) G.S.T.L. C13] specified that instead of providing copies of all invoices, a statement of invoices needs to be submitted in a prescribed format and copies of only those invoices need to be submitted the details of which are not found in **FORM GSTR-2A** for the relevant period. It is now clarified that the said statement and these invoices, instead of being submitted physically, shall be electronically uploaded on the common portal at the time of filing the claim of refund in **FORM GST RFD-01A**. Neither the application in **FORM GST RFD-01A**, nor any of the supporting documents, shall be required to be submitted physically in the office of the jurisdictional proper officer.
- (b) However, the taxpayer will still have the option to physically submit the refund application to the jurisdictional proper officer in **FORM GST RFD-01A**, along with supporting documents, if he so chooses. A taxpayer who still remains unallocated to the Central or State Tax Authority will necessarily have to submit the refund application physically. They can choose to do so before the jurisdictional proper officer of either the State or the Central tax authority, as was earlier clarified *vide* Circular No. 17/17/2017-GST, dated 15-11-2017.
- (c) The ARN will be generated only after the claimant has completed the process of filing the refund application in **FORM GST RFD-01A**, and has completed uploading of all the supporting documents/undertaking/statements/invoices and, where required, the amount has been debited from the electronic credit/cash ledger.
- (d) As soon as the ARN is generated, the refund application along with all the supporting documents shall be transferred electronically to the jurisdictional proper officer who shall be able to view it on the system. The application shall be deemed to have been filed under Rule 90(2) of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as “CGST Rules”) on the date of generation of the said ARN and the time limit of 15 days to issue an acknowledgement shall be counted from that date. This will obviate the need for a claimant to visit the jurisdictional tax office for the submission of the refund application. Accordingly, the acknowledgement for the complete application or

deficiency memo, as the case may be, would be issued by the jurisdictional tax officer based on the documents so received electronically from the common portal. However, the said acknowledgement or deficiency memo shall continue to be issued manually for the time being.

- (e) If a refund application is electronically transferred to the wrong jurisdictional officer, he/she shall reassign it to the correct jurisdictional officer electronically within a period of three days. In such cases, the application shall be deemed to have been filed under Rule 90(2) of the CGST Rules only after it has been so reassigned. Deficiency memos shall not be issued in such cases merely on the ground that the applications were received electronically in the wrong jurisdiction. Where the facility of electronic re-assignment is not available, the present arrangement shall continue.
- (f) It has already been clarified *vide* Circular No. 70/44/2018-GST, dated 26-10-2018 [2018 (18) G.S.T.L. C12] that after the issuance of a deficiency memo, taxpayers would be required to submit the rectified refund application under the earlier Application Reference Number (ARN) only. It is further clarified that the rectified application, which is to be treated as a fresh refund application, will be submitted manually in the office of the jurisdictional proper officer.

3. It may be noted that the documents/statements/under-takings/invoices to be submitted along with the refund application in **FORM GST RFD-01A** are the same as have been prescribed under the CGST Rules and various Circulars issued on the subject from time to time. Only the method of submission of these documents/statements/undertakings/invoices is being changed from the physical mode to the electronic mode. It may also be noted that the other stages of processing of a refund claim submitted in **FORM GST RFD-01A** by the jurisdictional tax officer shall continue to be carried out manually for the time being, as is being presently done.

Calculation of refund amount for claims of refund of accumulated Input Tax Credit (ITC) on account of inverted duty structure:

4. Representations have been received stating that while processing the refund of unutilized ITC on account of inverted tax structure, the departmental officers are denying the refund of ITC of GST paid on those inputs which are procured at equal or lower rate of GST than the rate of GST on outward supply, by not including the amount of such ITC while calculating the maximum refund amount as specified in Rule 89(5) of the CGST Rules. The matter has been examined and the following issues are clarified:

- (a) Refund of unutilized ITC in case of inverted tax structure, as provided in Section 54(3) of the CGST Act, is available where ITC remains unutilized even after setting off of available ITC for the payment of output tax liability. Where there are multiple inputs attracting different rates of tax, in the formula provided in Rule 89(5) of the CGST Rules,

the term ‘Net ITC’ covers the ITC availed on all inputs in the relevant period, irrespective of their rate of tax.

- (b) The calculation of refund of accumulated ITC on account of inverted tax structure, in cases where several inputs are used in supplying the final product/output, can be clearly understood with help of the following example:
 - (i) Suppose a manufacturing process involves the use of an input A (attracting 5 per cent GST) and input B (attracting 18 per cent GST) to manufacture output Y (attracting 12 per cent GST).
 - (ii) The refund of accumulated ITC in the situation at (i) above, will be available under Section 54(3) of the CGST Act read with Rule 89(5) of the CGST Rules, which prescribes the formula for the maximum refund amount permissible in such situations.
 - (iii) Further assume that the claimant supplies the output Y having value of ₹3,000/- during the relevant period for which the refund is being claimed. Therefore, the turnover of inverted rated supply of goods and services will be ₹3,000/. Since the claimant has no other outward supplies, his adjusted total turnover will also be ₹3,000/-.
 - (iv) If we assume that Input A, having value of ₹500/- and Input B, having value of ₹2,000/-, have been purchased in the relevant period for the manufacture of Y, then Net ITC shall be equal to ₹₹385/- (₹25/- and ₹360/- on Input A and Input B respectively).
 - (v) Therefore, multiplying Net ITC by the ratio of turnover of inverted rated supply of goods and services to the adjusted total turnover will give the figure of ₹385/-.
 - (vi) From this, if we deduct the tax payable on such inverted rated supply of goods or services, which is ₹360/-, we get the maximum refund amount, as per Rule 89(5) of the CGST Rules which is ₹25/-.

Disbursal of refund amounts after sanction:

5. Section 56 of the CGST Act clearly states that if any tax ordered to be refunded is not refunded within 60 days of the date of receipt of application, interest at the rate of 6 per cent (notified *vide* Notification No. 13/2017-C.T., dated 28-6-2017) on the refund amount starting from the date immediately after the expiry of sixty days from the date of receipt of application (ARN) till the date of refund of such tax shall have to be paid to the claimant. It may be noted that any tax shall be considered to have been refunded only when the amount has been credited to the bank account of the claimant. Therefore, interest will be calculated starting from the date immediately after the expiry of sixty days from the date of receipt of the application till the date on which the amount is credited to the bank account of the claimant. Accordingly, all tax authorities are advised to issue the final sanction orders in **FORM GST RFD-06** within 45 days of the date of generation of ARN, so that the disbursement is completed within 60 days by both Central and State Tax Authorities for CGST/IGST/UTGST/ Compensation Cess and SGST respectively.

Refund applications that have been generated on the portal but not physically received in the jurisdictional tax offices:

6. There are a large number of applications for refund in **FORM GST RFD-01A** which have been generated on the common portal but have not yet been physically received in the jurisdictional tax offices. With the implementation of electronic submission of refund application, as detailed in para 2 above, this problem is expected to reduce. However, for the applications (except those relating to refund of excess balance in the electronic cash ledger) which have been generated on the common portal before the issuance of this Circular and which have not yet been physically received in the jurisdictional offices (list of all applications pertaining to a particular jurisdictional office which have been generated on the common portal, if not already available, may be obtained from DG-Systems), the following guidelines are laid down:

- (a) All refund applications in which the amount claimed is less than the statutory limit of ₹1,000/- should be rejected and the amount re-credited to the electronic credit ledger of the applicant through the issuance of **FORM GST RFD-01B**.
- (b) For all applications wherein an amount greater than ₹1,000/- has been claimed, a list of applications which have not been received in the jurisdictional tax office within a period of 60 days starting from the date of generation of ARN may be compiled. A communication may be sent to all such claimants on their registered email ids, informing that the application needs to be physical submitted to the jurisdictional tax office within 15 days of the date of the email. The contact details and the address of the jurisdictional officer may also be provided in the said communication. The claimant may be further informed that if he/she fails to physically submit the application within 15 days of the date of the email, the application shall be summarily rejected and the debited amount, if any, shall be re-credited to the electronic credit ledger.

7. For the applications generated on the common portal before the issuance of this Circular in relation to refund of excess balance from the electronic cash ledger which have not yet been received in the jurisdictional office, the amount debited in the electronic cash ledger in such applications may be re-credited through **FORM GST RFD-01B** provided that there are no liabilities in the electronic liability register. The said amount shall be re-credited even though the return in **FORM GSTR-3B**, as the case may be for the relevant period has not been filed.

8. For the refund applications generated on the common portal after the issuance of this Circular, and for the refund applications generated on the common portal before the issuance of this Circular and which have been physically received in the jurisdictional tax offices before the issuance of this Circular, the existing guidelines, as modified by this Circular may be followed.

Issues related to refund of accumulated Input Tax Credit of Compensation Cess:

9. Several representations have been received requesting clarifications on certain issues related to refund of accumulated input tax credit of compensation cess on account of zero-rated supplies made under Bond/Letter of Undertaking. These issues have been examined and are clarified as below:

- (a) **Issue:** A registered person uses inputs on which compensation cess is leviable (E.g. coal) to export goods on which there is no levy of compensation cess (E.g. aluminum). For the period July, 2017 to May, 2018, no ITC is availed of the compensation cess paid on the inputs received during this period. ITC is only availed of the CGST, SGST/UTGST or IGST charged on the invoices for these inputs. This ITC is utilized for payment of IGST on export of goods. *Vide Circular No. 45/19/2018-GST, dated 30-5-2018*, it was clarified that refund of accumulated ITC of compensation cess on account of zero-rated supplies made under Bond/Letter of Undertaking is available even if the exported product is not subject to levy of cess. After the issuance of this Circular, the registered person decides to start exporting under bond/LUT without payment of tax. He also decides to avail (through the return in **FORM GSTR-3B**) the ITC of compensation cess, paid on the inputs used in the months of July, 2017 to May, 2018, in the month of July, 2018. The registered person then goes on to file a refund claim for ITC accumulated on account of exports for the month of July, 2018 and includes the said accumulated ITC for the month of July, 2018. How should the amount of compensation cess to be refunded be calculated?

Clarification: In the instant case, refund on account of compensation cess is to be recomputed as if the same was available in the respective months in which the refund of unutilized credit of CGST/SGST/UTGST/IGST was claimed on account of exports made under LUT/Bond. If the aggregate of these recomputed amounts of refund of compensation cess is less than or equal to the eligible refund of compensation cess calculated in respect of the month in which the same has actually been claimed, then the aggregate of the recomputed refund of compensation cess of the respective months would be admissible. Further, the recomputed amount of eligible refund (of compensation cess) in respect of past periods, as aforesaid, would not be admissible in respect of consignments exported on payment of IGST. This process would be applicable for application for refund of compensation cess (not claimed earlier) in respect of the past period.

- (b) **Issue:** A registered person uses coal for the captive generation of electricity which is further used for the manufacture of goods (say aluminium) which are exported under Bond/Letter of Undertaking without payment of duty. Refund claim is filed for accumulated Input Tax Credit of compensation cess paid on coal. Can the said refund claim

be rejected on the ground that coal is used for the generation of electricity which is an intermediate product and not the final product which is exported and since electricity is exempt from GST, the ITC of the tax paid on coal for generation of electricity is not available?

Clarification: There is no distinction between intermediate goods or services and final goods or services under GST. Inputs have been clearly defined to include any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business. Since coal is an input used in the production of aluminium, albeit indirectly through the captive generation of electricity, which is directly connected with the business of the registered person, input tax credit in relation to the same cannot be denied.

- (c) **Issue:** A registered person avails ITC of compensation cess (say, of ₹100/-) paid on purchases of coal every month. At the same time, he reverses a certain proportion (say, half i.e. ₹50/-) of the ITC of compensation cess so availed on purchases of coal which are used in making zero-rated outward supplies. Both these details are entered in the **FORM GSTR-3B** filed for the month as a result of which an amount of ₹ 50/- only is credited in the electronic credit ledger. The reversed amount (₹50/-) is then shown as a ‘cost’ in the books of accounts of the registered person. However, the registered person declares ₹100/- as ‘Net ITC’ and uses the same in calculating the maximum refund amount which works out to be ₹50/- (assuming that export turnover is half of total turnover). Since both the balance in the electronic credit ledger at the end of the tax period for which the claim of refund is being filed and the balance in the electronic credit ledger at the time of filing the refund claim is ₹50/- (assuming that no other debits/credits have happened), the system will proceed to debit ₹50/- from the ledger as the claimed refund amount. The question is whether the proper officer should sanction ₹50/- as the refund amount or ₹25/- (i.e. half of the ITC availed after adjusting for reversals)?

Clarification: ITC which is reversed cannot be held to have been ‘availed’ in the relevant period. Therefore, the same cannot be part of refund of unutilized ITC on account of zero-rated supplies. Moreover, the reversed ITC has been accounted as a cost which would have reduced the income tax liability of the claimant. Therefore, the same amount cannot, at the same time, be refunded to him/her in the ratio of export turnover to total turnover. However, if the said reversed amount is again availed in a later tax period, subject to the restriction under Section 16(4) of the CGST Act, it can be refunded in the ratio of export turnover to total turnover in that tax period in the same manner as detailed in para 9(a) above. This is subject to the restriction that the accounting entry showing the said ITC as cost is also reversed.

Non-consideration of ITC of GST paid on invoices of earlier tax period availed in subsequent tax period:

10. Presently, ITC is reflected in the electronic credit ledger on the basis of the amount of the ITC availed on self-declaration basis in **FORM GSTR-3B** for a particular tax period. It may happen that the goods purchased against a particular tax invoice issued in a particular month, say August, 2017, may be declared in the **FORM GSTR-3B** filed for a subsequent month, say September, 2017. This is inevitable in cases where the supplier raises an invoice, say in August, 2017, and the goods reach the recipient's premises in September, 2017. Since GST law mandates that ITC can be availed only after the goods are received, the recipient can only avail the ITC on such goods in the **FORM GSTR-3B** filed for the month of September, 2017. However, it has been observed that field officers are excluding such invoices from the calculation of refund of unutilized ITC filed for the month of September, 2017.

11. In this regard, it is clarified that 'Net ITC' as defined in Rule 89(4) of the CGST Rules means input tax credit availed on inputs and input services during the relevant period. Relevant period means the period for which the refund claim has been filed. Input tax credit can be said to have been 'availed' when it is entered into the electronic credit ledger of the registered person. Under the current dispensation, this happens when the said taxable person files his/her monthly return in **FORM GSTR-3B**. Further, Section 16(4) of the CGST Act stipulates that ITC may be claimed on or before the due date of filing of the return for the month of September following the financial year to which the invoice pertains or the date of filing of annual return, whichever is earlier. Therefore, the input tax credit of invoices issued in August, 2017, 'availed' in September, 2017 cannot be excluded from the calculation of the refund amount for the month of September, 2017.

Misinterpretation of the meaning of the term "inputs":

12. It has been represented that on certain occasions, departmental officers do not consider ITC on stores and spares, packing materials, materials purchased for machinery repairs, printing and stationery items, as part of Net ITC on the grounds that these are not directly consumed in the manufacturing process and therefore, do not qualify as input. There are also instances where stores and spares charged to revenue are considered as capital goods and therefore the ITC availed on them is not included in Net ITC, even though the value of these goods has not been capitalized in his books of account by the claimant.

13. In relation to the above, it is clarified that the input tax credit of the GST paid on inputs shall be available to a registered person as long as he/she uses or intends to use such inputs for the purposes of his/her business and there is no specific restriction on the availment of such ITC anywhere else in the GST Act. The GST paid on inward supplies of stores and spares, packing materials etc. shall be available as ITC as long as these inputs are used for the purpose of the business and/or for effecting taxable supplies, including zero-rated supplies, and the ITC for such inputs is not restricted under Section 17(5) of the CGST Act.

Further, capital goods have been clearly defined in Section 2(19) of the CGST Act as goods whose value has been capitalized in the books of account and which are used or intended to be used in the course or furtherance of business. Stores and spares, the expenditure on which has been charged as a revenue expense in the books of account, cannot be held to be capital goods.

Refund of accumulated ITC of input services and capital goods arising on account of inverted duty structure:

14. Section 54(3) of the CGST Act provides that refund of any unutilized ITC may be claimed where the credit has accumulated on account of rate of tax on *inputs* being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies). Further, Section 2(59) of the CGST Act defines *inputs* as any *goods other than capital goods* used or intended to be used by a supplier in the course or furtherance of business. Thus, inputs do not include services or capital goods. Therefore, clearly, the intent of the law is not to allow refund of tax paid on input services or capital goods as part of refund of unutilized input tax credit. Accordingly, in order to align the CGST Rules with the CGST Act, Notification No. 26/2018-C.T., dated 13-6-2018 was issued wherein it was stated that the term Net ITC, as used in the formula for calculating the maximum refund amount under Rule 89(5) of the CGST Rules, shall mean input tax credit availed on *inputs* during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both. In view of the above, it is clarified that both the law and the related rules clearly prevent the refund of tax paid on input services and capital goods as part of refund of input tax credit accumulated on account of inverted duty structure.

15. All previous Circulars/Instructions issued on the subject stand modified accordingly. It is requested that suitable trade notices may be issued to publicize the contents of this circular.

16. Difficulty, if any, in implementation of this Circular may please be brought to the notice of the Board. Hindi version would follow.

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Circular No. 94/13/2019-GST, dated 28-3-2019

Subject: Clarification of refund related issues under GST-Regarding

Various representations have been received seeking clarifications on certain issues relating to refund. In order to clarify these issues and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168(1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”), hereby clarifies the issues as detailed hereunder:

| Sl. No. | Issue | Clarification |
|------------|--|---|
| 1 | Certain registered persons have reversed, through return in FORM GSTR-3B filed for | (a) As a one-time measure to resolve this issue, refund of accumulated ITC on account of inverted tax |

| Sl. No. | Issue | Clarification |
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| | <p>the month of August, 2018 or for a subsequent month, the accumulated input tax credit (ITC) required to be lapsed in terms of notification No. 20/2018- Central Tax (Rate) dated 26.07.2018 read with circular No. 56/30/2018-GST dated 24.08.2018 (hereinafter referred to as the “said notification”). Some of these registered persons, who have attempted to claim refund of accumulated ITC on account of inverted tax structure for the same period in which the ITC required to be lapsed in terms of the said notification has been reversed, are not able to claim refund of accumulated ITC to the extent to which they are so eligible. This is because of a validation check on the common portal which prevents the value of input tax credit in Statement 1A of FORM GST RFD-01A from being higher than the amount of ITC availed in FORM GSTR-3B of the relevant period minus the value of ITC reversed in the same period. This results in registered persons being unable to claim the full amount of refund of accumulated ITC on account of inverted tax structure to which they might be otherwise eligible. What is the solution to this problem?</p> | <p>structure, for the period(s) in which there is reversal of the ITC required to be lapsed in terms of the said notification, is to be claimed under the category “any other” instead of under the category “refund of unutilized ITC on account of accumulation due to inverted tax structure” in FORM GST RFD-01A. It is emphasized that this application for refund should relate to the same tax period in which such reversal has been made.</p> <p>(b) The application shall be accompanied by all statements, declarations, undertakings and other documents which are statutorily required to be submitted with a “refund claim of unutilized ITC on account of accumulation due to inverted tax structure”. On receiving the said application, the proper officer shall himself calculate the refund amount admissible as per rule 89(5) of Central Goods and Services Tax Rules, 2017 (hereinafter referred to as “CGST Rules”), in the manner detailed in para 3 of Circular No. 59/33/2018-GST dated 04.09.2018. After calculating the admissible refund amount, as described above, and scrutinizing the application for completeness and eligibility, if the proper officer is satisfied that the whole or any part of the amount claimed is payable as refund, he shall request the taxpayer, in writing, to debit the said amount from his electronic credit ledger through FORM GST DRC-03. Once the proof of such debit is received</p> |

| Sl. No. | Issue | Clarification |
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| | | <p>by the proper officer, he shall proceed to issue the refund order in FORM GST RFD-06 and the payment advice in FORM GST RFD-05.</p> <p>(c) All refund applications for unutilized ITC on account of accumulation due to inverted tax structure for subsequent tax period(s) shall be filed in FORM GST RFD-01A under the category “refund of unutilized ITC on account of accumulation due to inverted tax structure”.</p> |
| 2 | <p>The clarification at Sl. No. 1 above applies to registered persons who have already reversed the ITC required to be lapsed in terms of the said notification through return in FORM GSTR-3B. What about those registered persons who are yet to perform this reversal?</p> | <p>It is hereby clarified that all those registered persons required to make the reversal in terms of the said notification and who have not yet done so, may reverse the said amount through FORM GST DRC-03 instead of through FORM GSTR-3B.</p> |
| 3 | <p>What shall be the consequence if any registered person reverses the amount of credit to be lapsed, in terms the said notification, through the return in FORM GSTR-3B for any month subsequent to August, 2018 or through FORM GST DRC-03 subsequent to the due date of filing of the return in FORM GSTR-3B for the month of August, 2018?</p> | <p>(a) As the registered person has reversed the amount of credit to be lapsed in the return in FORM GSTR-3B for a month subsequent to the month of August, 2018 or through FORM GST DRC-03 subsequent to the due date of filing of the return in FORM GSTR-3B for the month of August, 2018, he shall be liable to pay interest under sub-section (1) of section 50 of the CGST Act on the amount which has been reversed belatedly. Such interest shall be calculated starting from the due date of filing of return in FORM GSTR3B for the month of August, 2018 till the date of reversal of said amount through</p> |

| Sl. No. | Issue | Clarification |
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| | | <p>FORM GSTR-3B or through FORM GST DRC-03, as the case may be. (b) The registered person who has reversed the amount of credit to be lapsed in the return in FORM GSTR-3B for any month subsequent to August, 2018 or through FORM GST DRC-03 subsequent to the due date of filing of the return in FORM GSTR-3B for the month of August, 2018 would remain eligible to claim refund of unutilized ITC on account of accumulation due to inverted tax structure w.e.f. 01.08.2018. However, such refund shall be granted only after the reversal of the amount of credit to be lapsed, either through FORM GSTR-3B or FORM GST DRC-03, along with payment of interest, as applicable.</p> |
| 4 | <p>How should a merchant exporter claim refund of input tax credit availed on supplies received on which the supplier has availed the benefit of the Government of India, Ministry of Finance, notification No. 40/2017-Central Tax (Rate), dated the 23rd October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), <i>vide</i> number G.S.R 1320 (E), dated the 23rd October, 2017 or notification No. 41/2017-Integrated Tax (Rate), dated the 23rd October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Subsection (i), <i>vide</i></p> | <p>(a) Rule 89(4B) of the CGST Rules provides that where the person claiming refund of unutilized input tax credit on account of zero-rated supplies without payment of tax has received supplies on which the supplier has availed the benefit of the said notifications, the refund of input tax credit, availed in respect of such inputs received under the said notifications for export of goods, shall be granted.</p> <p>(b) This refund of accumulated ITC under rule 89(4B) of the CGST Rules shall be applied under the category "any other" instead of under the category "refund of unutilized ITC on account of exports without payment of tax" in FORM GST RFD-01A and shall be accompanied by all supporting</p> |

| Sl. No. | Issue | Clarification |
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| | number G.S.R 1321(E), dated the 23rd October, 2017 (hereinafter referred to as the "said notifications")? | documents required for substantiating the refund claim under the category "refund of unutilized ITC on account of exports without payment of tax". After scrutinizing the application for completeness and eligibility, if the proper officer is satisfied that the whole or any part of the amount claimed is payable as refund, he shall request the taxpayer, in writing, to debit the said amount from his electronic credit ledger through FORM GST DRC-03. Once the proof of such debit is received by the proper officer, he shall proceed to issue the refund order in FORM GST RFD-06 and the payment advice in FORM GST RFD-05. |
| 5 | Vide Circular No. 59/33/2018-GST dated 04.09.2018, it was clarified that after issuance of a deficiency memo, the input tax credit is required to be recredited through FORM GST RFD-01B and the taxpayer is expected to file a fresh application for refund. Accordingly, in several cases, the ITC amounts were recredited after issuance of deficiency memo. However, it was later represented that the common portal does not allow a taxpayer to file a fresh application for the same period after issuance of a deficiency memo. Therefore, the matter was reexamined and it was subsequently | In such cases, the claimant may resubmit the refund application manually in FORM GST RFD-01A after the deficiency memo, using the same ARN. The proper officer shall then proceed to process the refund application as per the existing guidelines. After scrutinizing the application for completeness and eligibility, if the proper officer is satisfied that the whole or any part of the amount claimed is payable as refund, he shall request the taxpayer, in writing, to debit the said amount from his electronic credit ledger through FORM GST DRC-03. Once the proof of such debit is received by the officer, he shall proceed to issue the refund order in FORM GST RFD-06 and the payment advice in FORM GST RFD-05. |

| Sl. No. | Issue | Clarification |
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| | clarified, <i>vide</i> Circular No. 70/44/2018-GST dated 26.10.2018 that no re-credit should be carried out in such cases and taxpayers should file the rectified application, after issuance of the deficiency memo, under the earlier ARN only. It was also further clarified that a suitable clarification would be issued separately for cases in which such re-credit has already been carried out. However, no such clarification has yet been issued and several refund claims are pending on this account. | |

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Circular No. 125/44/2019-GST [CBEC-20/16/04/18-GST], dated 18-11-2019

Subject: Fully electronic refund process through FORM GST RFD-01 and single disbursement – regarding.

1. After roll out of GST w.e.f. 01.07.2017, on account of the unavailability of electronic refund module on the common portal, a temporary mechanism had to be devised and implemented wherein applicants were required to file the refund application in **FORM GST RFD-01A** on the common portal, take a print out of the same and submit it physically to the jurisdictional tax office along with all supporting documents. Further processing of these refund applications, i.e. issuance of acknowledgement of the refund application, issuance of deficiency memo, passing of provisional/final order, payment advice etc. was also being done manually. In order to make the process of submission of the refund application electronic, Circular No. 79/53/2018-GST, dated 31.12.2018 was issued wherein it was specified that the refund application in **FORM GST RFD-01A**, along with all supporting documents, shall be submitted electronically. However, various post submission stages of processing of the refund application continued to be manual.

2. The necessary capabilities for making the refund procedure fully electronic, in which all steps of submission and processing shall be undertaken electronically, have been deployed on the common portal with effect from **26.09.2019**. Accordingly, the Circulars issued earlier laying down the guidelines for manual submission and processing of refund claims need to be suitably

modified and a fresh set of guidelines needs to be issued for electronic submission and processing of refund claims. With this objective and in order to ensure uniformity in the implementation of the provisions of law across field formations, the Board, in exercise of its powers conferred by section 168(1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby lays down the procedure for electronic submission and processing of refund applications in supersession of earlier Circulars viz. Circular No. 17/17/2017-GST, dated 15.11.2017, 24/24/2017-GST, dated 21.12.2017, 37/11/2018-GST, dated 15.03.2018, 45/19/2018-GST, dated 30.05.2018 (including corrigendum dated 18.07.2019), 59/33/2018-GST, dated 04.09.2018, 70/44/2018-GST, dated 26.10.2018, 79/53/2018-GST, dated 31.12.2018 and 94/13/2019-GST, dated 28.03.2019. However, the provisions of the said Circulars shall continue to apply for all refund applications filed on the common portal before 26.09.2019 and the said applications shall continue to be processed manually as prior to deployment of new system.

Filing of refund applications in **FORM GST RFD-01**

3. With effect from 26.09.2019, the applications for the following types of refunds shall be filed in **FORM GST RFD-01** on the common portal and the same shall be processed electronically:

- (a) Refund of unutilized input tax credit (ITC) on account of exports without payment of tax;
- (b) Refund of tax paid on export of services with payment of tax;
- (c) Refund of unutilized ITC on account of supplies made to SEZ Unit/SEZ Developer without payment of tax;
- (d) Refund of tax paid on supplies made to SEZ Unit/SEZ Developer with payment of tax;
- (e) Refund of unutilized ITC on account of accumulation due to inverted tax structure;
- (f) Refund to supplier of tax paid on deemed export supplies;
- (g) Refund to recipient of tax paid on deemed export supplies;
- (h) Refund of excess balance in the electronic cash ledger;
- (i) Refund of excess payment of tax;
- (j) Refund of tax paid on intra-State supply which is subsequently held to be inter-State supply and *vice versa*;
- (k) Refund on account of assessment/provisional assessment/appeal/any other order;
- (l) Refund on account of "any other" ground or reason.

4. The following modalities shall be followed for all refund applications filed in **FORM GST RFD-01** on the common portal with effect from 26.09.2019:

- (a) **FORM GST RFD-01** shall be filled on the common portal by an applicant seeking refund under any of the categories mentioned above.

This shall entail filing of statements/declarations/undertakings which are part of **FORM GST RFD-01** itself, and also uploading of other documents/invoices which shall be required to be provided by the applicant for processing of the refund claim. A comprehensive list of such documents is provided at Annexure-A and it is clarified that no other document needs to be provided by the applicant at the stage of filing of the refund application. The facility of uploading these other documents/invoices shall be available on the common portal where four documents, each of maximum 5MB, may be uploaded along with the refund application. Neither the refund application in **FORM GST RFD-01** nor any of the supporting documents shall be required to be physically submitted to the office of the jurisdictional proper officer.

- (b) The Application Reference Number (ARN) will be generated only after the applicant has completed the process of filing the refund application in **FORM GST RFD-01**, and has completed uploading of all the supporting documents/undertaking/statements/invoices and, where required, the amount has been debited from the electronic credit/cash ledger.
 - (c) As soon as the ARN is generated, the refund application along with all the supporting documents shall be transferred electronically to the jurisdictional proper officer who shall be able to view it on the system. The application shall be deemed to have been filed under sub-rule (2) of rule 90 of the CGST Rules on the date of generation of the said ARN and the time limit of 15 days to issue an acknowledgement or a deficiency memo, as the case may be, shall be counted from the said date. This will obviate the need for an applicant to visit the jurisdictional tax office for the submission of the refund application and/or any of the supporting documents. Accordingly, the acknowledgement for the complete application (**FORM GST RFD-02**) or deficiency memo (**FORM GST RFD-03**), as the case may be, would be issued electronically by the jurisdictional tax officer based on the documents so received from the common portal.
 - (d) If a refund application is electronically transmitted to the wrong jurisdictional officer, he/she shall reassign it to the correct jurisdictional officer electronically as soon as possible, but not later than three working days, from the date of generation of the ARN. Deficiency memos shall not be issued in such cases merely on the ground that the applications were received electronically in the wrong jurisdiction.
 - (e) It may be noted that the facility to reassign such refund applications is already available with the Commissioner or the officer(s) authorized by him.
5. The refund application in **FORM GST RFD-01** filed by all taxpayers, who have already been assigned to the Centre or the State tax authorities, shall be automatically forwarded by the common portal to the concerned authority. At the

same time, there might be some migrated taxpayers, who have remained unassigned so far. The refund application in **FORM GST RFD-01** filed by such unassigned taxpayers shall be forwarded, for processing, by the common portal to the jurisdictional proper officer of the tax authority from which the taxpayer has originally migrated. Such officers will continue to process these applications up to the stage of issuance of final order in **FORM GST RFD-06** and the related payment order in **FORM GST RFD-05** even if the applicant is assigned to the counterpart tax authority while the refund claim is under processing. However, if such an applicant gets assigned to one of the tax authorities after generation of the ARN and a deficiency memo gets issued for the refund application submitted by him, then the re-submitted refund application, after correction of deficiencies, shall be treated as a fresh refund application and shall be forwarded to the jurisdictional proper officer of the tax authority to which the taxpayer has now been assigned, irrespective of which authority handled the initial refund claim and issued the deficiency memo.

6. Any refund claim for a tax period may be filed only after furnishing all the returns in **FORM GSTR-1** and **FORM GSTR-3B** which were due to be furnished on or before the date on which the refund application is being filed. However, in case of a claim for refund filed by a composition taxpayer, a non-resident taxable person, or an Input Service Distributor (ISD) furnishing of returns in **FORM GSTR-1** and **FORM GSTR-3B** is not required. Instead, the applicant should have furnished returns in **FORM GSTR-4 (along with FORM GST CMP-08)**, **FORM GSTR-5** or **FORM GSTR-6**, as the case may be, which were due to be furnished on or before the date on which the refund application is being filed.

7. Since the functionality of furnishing of **FORM GSTR-2** and **FORM GSTR-3** remains unimplemented, it has been decided by the GST Council to sanction refund of provisionally accepted input tax credit. However, the applicants applying for refund must give an undertaking to the effect that the amount of refund sanctioned would be paid back to the Government with interest in case it is found subsequently that the requirements of clause (c) of sub-section (2) of section 16 read with sub-section (2) of section 42 of the CGST Act have not been complied with in respect of the amount refunded. This undertaking should be submitted electronically along with the refund claim.

8. The applicant, at his option, may file a refund claim for a tax period or by clubbing successive tax periods. The period for which refund claim has been filed, however, cannot spread across different financial years. Registered persons having aggregate turnover of up to ₹ 1.5 crore in the preceding financial year or the current financial year opting to file **FORM GSTR-1** on quarterly basis, can only apply for refund on a quarterly basis or clubbing successive quarters as aforesaid. However, refund claims under categories listed at (a), (c) and (e) in para 3 above must be filed by the applicant chronologically. This means that an applicant, after submitting a refund application under any of these categories for a certain period, shall not be subsequently allowed to file a refund claim under

the same category for any previous period. This principle/limitation, however, shall not apply in cases where a fresh application is being filed pursuant to a deficiency memo having been issued earlier.

Deficiency Memos

9. It may be noted that if the application for refund is complete in terms of sub-rule (2), (3) and (4) of rule 89 of the CGST Rules, an acknowledgement in **FORM GST RFD-02** should be issued within 15 days of the filing of the refund application. The date of generation of ARN for **FORM GST RFD-01** is to be considered as the date of filing of the refund application. Sub-rule (3) of rule 90 of the CGST Rules provides for communication of deficiencies in **FORM GST RFD-03** where deficiencies are noticed within the aforesaid period of 15 days. It is clarified that either an acknowledgement or a deficiency memo should be issued within the aforesaid period of 15 days starting from the date of generation of ARN. Once an acknowledgement has been issued in relation to a refund application, no deficiency memo, on any grounds, may be subsequently issued for the said application.

10. After a deficiency memo has been issued, the refund application would not be further processed and a fresh application would have to be filed. Any amount of input tax credit/cash debited from electronic credit/cash ledger would be re-credited automatically once the deficiency memo has been issued. It may be noted that the re-credit would take place automatically and no order in **FORM GST PMT-03** is required to be issued. The applicant is required to rectify the deficiencies highlighted in deficiency memo and file fresh refund application electronically in **FORM GST RFD-01** again for the same period and this application would have a new and distinct ARN.

11. It is further clarified that once an application has been submitted afresh, pursuant to a deficiency memo, the proper officer will not serve another deficiency memo with respect to the application for the same period, unless the deficiencies pointed out in the original deficiency memo remain un-rectified, either wholly or partly, or any other substantive deficiency is noticed subsequently.

12. It is also clarified that since a refund application filed after correction of deficiency is treated as a fresh refund application, such a rectified refund application, submitted after correction of deficiencies, shall also have to be submitted within 2 years of the relevant date, as defined in the explanation after sub-section (14) of section 54 of the CGST Act.

Provisional Refund

13. Doubts get raised as to whether provisional refund would be given even in those cases where the proper officer *prima facie* has sufficient reasons to believe that there are irregularities in the refund application which would result in rejection of whole or part of the refund amount so claimed. It is clarified that in such cases, the proper officer shall refund on a provisional basis ninety percent of the refundable amount of the claim (amount of refund claim less the inadmissible

portion of refund so found) in accordance with the provisions of rule 91 of the CGST Rules. Final sanction of refund shall be made in accordance with the provisions of rule 92 of the CGST Rules.

14. It is further clarified that there is no prohibition under the law preventing a proper officer from sanctioning the entire amount within 7 days of the issuance of acknowledgement through issuance of **FORM GST RFD-06**, instead of grant of provisional refund of 90 per cent of the amount claimed through **FORM GST RFD-04**. If the proper officer is fully satisfied about the eligibility of a refund claim on account of zero-rated supplies, and is of the opinion that no further scrutiny is required, the proper officer may issue final order in **FORM GST RFD-06** within 7 days of the issuance of acknowledgement. In such cases, the issuance of a provisional refund order in **FORM GST RFD-04** will not be necessary.

15. Further, there are doubts on the procedure to be followed in situations where the final refund amount to be sanctioned in **FORM GST RFD-06** is less than the amount of refund sanctioned provisionally through **FORM GST RFD-04**. For example, consider a situation where an applicant files a refund claim of ₹100 on account of zero-rated supplies. The proper officer, after *prima facie* examination of the application, sanctions ₹ 90 as provisional refund through **FORM GST RFD-04** and the same is electronically credited to his bank account. However, on detailed examination, it appears to the proper officer that only an amount of ₹ 70 is admissible as refund to the applicant. In such cases, the proper officer shall have to issue a show cause notice to the applicant, in **FORM GST RFD-08**, under section 54 of the CGST Act, read with section 73 or 74 of the CGST Act, requiring the applicant to show cause as to why:

- (a) the amount claimed of ₹30 should not be rejected as per the relevant provisions of the law; and
- (b) the amount of ₹20 erroneously refunded should not be recovered under section 73 or section 74 of the CGST Act, as the case may be, along with interest and penalty, if any.

16. The proper officer for adjudicating the above case shall be the same as the proper officer for sanctioning refund under section 54 of the CGST Act. The above notice shall be adjudicated following the principles of natural justice and an order shall be issued, in **FORM GST RFD-06**, under section 54 of the CGST Act, read with section 73 or section 74 of the CGST Act, as the case may be. If the adjudicating authority decides against the applicant in respect of both points (a) and (b) above, then an amount of ₹70 will have to be sanctioned in **FORM GST RFD-06**, and an amount of ₹20, along with interest and penalty, if any, shall be entered by the officer in the electronic liability register of the applicant through issuance of **FORM GST DRC-07**. Further, if the application pertains to refund of unutilized/accumulated ITC, then ₹30, i.e. the amount rejected, shall have to be re-credited to the electronic credit ledger of the applicant through **FORM GST PMT-03**. However, this re-credit shall be done only after the receipt of an undertaking from the applicant to the effect that he shall not file an

appeal or in case he files an appeal, the same has been finally decided against the applicant. In such cases, it may be noted that **FORM GST RFD-08** and **FORM GST RFD-06**, are to be considered as show cause notice and adjudication order respectively, under both section 54 (for rejection of refund) and section 73/74 of the CGST Act as the case may be (for recovery of erroneous refund).

17. It is further clarified that no adjustment or withholding of refund, as provided under sub-sections (10) and (11) of section 54 of the CGST Act, shall be allowed in respect of the amount of refund which has been provisionally sanctioned. In cases where there is an outstanding recoverable amount due from the applicant, the proper officer, instead of granting refund on provisional basis, may process and sanction refund on final basis at the earliest and recover the amount from the amount so sanctioned.

Scrutiny of Application

18. In case of refund claim on account of export of goods without payment of tax, the Shipping bill details shall be checked by the proper officer through ICEGATE SITE (www.icegate.gov.in) wherein the officer would be able to check details of EGM and shipping bill by keying in port name, Shipping bill number and date. It is advised that while processing refund claims, information contained in Table 9 of **FORM GSTR-1** of the relevant tax period as well as that of the subsequent tax periods should also be taken into cognizance, wherever applicable. In this regard, Circular No. 26/26/2017-GST, dated 29.12.2017 may be referred, wherein the procedure for rectification of errors made while filing the returns in **FORM GSTR-3B** has been provided. Therefore, in case of discrepancies between the data furnished by the taxpayer in **FORM GSTR-3B** and **FORM GSTR-1**, the proper officer shall refer to the said Circular and process the refund application accordingly.

19. Detailed guidelines laid down in subsequent paragraphs of this Circular covering various types of refund claims may also be followed while scrutinizing refund claims for completeness and eligibility.

Re-crediting of electronic credit ledger on account of rejection of refund claim

20. In case of rejection of refund claim of unutilized/accumulated ITC due to ineligibility of the input tax credit under any provisions of the CGST Act and rules made thereunder, the proper officer shall have to issue a show cause notice in **FORM GST RFD-08**, under section 54 of the CGST Act, read with section 73 or 74 of the CGST Act, requiring the applicant to show cause as to why:

- (a) the refund amount corresponding to the ineligible ITC should not be rejected as per the relevant provisions of the law; and
- (b) the amount of ineligible ITC should not be recovered as wrongly availed ITC under section 73 or section 74 of the CGST Act, as the case may be, along with interest and penalty, if any.

21. The above notice shall be adjudicated following the principles of natural justice and an order shall be issued, in **FORM GST RFD-06**, under section 54 of

the CGST Act, read with section 73 or section 74 of the CGST Act, as the case may be. If the adjudicating authority decides against the applicant in respect of both points (a) and (b) above, then **FORM GST RFD-06** shall have to be issued accordingly, and the amount of ineligible ITC, along with interest and penalty, if any, shall be entered by the officer in the electronic liability register of the applicant through issuance of **FORM GST DRC-07**. Alternatively, the applicant can voluntarily pay this amount, along with interest and penalty, as applicable, before service of the demand notice, and intimate the same to the proper officer in **FORM GST DRC-03** in accordance with sub-section (5) of section 73 or sub-section (5) of section 74 of the CGST Act, as the case may be, read with sub-rule (2) of rule 142 of the CGST Rules. In such cases, the need for serving a demand notice for recovery of ineligible ITC will be obviated. In any case, the proper officer shall order for the rejected amount to be re-credited to the electronic credit ledger of the applicant using **FORM GST PMT-03**, only after the receipt of an undertaking from the applicant to the effect that he shall not file an appeal or in case he files an appeal, the same is finally decided against the applicant.

22. In case of rejection of a claim for refund, on account of any reason other than the ineligibility of credit, the process described in para 20 and 21 above shall be followed with the only difference that there shall be no proceedings for recovery of ineligible ITC under section 73 or section 74, as the case may be.

23. Consider an example where against a refund claim of unutilized/accumulated ITC of ₹100, only ₹80 is sanctioned (₹15 is rejected on account of ineligible ITC and ₹5 is rejected on account of any other reason). As stated above, a show cause notice, in **FORM GST RFD-08** shall have to be issued to the applicant, requiring him to show cause as to why the refund claim amounting to ₹20 should not be rejected under the relevant provisions of the law and why the ineligible ITC of ₹ 15 should not be recovered under section 73 or section 74, as the case may be, with interest and penalty, if any. If the said notice is decided against the applicant, ₹15, along with interest and penalty, if any, shall be entered by the officer in the electronic liability register of the applicant through issuance of **FORM GST DRC-07**. Further, ₹20 would be recrated through **FORM GST PMT-03** only after the receipt of an undertaking from the applicant to the effect that he shall not file an appeal or in case he files an appeal, the same is finally decided against the applicant.

24. Continuing with the above example, further assume that the applicant files an appeal against this order and the appellate authority decides wholly in the applicant's favour. It is hereby clarified in such a case the petitioner would file a fresh refund claim for the said amount of ₹20 under the option of claiming refund "On Account of Assessment/Provisional Assessment/Appeal/Any other order".

Application for refund of integrated tax paid on export of services and supplies made to a Special Economic Zone developer or a Special Economic Zone unit

25. It has been represented that while filing the return in **FORM GSTR-3B** for a given tax period, certain registered persons committed errors in declaring

the export of services on payment of integrated tax or zero-rated supplies made to a Special Economic Zone developer or a Special Economic Zone unit on payment of integrated tax. They have shown such supplies in the Table under column 3.1(a) instead of showing them in column 3.1(b) of **FORM GSTR-3B** whilst they have shown the correct details in Table 6A or 6B of **FORM GSTR-1** for the relevant tax period and duly discharged their tax liabilities. Such registered persons were earlier unable to file the refund application in **FORM GST RFD-01A** for refund of integrated tax paid on the export of services or on supplies made to a SEZ developer or a SEZ unit on the GST common portal because of an in-built validation check in the system which restricted the refund amount claimed (integrated tax/cess) to the amount of integrated tax/cess mentioned under column 3.1(b) of **FORM GSTR-3B** (zero-rated supplies) filed for the corresponding tax period.

26. In this regard, it is clarified that for the tax periods commencing from 01.07.2017 to 30.06.2019, such registered persons shall be allowed to file the refund application in **FORM GST RFD-01** on the common portal subject to the condition that the amount of refund of integrated tax/cess claimed shall not be more than the aggregate amount of integrated tax/cess mentioned in the Table under columns 3.1(a), 3.1(b) and 3.1(c) of **FORM GSTR-3B** filed for the corresponding tax period.

Disbursal of refunds

27. Separate disbursement of refund amounts under different tax heads by different tax authorities, i.e. disbursement of Central tax, Integrated tax and Compensation Cess by Central tax officers and disbursement of State tax by State tax officers, was causing undue hardship to the refund applicants. In order to facilitate refund applicants on this account, it has now been decided that for a refund application assigned to a Central tax officer, both the sanction order (**FORM GST RFD-04/06**) and the corresponding payment order (**FORM GST RFD-05**) for the sanctioned refund amount, under all tax heads, shall be issued by the Central tax officer only. Similarly, for refund applications assigned to a State/UT tax officer, both the sanction order (**FORM GST RFD-04/06**) and the corresponding payment order (**FORM GST RFD-05**) for the sanctioned refund amount, under all tax heads, shall be issued by the State/UT tax officer only.

28. The sanctioned refund amounts, as entered in the payment orders issued by the Central and State/UT tax officers, shall be disbursed through the Public Financial Management System (PFMS) of the Controller General of Accounts (CGA), Ministry of Finance, Government of India. On filing of a refund application in **FORM GST RFD-01**, the common portal shall generate a master file for the applicant containing the relevant details like name, GSTIN, bank account details etc. This master file shall be shared with PFMS for validation of the bank account details provided by the applicant in the refund application. Once the bank account is validated, PFMS will create a unique assessee code (combination of GSTIN + validated bank account number) for the applicant. This unique assessee code will be used by PFMS for all refund payments made to the

applicant in the said bank account. Therefore, in order to avoid repeat validations and generation of multiple unique assessee codes for the same GSTIN, it shall be advisable for the applicants to enter the same bank account details in successive refund applications submitted in **FORM GST RFD-01**. In cases where an applicant wishes to avail the refund in a different bank account, which has not yet been validated, a new unique assessee code (comprising of GSTIN + new bank account) will be generated by PFMS after validation of the said bank account.

29. If the bank account details mentioned by an applicant in the refund application submitted in **FORM GST RFD-01** are invalidated, an error message shall be transmitted by PFMS to the common portal electronically and the common portal shall make the error message available to the applicant and the refund officers on their dashboards. On receiving such an error message, an applicant can:

- (a) rectify the invalidated bank account details by filing a non-core amendment in **FORM GST REG-14**; or
- (b) add a new bank account by filing a non-core amendment in **FORM GST REG-14**.

30. The updated bank account details will be reflected in a drop-down menu on the dashboard. From this drop-down menu, the applicant can choose any bank account, including the ones rectified (option (a)) or newly added (option (b)), from the list of bank accounts available in his registration database. The chosen bank account details will again be sent to PFMS for validation. The proper officer will be able to issue the payment order in **FORM GST RFD-05** only after the selected bank account has been validated.

31. By following the above process, validation errors, if any, will generally be corrected before the issuance of payment order in **FORM GST RFD-05**. Therefore, there should generally not be any validation errors after issuance of a payment order in **FORM GST RFD-05**. However, in certain exceptional cases, it is possible that a validation error occurs after issuance of the payment order. In such cases, the said payment order will be invalidated by the common portal and a new payment order will have to be issued by the proper officer after following the rectification process described in paras 29 and 30 above. The re-issued payment order will have a new reference number and shall contain the newly selected bank account details. However, there will be no change in either the original ARN or the sanction order number or the amount for which the payment order was originally issued.

32. It may be noted that the applicant, at the time of filing of refund application in **FORM GST RFD-01**, can select a bank account only from the list of bank accounts provided by him at the time of registration in **FORM GST REG-01**, or subsequently through filing a non-core amendment in **FORM GST REG-14**. The same account details will be auto-populated in the payment order issued in **FORM GST RFD-05**. Any change in these auto-populated bank account details shall not be allowed unless there is a validation error in relation to the same.

33. The disbursement status of the refund amount would be communicated by PFMS to the common portal. The common portal shall notify the same to the taxpayer by email/SMS. Such details shall also be available on the status tracking facility on the dashboard.

34. Section 56 of the CGST Act clearly states that if any tax ordered to be refunded is not refunded within 60 days of the date of receipt of application, interest at the rate of 6 per cent (notified *vide* notification No. 13/2017-Central Tax, dated 28.06.2017) on the refund amount starting from the date immediately after the expiry of sixty days from the date of receipt of application (ARN) till the date of refund of such tax shall have to be paid to the applicant. It may be noted that any tax shall be considered to have been refunded only when the amount has been credited to the bank account of the applicant. Therefore, interest will be calculated starting from the date immediately after the expiry of sixty days from the date of receipt of the application till the date on which the amount is credited to the bank account of the applicant. Accordingly, all tax authorities are advised to issue the final sanction order in **FORM GST RFD-06** and the payment order in **FORM GST RFD-05** within 45 days of the date of generation of ARN, so that the disbursement is completed within 60 days.

35. The provisions relating to refund provide for partial as well as complete adjustment of refund against any outstanding demand under GST or under any existing law. It is hereby clarified that both partial or complete adjustment of sanctioned amount of refund against any outstanding demand under GST or under any existing law would be made in **FORM GST RFD-06**. Furthermore, sub-clause (b) of sub-section (6), sub-clause (a) of sub-section (7), sub-clause (a) of sub-section (8) and sub-clause (a) of sub-section (9) of Section 142 of the CGST Act provides for recovery of any tax, interest, fine, penalty or any other amount recoverable under the existing law as an arrear of tax under GST unless such amount is recovered under the existing law. It is hereby clarified that adjustment of refund amount against any outstanding demand under the existing law can be done.

Guidelines for refunds of unutilized Input Tax Credit

36. Applicants of refunds of unutilized ITC, i.e. refunds pertaining to items listed at (a), (c) and (e) in para 3 above, shall have to upload a copy of **FORM GSTR-2A** for the relevant period (or any prior or subsequent period(s) in which the relevant invoices have been auto-populated) for which the refund is claimed. The proper officer shall rely upon **FORM GSTR-2A** as an evidence of the account of the supply by the corresponding supplier(s) in relation to which the input tax credit has been availed by the applicant. Such applicants shall also upload the details of all the invoices on the basis of which input tax credit has been availed during the relevant period for which the refund is being claimed, in the format enclosed as Annexure-B along with the application for refund claim. Such availment of ITC will be subject to restriction imposed under sub-rule (4) in rule 36 of the CGST rules inserted *vide* Notification No. 49/2019-CT dated 09.10.2019. The applicant shall also declare the eligibility or otherwise of the

input tax credit availed against the invoices related to the claim period in the said format for enabling the proper officer to determine the same. Self-certified copies of invoices in relation to which the refund of ITC is being claimed and which are declared as eligible for ITC in Annexure-B, but which are not populated in **FORM GSTR-2A**, shall be uploaded by the applicant along with the application in **FORM GST RFD 01**. It is emphasized that the proper officer shall not insist on the submission of an invoice (either original or duplicate) the details of which are available in **FORM GSTR-2A** of the relevant period uploaded by the applicant.

37. In case of refunds pertaining to items listed at (a), (c) and (e) in para 3 above, the common portal calculates the refundable amount as the least of the following amounts:

- (a) The maximum refund amount as per the formula in rule 89(4) or rule 89(5) of the CGST Rules [formula is applied on the consolidated amount of ITC, i.e. Central tax + State tax/Union Territory tax +Integrated tax];
- (b) The balance in the electronic credit ledger of the applicant at the end of the tax period for which the refund claim is being filed after the return in **FORM GSTR-3B** for the said period has been filed; and
- (c) The balance in the electronic credit ledger of the applicant at the time of filing the refund application.

After calculating the least of the three amounts, as detailed above, the equivalent amount is to be debited from the electronic credit ledger of the applicant in the following order:

- (a) Integrated tax, to the extent of balance available;
- (b) Central tax and State tax/Union Territory tax, equally to the extent of balance available and in the event of a shortfall in the balance available in a particular electronic credit ledger (say, Central tax), the differential amount is to be debited from the other electronic credit ledger (i.e., State tax/Union Territory tax, in this case).

38. The order of debit described above, however, is not presently available on the common portal. Till the time such facility is made available on the common portal, the taxpayers are advised to follow the order as explained above for all refund applications. However, for applications where this order is not adhered to by the applicant, no adverse view may be taken by the tax authorities. The above system validations are being clarified so that there is no ambiguity in relation to the process through which an application in **FORM GST RFD-01** is generated.

39. For all refund applications where refund of unutilized ITC of compensation cess is being claimed, the calculation of the refundable amount of compensation cess shall be done separately and the amount so calculated will be entirely debited from the balance of compensation cess available in the electronic credit ledger.

40. The third proviso to sub-section (3) of section 54 of the CGST Act states that no refund of input tax credit shall be allowed in cases where the supplier of goods or services or both avails of drawback in respect of Central tax. It is clarified that if a supplier avails of drawback in respect of duties rebated under the Customs and Central Excise Duties Drawback Rules, 2017, he shall be eligible for refund of unutilized input tax credit of Central tax/State tax/Union Territory tax/Integrated tax/Compensation cess. It is also clarified that refund of eligible credit on account of State tax shall be available if the supplier of goods or services or both has availed of drawback in respect of Central tax.

Guidelines for refund of tax paid on deemed exports

41. Certain supplies of goods have been notified as deemed exports *vide* notification No. 48/2017-Central Tax, dated 18.10.2017 under section 147 of the CGST Act. Further, the third proviso to rule 89(1) of the CGST Rules allows either the recipient or the supplier to apply for refund of tax paid on such deemed export supplies. In case such refund is sought by the supplier of deemed export supplies, the documentary evidences as specified in notification No. 49/2017-Central Tax, dated 18.10.2017 are also required to be furnished which includes an undertaking that the recipient of deemed export supplies shall not claim the refund in respect of such supplies and shall not avail any input tax credit on such supplies. Similarly, in case the refund is filed by the recipient of deemed export supplies, an undertaking shall have to be furnished by him stating that refund has been claimed only for those invoices which have been detailed in statement 5B for the tax period for which refund is being claimed and that he has not availed input tax credit on such invoices. The recipient shall also be required to declare that the supplier has not claimed refund with respect to the said supplies. The procedure regarding procurement of supplies of goods from DTA by Export Oriented Unit (EOU)/Electronic Hardware Technology Park (EHTP) Unit/ Software Technology Park (STP) Unit/Bio-Technology Parks (BTP) Unit under deemed export as laid down in Circular No. 14/14/2017-GST, dated 06.11.2017 needs to be complied with.

Guidelines for claims of refund of Compensation Cess

42. Doubts have been raised whether a registered person is eligible to claim refund of unutilized input tax credit of compensation cess paid on inputs, where the zero-rated final product is not leviable to compensation cess. For instance, cess is levied on coal, which is an input for the manufacture of aluminium products, whereas cess is not levied on aluminium products. In this context, attention is invited to section 16(2) of the Integrated Goods and Services Tax Act, 2017 (hereafter referred to as the “IGST Act”) which states that, subject to the provisions of section 17(5) of the CGST Act, credit of input tax may be availed for making zero-rated supplies. Further, section 16 of the IGST Act has been *mutatis mutandis* made applicable to inter-State supplies under the Cess Act *vide* section 11(2) of the Cess Act. Thus, it implies that input tax credit of Compensation Cess may be availed for making zero-rated supplies. Further, by virtue of section 54(3) of the CGST Act, the refund of such unutilized ITC shall

be available. Accordingly, it is clarified that a registered person making zero-rated supply of aluminium products under bond or LUT may claim refund of unutilized credit including that of compensation cess paid on coal. Such registered persons may also make zero-rated supply of aluminium products on payment of Integrated tax but they cannot utilize the credit of the compensation cess paid on coal for payment of Integrated tax in view of the proviso to section 11(2) of the Cess Act, which allows the utilization of the input tax credit of cess, only for the payment of cess on the outward supplies.

43. As regards the certain issues related to refund of accumulated input tax credit of compensation cess on account of zero-rated supplies made under Bond/ Letter of Undertaking on which clarifications have been sought since GST roll out, the same have been examined and are clarified as below:

- (a) **Issue:** A registered person uses inputs on which compensation cess is leivable (e.g. coal) to export goods on which there is no levy of compensation cess (e.g. aluminium). For the period July, 2017 to May, 2018, no ITC is availed of the compensation cess paid on the inputs received during this period. ITC is only availed of the Central tax, State tax/Union Territory tax or Integrated tax charged on the invoices for these inputs. This ITC is utilized for payment of Integrated tax on export of goods. *Vide Circular No. 45/19/2018-GST*, dated 30.05.2018, it was clarified that refund of accumulated ITC of compensation cess on account of zero-rated supplies made under Bond/Letter of Undertaking is available even if the exported product is not subject to levy of cess. After the issuance of this Circular, the registered person decides to start exporting under bond/LUT without payment of tax. He also decides to avail (through the return in **FORM GSTR-3B**) the ITC of compensation cess, paid on the inputs used in the months of July, 2017 to May, 2018, in the month of July, 2018. The registered person then goes on to file a refund claim for ITC accumulated on account of exports for the month of July, 2018 and includes the said accumulated ITC for the month of July, 2018. How should the amount of compensation cess to be refunded be calculated?

Clarification: In the instant case, refund on account of compensation cess is to be recomputed as if the same was available in the respective months in which the refund of unutilized credit of Central tax/State tax/Union Territory tax/Integrated tax was claimed on account of exports made under LUT/Bond. If the aggregate of these recomputed amounts of refund of compensation cess is less than or equal to the eligible refund of compensation cess calculated in respect of the month in which the same has actually been claimed, then the aggregate of the recomputed refund of compensation cess of the respective months would be admissible. However, the recomputed amount of eligible refund (of compensation cess) in respect of past periods, as aforesaid, would not be admissible in respect of consignments exported on payment of Integrated tax. This

process would be applicable for application(s) for refund of compensation cess (not claimed earlier) in respect of the past period.

- (b) **Issue:** A registered person uses coal for the captive generation of electricity which is further used for the manufacture of goods (say aluminium) which are exported under Bond/Letter of Undertaking without payment of duty. Refund claim is filed for accumulated Input Tax Credit of compensation cess paid on coal. Can the said refund claim be rejected on the ground that coal is used for the generation of electricity which is an intermediate product and not the final product which is exported and since electricity is exempt from GST, the ITC of the tax paid on coal for generation of electricity is not available?

Clarification: There is no distinction between intermediate goods or services and final goods or services under GST. Inputs have been clearly defined to include any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business. Since coal is an input used in the production of aluminium, *albeit* indirectly through the captive generation of electricity, which is directly connected with the business of the registered person, input tax credit in relation to the same cannot be denied.

- (c) **Issue:** A registered person avails ITC of compensation cess (say, of ₹100) paid on purchases of coal every month. At the same time, he reverses a certain proportion (say, half i.e. ₹50) of the ITC of compensation cess so availed on purchases of coal which are used in making zero rated outward supplies. Both these details are entered in the **FORM GSTR-3B** filed for the month as a result of which an amount of ₹ 50 only is credited in the electronic credit ledger. The reversed amount (₹ 50) is then shown as a ‘cost’ in the books of accounts of the registered person. However, the registered person declares ₹100 as ‘Net ITC’ and uses the same in calculating the maximum refund amount which works out to be ₹50 (assuming that export turnover is half of total turnover). Since both the balance in the electronic credit ledger at the end of the tax period for which the claim of refund is being filed and the balance in the electronic credit ledger at the time of filing the refund claim is ₹50 (assuming that no other debits/credits have happened), the common portal will proceed to debit ₹ 50 from the ledger as the claimed refund amount. The question is whether the proper officer should sanction ₹50 as the refund amount or ₹25 (i.e. half of the ITC availed after adjusting for reversals)?

Clarification: ITC which is reversed cannot be held to have been ‘availed’ in the relevant period. Therefore, the same cannot be part of refund of unutilized ITC on account of zero-rated supplies. Moreover, the reversed ITC has been accounted as a cost which would have reduced the income tax liability of the applicant. Therefore, the same amount cannot, at the same time, be refunded to him/her in the ratio of export

turnover to total turnover. However, if the said reversed amount is again availed in a later tax period, subject to the restriction under section 16(4) of the CGST Act, it can be refunded in the ratio of export turnover to total turnover in that tax period in the same manner as detailed in para 37 above. This is subject to the restriction that the accounting entry showing the said ITC as cost is also reversed.

Clarifications on issues related to making zero-rated supplies

44. Export of goods or services can be made without payment of Integrated tax under the provisions of rule 96A of the CGST Rules. Under the said provisions, an exporter is required to furnish a bond or Letter of Undertaking (LUT) to the jurisdictional Commissioner before effecting zero-rated supplies. A detailed procedure for filing of LUT has been specified *vide* Circular No. 8/8/2017-GST, dated 4.10.2017. It has been brought to the notice of the Board that in some cases, such zero-rated supplies were made before filing the LUT and refund claims for unutilized input tax credit got filed. In this regard, it is emphasized that the substantive benefits of zero-rating may not be denied where it has been established that exports in terms of the relevant provisions have been made. The delay in furnishing of LUT in such cases may be condoned and the facility for export under LUT may be allowed on *ex post facto* basis taking into account the facts and circumstances of each case.

45. Rule 96A(1) of the CGST Rules provides that any registered person may export goods or services without payment of Integrated tax after furnishing a LUT/bond and that he would be liable to pay the tax due along with the interest as applicable within a period of fifteen days after the expiry of three months or such further period as may be allowed by the Commissioner from the date of issue of the invoice for export, if the goods are not exported out of India. The time period in case of services is fifteen days after the expiry of one year or such further period as may be allowed by the Commissioner from the date of issue of the invoice for export, if the payment of such services is not received by the exporter in convertible foreign exchange. It has been reported that the exporters have been asked to pay Integrated tax where the goods have been exported but not within three months from the date of the issue of the invoice for export. In this regard, it is emphasized that exports have been zero-rated under the IGST Act and as long as goods have actually been exported even after a period of three months, payment of Integrated tax first and claiming refund at a subsequent date should not be insisted upon. In such cases, the jurisdictional Commissioner may consider granting extension of time limit for export as provided in the said sub-rule on *post facto* basis keeping in view the facts and circumstances of each case. The same principle should be followed in case of export of services.

46. It is learnt that some field formations are asking for a self-declaration with every refund claim to the effect that the applicant has not been prosecuted. The facility of export under LUT is available to all exporters in terms of notification No. 37/2017-Central Tax, dated 04.10.2017, except to those who have been prosecuted for any offence under the CGST Act or the IGST Act or

any of the existing laws in force in a case where the amount of tax evaded exceeds two hundred and fifty lakh rupees. Para 2(d) of the Circular No. 8/8/2017-GST, dated 04.10.2017, mentions that a person intending to export under LUT is required to give a self-declaration at the time of submission of LUT that he has not been prosecuted. Persons who are not eligible to export under LUT are required to export under bond. It is clarified that this requirement is already satisfied in case of exports under LUT and asking for self-declaration with every refund claim where the exports have been made under LUT is not warranted.

47. It has also been brought to the notice of the Board that in certain cases, where the refund of unutilized input tax credit on account of export of goods is claimed and the value declared in the tax invoice is different from the export value declared in the corresponding shipping bill under the Customs Act, refund claims are not being processed. The matter has been examined and it is clarified that the zero-rated supply of goods is effected under the provisions of the GST laws. An exporter, at the time of supply of goods declares that the goods are meant for export and the same is done under an invoice issued under rule 46 of the CGST Rules. The value recorded in the GST invoice should normally be the transaction value as determined under section 15 of the CGST Act read with the rules made thereunder. The same transaction value should normally be recorded in the corresponding shipping bill/bill of export. During the processing of the refund claim, the value of the goods declared in the GST invoice and the value in the corresponding shipping bill/bill of export should be examined and the lower of the two values should be taken into account while calculating the eligible amount of refund.

48. It is clarified that the realization of consideration in convertible foreign exchange, or in Indian rupees wherever permitted by Reserve Bank of India, is one of the conditions for export of services. In case of export of goods, realization of consideration is not a pre-condition. In rule 89(2) of the CGST Rules, a statement containing the number and date of invoices and the relevant Bank Realization Certificates (BRC) or Foreign Inward Remittance Certificates (FIRC) is required in case of export of services whereas, in case of export of goods, a statement containing the number and date of shipping bills or bills of export and the number and the date of the relevant export invoices is required to be submitted along with the claim for refund. It is therefore clarified that insistence on proof of realization of export proceeds for processing of refund claims related to export of goods has not been envisaged in the law and should not be insisted upon.

49. As per section 16(2) of the IGST Act, credit of input tax may be availed for making zero-rated supplies, notwithstanding that such supply is an exempt supply. In terms of section 2(47) of the CGST Act, exempt supply includes non-taxable supply. Further, as per section 16(3) of the IGST Act, a registered person making zero-rated supply shall be eligible to claim refund when he either makes supply of goods or services or both under bond or letter of undertaking (LUT) or

makes such supply on payment of Integrated tax. However, in case of zero-rated supply of exempted or non-GST goods, the requirement for furnishing a bond or LUT cannot be insisted upon. It is thus, clarified that in respect of refund claims on account of export of non-GST and exempted goods without payment of Integrated tax; LUT/bond is not required. Such registered persons exporting non-GST goods shall comply with the requirements prescribed under the existing law (i.e. Central Excise Act, 1944 or the VAT law of the respective State) or under the Customs Act, 1962, if any. Further, the exporter would be eligible for refund of unutilized input tax credit of Central tax, State tax, Union Territory tax, Integrated tax and compensation cess in such cases.

Refund of transitional credit

50. Refund of unutilized input tax credit is allowed in two scenarios mentioned in sub-section (3) of section 54 of the CGST Act. These two scenarios are zero-rated supplies made without payment of tax and inverted tax structure. In sub-rule (4) and (5) of rule 89 of the CGST Rules, the amount of refund under these scenarios is to be calculated using the formulae given in the said sub-rules. The formulae use the phrase ‘Net ITC’ and defines the same as “input tax credit availed on inputs and input services during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both”. It is clarified that as the transitional credit pertains to duties and taxes paid under the existing laws viz., under Central Excise Act, 1944 and Chapter V of the Finance Act, 1994, the same cannot be said to have been availed during the relevant period and thus, cannot be treated as part of ‘Net ITC’ and thus no refund of such unutilized transitional credit is admissible.

Restrictions imposed by sub-rule (10) of rule 96 of the CGST Rules

51. Sub-rule (10) of rule 96 of the CGST Rules, restricted exporters from availing the facility of claiming refund of Integrated tax paid on exports in certain scenarios. It was intended that exporters availing benefit of certain notifications would not be eligible to avail the facility of such refund. However, representations were received requesting that exporters who have received capital goods under the Export Promotion Capital Goods Scheme (hereinafter referred to as “EPCG Scheme”), should be allowed to avail the facility of claiming refund of the Integrated tax paid on exports. GST Council, in its 30th meeting held in New Delhi on 28th September, 2018, accorded approval to the proposal of suitably amending the said sub-rule along with sub-rule (4B) of rule 89 of the CGST Rules prospectively in order to enable such exporters to avail the said facility. Notification No. 54/2018-Central Tax, dated the 9th October, 2018 was issued to carry out the changes recommended by the GST Council. In addition, notification No. 39/2018-Central Tax, dated 4th September, 2018 was rescinded *vide* notification No. 53/2018-Central Tax, dated the 9th October, 2018.

52. The net effect of these changes is that any exporter who himself/herself imported any inputs/capital goods in terms of notification Nos. 78/2017-Customs and 79/2017-Customs both dated 13.10.2017, before the issuance of the notification No. 54/2018-Central Tax, dated 09.10.2018, shall be eligible to claim

refund of the Integrated tax paid on exports. Further, exporters who have imported inputs in terms of notification Nos. 78/2017-Customs, dated 13.10.2017, after the issuance of notification No. 54/2018-Central Tax, dated 09.10.2018, would not be eligible to claim refund of Integrated tax paid on exports. However, exporters who are receiving capital goods under the EPCG scheme, either through import in terms of notification No. 79/2017-Customs, dated 13.10.2017 or through domestic procurement in terms of notification No. 48/2017-Central Tax, dated 18.10.2017, shall continue to be eligible to claim refund of Integrated tax paid on exports and would not be hit by the restrictions provided in sub-rule (10) of rule 96 of the CGST Rules.

Clarification on calculation of refund amount for claims of refund of accumulated ITC on account of inverted tax structure

53. Sub-section (3) of section 54 of the CGST Act provides that refund of any unutilized ITC may be claimed where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies). Further, clause (59) of section 2 of the CGST Act defines inputs as any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business. Thus, inputs do not include services or capital goods. Therefore, clearly, the intent of the law is not to allow refund of tax paid on input services or capital goods as part of refund of unutilized input tax credit. It is clarified that both the law and the related rules clearly prevent the refund of tax paid on input services and capital goods as part of refund of input tax credit accumulated on account of inverted tax structure.

54. There have been instances where while processing the refund of unutilized ITC on account of inverted tax structure, some of the tax authorities denied the refund of ITC of GST paid on those inputs which are procured at equal or lower rate of GST than the rate of GST on outward supply, by not including the amount of such ITC while calculating the maximum refund amount as specified in rule 89(5) of the CGST Rules. The matter has been examined and the following issues are clarified:

- (a) Refund of unutilized ITC in case of inverted tax structure, as provided in section 54(3) of the CGST Act, is available where ITC remains unutilized even after setting off of available ITC for the payment of output tax liability. Where there are multiple inputs attracting different rates of tax, in the formula provided in rule 89(5) of the CGST Rules, the term "Net ITC" covers the ITC availed on all inputs in the relevant period, irrespective of their rate of tax.
- (b) The calculation of refund of accumulated ITC on account of inverted tax structure, in cases where several inputs are used in supplying the final product/output, can be clearly understood with the help of following example:
 - (i) Suppose a manufacturing process involves the use of an input A (attracting 5 per cent GST) and input B (attracting 18 per cent GST) to manufacture output Y (attracting 12 per cent GST).

- (ii) The refund of accumulated ITC in the situation at (i) above, will be available under section 54(3) of the CGST Act read with rule 89(5) of the CGST Rules, which prescribes the formula for the maximum refund amount permissible in such situations.
- (iii) Further assume that the applicant supplies the output Y having value of ₹3,000 during the relevant period for which the refund is being claimed. Therefore, the turnover of inverted rated supply of goods and services will be ₹3,000. Since the applicant has no other outward supplies, his adjusted total turnover will also be ₹3,000.
- (iv) If we assume that Input A, having value of ₹500 and Input B, having value of ₹2,000, have been purchased in the relevant period for the manufacture of Y, then Net ITC shall be equal to ₹385 (₹25 and ₹360 on Input A and Input B respectively).
- (v) Therefore, multiplying Net ITC by the ratio of turnover of inverted rated supply of goods and services to the adjusted total turnover will give the figure of ₹385.
- (vi) From this, if we deduct the tax payable on such inverted rated supply of goods or services, which is ₹360, we get the maximum refund amount, as per rule 89(5) of the CGST Rules which is ₹25.

Refund of TDS/TCS deposited in excess

55. Tax deducted in accordance with the provisions of section 51 of the CGST Act or tax collected in accordance with the provisions of section 52 of the CGST Act is required to be paid while discharging the liability in **FORM GSTR-7** or **FORM GSTR-8**, as the case may be, by the deductor or the collector, as the case may be.

56. It has been reported that, there are instances where taxes so deducted or collected is deposited under the wrong head (e.g. an amount deducted as Central tax is deposited as Integrated tax/State tax), thereby creating excess balance in the cash ledger of the deductor or the collector as the case may be. Doubts have been raised on the fate of this excess balance of TDS/TCS in the cash ledger of the deductor or the collector. It is clarified that such excess balance may be claimed by the tax deductor or the collector as the excess balance in electronic cash ledger. In this case, the common portal would debit the amount so claimed as refund. However, in case where tax deducted or collected in excess is also paid while discharging the liability in **FORM GSTR 7 or FORM GSTR 8**, as the case may be, and the said amount has been credited to the electronic cash ledger of the deductee, the deductee can adjust the same while discharging his output liability or he can claim refund of the same under the category “refund of excess balance in the electronic cash ledger”.

Debit of electronic credit ledger using FORM GST DRC-03

57. Various representations have been received seeking clarifications on certain refund related issues, the solutions to which involve debiting the

electronic credit ledger using **FORM GST DRC-03**. These issues are clarified as under:

| Sl. No. | Issue | Clarification |
|------------|---|--|
| 1 | Certain registered persons have reversed, through return in FORM GSTR-3B filed for the month of August, 2018 or for a subsequent month, the accumulated input tax credit (ITC) required to be lapsed in terms of notification No. 20/2018-Central Tax (Rate), dated 26.07.2018 read with circular No. 56/30/2018-GST, dated 24.08.2018 (hereinafter referred to as the “said notification”). Some of these registered persons, who have attempted to claim refund of accumulated ITC on account of inverted tax structure for the same period in which the ITC required to be lapsed in terms of the said notification has been reversed, are not able to claim refund of accumulated ITC to the extent to which they are so eligible. This is because of a validation check on the common portal which prevents the value of input tax credit in Statement 1A of FORM GST RFD-01A from being higher than the amount of ITC availed in FORM GSTR-3B of the relevant period minus the | <p>(a) As a one-time measure to resolve this issue, refund of accumulated ITC on account of inverted tax structure, for the period(s) in which there is reversal of the ITC required to be lapsed in terms of the said notification, is to be claimed under the category “any other” instead of under the category “refund of unutilized ITC on account of accumulation due to inverted tax structure” in FORM GST RFD-01A. It is emphasized that this application for refund should relate to the same tax period in which such reversal has been made.</p> <p>(b) The application shall be accompanied by all statements, declarations, undertakings and other documents which are statutorily required to be submitted with a “refund claim of unutilized ITC on account of accumulation due to inverted tax structure”. On receiving the said application, the proper officer shall himself calculate the refund amount admissible as per rule 89(5) of Central Goods and Services Tax Rules, 2017 (hereinafter referred to as “CGST Rules”), in the manner detailed in para 37 above. After calculating the admissible refund amount, as described above, and scrutinizing the application for completeness and eligibility, if the proper officer is satisfied that the whole or any part of the amount claimed is payable as refund, he shall request the taxpayer, in writing, to debit the said amount from his electronic credit ledger through FORM GST DRC-03. Once the proof</p> |

| Sl. No. | Issue | Clarification |
|------------|---|---|
| | <p>value of ITC reversed in the same period. This results in registered persons being unable to claim the full amount of refund of accumulated ITC on account of inverted tax structure to which they might be otherwise eligible. What is the solution to this problem?</p> | <p>(c) of such debit is received by the proper officer, he shall proceed to issue the refund order in FORM GST RFD- 06 and the payment order in FORM GST RFD-05.</p> <p>All refund applications for unutilized ITC on account of accumulation due to inverted tax structure for subsequent tax period(s) shall be filed in FORM GST RFD-01 under the category “refund of unutilized ITC on account of accumulation due to inverted tax structure”.</p> |
| 2 | <p>The clarification at Sl. No. 1 above applies to registered persons who have already reversed the ITC required to be lapsed in terms of the said notification through return in FORM GSTR-3B. What about those registered persons who are yet to perform this reversal?</p> | <p>It is hereby clarified that all those registered persons required to make the reversal in terms of the said notification and who have not yet done so, may reverse the said amount through FORM GST DRC-03 instead of through FORM GSTR-3B.</p> |
| 3 | <p>What shall be the consequence if any registered person reverses the amount of credit to be lapsed, in terms the said notification, through the return in FORM GSTR-3B for any month subsequent to August, 2018 or through FORM GST DRC-03 subsequent to the due date of filing of the return in FORM GSTR-3B for the month of August, 2018?</p> | <p>(a) As the registered person has reversed the amount of credit to be lapsed in the return in FORM GSTR-3B for a month subsequent to the month of August, 2018 or through FORM GST DRC-03 subsequent to the due date of filing of the return in FORM GSTR-3B for the month of August, 2018, he shall be liable to pay interest under sub-section (1) of section 50 of the CGST Act on the amount which has been reversed belatedly. Such interest shall be calculated starting from the due date of filing of return in FORM GSTR-3B for the month of August, 2018 till the date of reversal of said amount through</p> |

| Sl. No. | Issue | Clarification |
|------------|---|--|
| | | <p>FORM GSTR-3B or through FORM GST DRC-03, as the case may be.</p> <p>(b) The registered person who has reversed the amount of credit to be lapsed in the return in FORM GSTR-3B for any month subsequent to August, 2018 or through FORM GST DRC-03 subsequent to the due date of filing of the return in FORM GSTR-3B for the month of August, 2018 would remain eligible to claim refund of unutilized ITC on account of accumulation due to inverted tax structure w.e.f. 01.08.2018. However, such refund shall be granted only after the reversal of the amount of credit to be lapsed, either through FORM GSTR-3B or FORM GST DRC-03, along with payment of interest, as applicable.</p> |
| 4 | <p>How should a merchant exporter claim refund of input tax credit availed on supplies received on which the supplier has availed the benefit of the Government of India, Ministry of Finance, notification No. 40/2017-Central Tax (Rate), dated the 23rd October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), <i>vide</i> number G.S.R 1320(E), dated the 23rd October, 2017 or notification No. 41/2017-Integrated Tax (Rate), dated the 23rd October, 2017, published in the Gazette of India, Extraordinary, Part II,</p> | <p>(a) Rule 89(4B) of the CGST Rules provides that where the person claiming refund of unutilized input tax credit on account of zero-rated supplies without payment of tax has received supplies on which the supplier has availed the benefit of the said notifications, the refund of input tax credit, availed in respect of such inputs received under the said notifications for export of goods, shall be granted.</p> <p>(b) This refund of accumulated ITC under rule 89(4B) of the CGST Rules shall be applied under the category “any other” instead of under the category “refund of unutilized ITC on account of exports without payment of tax” in FORM GST RFD-01 and shall be accompanied by all supporting documents required for substantiating the refund claim under the category “refund of unutilized ITC on account of exports without payment of tax”. After scrutinizing the</p> |

| Sl. No. | Issue | Clarification |
|------------|---|---|
| | Section 3, Sub-section (i), <i>vide</i> number G.S.R 1321(E), dated the 23rd October, 2017 (hereinafter referred to as the “said notifications”)? | application for completeness and eligibility, if the proper officer is satisfied that the whole or any part of the amount claimed is payable as refund, he shall request the taxpayer, in writing, to debit the said amount from his electronic credit ledger through FORM GST DRC-03 . Once the proof of such debit is received by the proper officer, he shall proceed to issue the refund order in FORM GST RFD-06 and the payment order in FORM GST RFD-05 . |

Refund of Integrated Tax paid on Exports

58. The refund of Integrated tax paid on goods exported out of India is governed by rule 96 of the CGST Rules. The shipping bill filed by an exporter is deemed to be an application for refund in such cases, but the same is deemed to have been filed only when the export manifest or export report is filed and the applicant has filed the return in **FORM GSTR-3B** for the relevant period duly indicating the integrated tax paid on goods exported in Table 3.1(b) of **FORM-GSTR-3B**. In addition, the exporter is expected to furnish the details of the exported goods in Table 6A of **FORM GSTR-1** of the relevant period. Only where the common portal is able to validate the consistency of the details so entered by the applicant, the relevant information regarding the refund claim is forwarded to Customs Systems. Upon receipt of the information from the common portal regarding furnishing of these details, the Customs Systems processes the claim for refund and an amount equal to the Integrated tax paid in respect of such export is electronically credited to the bank account of the applicant.

Clarifications on other issues

59. Notification No. 40/2017-Central Tax (Rate) and notification No. 41/2017-Integrated Tax (Rate), both dated 23.10.2017 provide for supplies for exports at a concessional rate of 0.05% and 0.1% respectively, subject to certain conditions specified in the said notifications. It is clarified that the benefit of supplies at concessional rate is subject to certain conditions and the said benefit is optional. The option may or may not be availed by the supplier and/or the recipient and the goods may be procured at the normal applicable tax rate. It is also clarified that the exporter will be eligible to take credit of the tax @ 0.05%/0.1% paid by him. The supplier who supplies goods at the concessional rate is also eligible for refund on account of inverted tax structure as per the provisions of clause (ii) of the first proviso to sub-section (3) of section 54 of the

CGST Act. It may also be noted that the exporter of such goods can export the goods only under LUT/bond and cannot export on payment of Integrated tax.

60. Sub-section (14) of section 54 of the CGST Act provides that no refund under sub-section (5) or sub-section (6) of section 54 of the CGST Act shall be paid to an applicant, if the amount is less than one thousand rupees. In this regard, it is clarified that the limit of rupees one thousand shall be applied for each tax head separately and not cumulatively.

61. Presently, ITC is reflected in the electronic credit ledger on the basis of the amount of the ITC availed on self-declaration basis in **FORM GSTR-3B** for a particular tax period. It may happen that the goods purchased against a particular tax invoice issued in a particular month, say August 2018, may be declared in the **FORM GSTR-3B** filed for a subsequent month, say September 2018. This is inevitable in cases where the supplier raises an invoice, say in August, 2018, and the goods reach the recipient's premises in September, 2018. Since GST law mandates that ITC can be availed only after the goods have been received, the recipient can only avail the ITC on such goods in the **FORM GSTR-3B** filed for the month of September, 2018. However, it has been reported that tax authorities are excluding such invoices from the calculation of refund of unutilized ITC filed for the month of September, 2018. In this regard, it is clarified that "Net ITC" as defined in rule 89(4) of the CGST Rules means input tax credit availed on inputs and input services during the relevant period. Relevant period means the period for which the refund claim has been filed. Input tax credit can be said to have been "availed" when it is entered into the electronic credit ledger of the registered person. Under the current dispensation, this happens when the said taxable person files his/her monthly return in **FORM GSTR-3B**. Further, section 16(4) of the CGST Act stipulates that ITC may be claimed on or before the due date of filing of the return for the month of September following the financial year to which the invoice pertains or the date of filing of annual return, whichever is earlier. Therefore, the input tax credit of invoices issued in August, 2019, "availed" in September, 2019 cannot be excluded from the calculation of the refund amount for the month of September, 2019.

62. It has been represented that on certain occasions, departmental officers do not consider ITC on stores and spares, packing materials, materials purchased for machinery repairs, printing and stationery items, as part of Net ITC on the grounds that these are not directly consumed in the manufacturing process and therefore, do not qualify as input. There are also instances where stores and spares charged to revenue are considered as capital goods and therefore the ITC availed on them is not included in Net ITC, even though the value of these goods has not been capitalized in his books of account by the applicant. It is clarified that the ITC of the GST paid on inputs, including inward supplies of stores and spares, packing materials etc., shall be available as ITC as long as these inputs are used for the purpose of the business and/or for effecting taxable supplies, including zero-rated supplies, and the ITC for such inputs is not restricted under

section 17(5) of the CGST Act. Further, capital goods have been clearly defined in section 2(19) of the CGST Act as goods whose value has been capitalized in the books of account and which are used or intended to be used in the course or furtherance of business. Stores and spares, the expenditure on which has been charged as a revenue expense in the books of account, cannot be held to be capital goods.

63. It is requested that suitable trade notices may be issued to publicize the contents of this circular.

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Circular No. 161/17/2021-GST dated 20-9-2021

Clarification relating to export of services-condition (v) of section 2(6) of the IGST Act 2017-reg.

Various representations have been received citing ambiguity caused in interpretation of the *Explanation 1* under section 8 of the IGST Act, 2017 in relation to condition (v) of export of services as mentioned in sub-section (6) of the section 2 of the IGST Act 2017. Doubts have been raised whether the supply of service by a subsidiary/sister concern/group concern, etc. of a foreign company in India, which is incorporated under the laws in India, to the foreign company incorporated under laws of a country outside India, will hit by condition (v) of sub-section (6) of section 2 of IGST Act.

2. The matter has been examined. In view of the difficulties being faced by the trade and industry and to ensure uniformity in the implementation of the provisions of the law across field formations, the Board, in exercise of its powers conferred by section 168(1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby clarifies the issue in succeeding paragraphs.

Relevant legal provisions:

3.1 The export of services has been defined in sub-section (6) of the section 2 of the IGST Act, 2017 as under:

- (6) "*export of services*" means the supply of any service when,—
 - (i) the supplier of service is located in India;
 - (ii) the recipient of service is located outside India;
 - (iii) the place of supply of service is outside India;
 - (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange; and
 - (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with *Explanation 1* in section 8;

3.2 *Explanation 1* of the Section 8 of the IGST Act provides for the conditions wherein establishments of a person would be treated as establishments of distinct persons, which is reproduced as under:

Explanation 1.—For the purposes of this Act, where a person has,—

- (i) an establishment in India and any other establishment outside India;
- (ii) an establishment in a State or Union territory and any other establishment outside that State or Union territory; or
- (iii) an establishment in a State or Union territory and any other establishment being a business vertical registered within that State or Union territory, then such establishments shall be treated as establishments of distinct persons.

As per the above *Explanation*, an establishment of a person in India and another establishment of the said person outside India are considered as establishments of distinct persons.

3.3 Reference is also invited to the *Explanation 2* of Section 8 of IGST Act, which is reproduced below:

Explanation 2.—A person carrying on a business through a branch or an agency or a representational office in any territory shall be treated as having an establishment in that territory.”

3.4 Reference is also invited to the definition of “person” as provided under CGST Act, 2017, made applicable to IGST Act *vide* section 2(24) of IGST Act, 2017. “Person” has been defined under sub-section (84) of the section 2 of the CGST Act, 2017, as under:

- (84) “person” includes—
 - (a) an individual;
 - (b) a Hindu Undivided Family;
 - (c) a company;
 - (d) a firm;
 - (e) a Limited Liability Partnership;
 - (f) an association of persons or a body of individuals, whether incorporated or not, in India or outside India;
 - (g) any corporation established by or under any Central Act, State Act or Provincial Act or a Government company as defined in clause (45) of section 2 of the Companies Act, 2013;
 - (h) any body corporate incorporated by or under the laws of a country outside India;
 - (i) a co-operative society registered under any law relating to co-operative societies;
 - (j) a local authority;
 - (k) Central Government or a State Government;
 - (l) society as defined under the Societies Registration Act, 1860;
 - (m) trust; and
 - (n) every artificial juridical person, not falling within any of the above;

3.5. The definitions of company and foreign company have been provided under section 2 of Companies Act, 2013, as under:

(20) "company" means a company incorporated under this Act or under any previous company law;

(42) "foreign company" means any company or body corporate incorporated outside India which—

(a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

(b) conducts any business activity in India in any other manner.

Analysis of the issue:

4.1 Clause (v) of sub-section (6) of section 2 of IGST Act, which defines "export of services", places a condition that the services provided by one establishment of a person to another establishment of the same person, considered as establishments of distinct persons as per *Explanation 1 of section 8 of IGST Act*, cannot be treated as export. In other words, any supply of services by an establishment of a foreign company in India to any other establishment of the said foreign company outside India will not be covered under definition of export of services.

4.2 Further, perusal of the *Explanation 2* to section 8 of the IGST Act suggests that if a foreign company is conducting business in India through a branch or an agency or a representational office, then the said branch or agency or representational office of the foreign company, located in India, shall be treated as establishment of the said foreign company in India. Similarly, if any company incorporated in India, is operating through a branch or an agency or a representational office in any country outside India, then that branch or agency or representational office shall be treated as the establishment of the said company in the said country.

4.3. In view of the above, it can be stated that supply of services made by a branch or an agency or representational office of a foreign company, not incorporated in India, to any establishment of the said foreign company outside India, shall be treated as supply between establishments of distinct persons and shall not be considered as "export of services" in view of condition (v) of sub-section (6) of section 2 of IGST Act. Similarly, any supply of service by a company incorporated in India to its branch or agency or representational office, located in any other country and not incorporated under the laws of the said country, shall also be considered as supply between establishments of distinct persons and cannot be treated as export of services.

4.4 From the perusal of the definition of "person" under sub-section (84) of section 2 of the CGST Act, 2017 and the definitions of "company" and "foreign company" under Section 2 of the Companies Act, 2013, it is observed that a company incorporated in India and a foreign company incorporated outside India, are separate "person" under the provisions of CGST Act and accordingly, are separate legal entities. Thus, a subsidiary/sister concern/group concern of any

foreign company which is incorporated in India, then the said company incorporated in India will be considered as a separate "person" under the provisions of CGST Act and accordingly, would be considered as a separate legal entity than the foreign company.

Clarification:

5.1 In view of the above, it is clarified that a company incorporated in India and a body corporate incorporated by or under the laws of a country outside India, which is also referred to as foreign company under Companies Act, are separate persons under CGST Act, and thus are separate legal entities. Accordingly, these two separate persons would not be considered as "merely establishments of a distinct person in accordance with *Explanation 1* in section 8".

5.2 Therefore, supply of services by a subsidiary/sister concern/group concern, etc. of a foreign company, which is incorporated in India under the Companies Act, 2013 (and thus qualifies as a 'company' in India as per Companies Act), to the establishments of the said foreign company located outside India (incorporated outside India), would not be barred by the condition (v) of the sub-section (6) of the section 2 of the IGST Act, 2017 for being considered as export of services, as it would not be treated as supply between merely establishments of distinct persons under *Explanation 1* of section 8 of IGST Act, 2017. Similarly, the supply from a company incorporated in India to its related establishments outside India, which are incorporated under the laws outside India, would not be treated as supply to merely establishments of distinct person under *Explanation 1* of section 8 of IGST Act, 2017. Such supplies, therefore, would qualify as 'export of services', subject to fulfilment of other conditions as provided under sub-section (6) of section 2 of IGST Act.

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Instruction No. 3/2022-GST, dated 14-6-2022

Procedure relating to sanction, post-audit and review of refund claims — Regarding

Attention is invited to sub-section (2) of section 107 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act") which provides that the Commissioner may review any decision or order, including an order of refund, with respect to its legality or propriety and he may direct any officer subordinate to him to file an appeal against the said decision or order within 6 months of the date of communication of the said decision or order. Reference is further drawn to entry against the subject pre-audit in table under para 3.3 of the Circular 17/17/2017-GST dated 15.11.2017 wherein it has been stated that pre-audit of refund orders is not required to be carried out but the post-audit of the refund orders may, however, continue on the basis of extant guidelines.

2. Subsequently, Board has been receiving reports of different practices being followed by the field formations regarding sanction, review and post-audit of refund claims. In certain Commissionerates, speaking order is being issued in respect of all refund claims, whereas in others, speaking orders are not being issued if the refund is sanctioned in full. Similarly, in case of review and post-audit, different practices are being followed by the field formations. The matter has been examined with the twin purpose of ensuring uniformity in procedure and enabling effective monitoring of sanction of refund claims in order to safeguard interest of revenue. Accordingly, the Board hereby issues the following instructions/guidelines for sanction, post-audit and review of refunds:

2.1 Sanction of Refund

2.1.1 Detailed guidelines for processing of refund claims in GST have been issued by the Board *vide* Circular No. 17/17/2017-GST dated 15.11.2017 (for manual processing of refunds) and Circular No. 125/44/2019-GST dated 18.11.2019 (for electronic filing and online processing of refunds) to ensure uniformity in processing of refund claims. In both of these Circulars, it has been mentioned that the proper officer shall follow the principle of natural justice before taking the final decision with regard to refund claim. Principle of natural justice *inter alia* provides that a detailed speaking order needs to be issued providing a basis for sanction/rejection of refund. Therefore, while passing the refund sanction order in FORM GST RFD-06, the proper officer should also upload a detailed speaking order along with refund sanction order in FORM GST RFD-06. In order to ensure uniformity in issuance of such speaking order, it is clarified that such speaking order should *inter alia* contain the following details:

A. Details for all category of refund claims:

- (a) The period for which refund claim has been filed, date of filing & the category in which refund has been claimed.
- (b) Whether it has been checked that refund claim for the same period has not been filed in the same category including any claim filed under 'Any Other' Category.
- (c) Details of Deficiency Memo, if any, in FORM GST RFD-03 issued in respect of the said refund claim previously.
- (d) Whether the refund claim has been filed within limitation of time, as provided under CGST Act and Rules thereof, including in the cases, where Deficiency Memo in FORM GST RFD-03 had been issued previously.
- (e) Details of the documents/statements uploaded along with the refund claim. Whether all the necessary documents have been uploaded with the refund claim in terms of rule 89(2) of the CGST Rules. Details of document furnished by the applicant via e-mail in soft copy/in hard copy, if any, may also be provided.
- (f) Whether all the due returns have been filed by the applicant or not, whether any dues are pending recovery from the applicant, and whether

refund is required to be withheld/any amount is required to be deducted as per provisions of section 54(10) of CGST Act on account of non-filing of returns or dues being pending for recovery from the applicant.

- (g) Whether any SCN was issued to the applicant. Details of reply of the applicant and PH details.
- (h) Discussion and findings in respect of applicant submission. Details of case laws relied upon in deciding the matter, if any.
- (i) Whether provisions of unjust enrichment are applicable or not in terms of the provisions of section 54(8) of the CGST Act. If unjust enrichment is applicable in the refund, whether the applicant has furnished due documents/certificates, in terms of clause (b) of section 54(4) of COST Act, certifying/establishing not passing burden of tax, in respect of which refund is being claimed, on any other person.

B. Additional details in case of the refund of accumulated ITC (on account of zero-rated supplies/inverted rated structure) and refund of IGST paid on account of zero-rated supplies:

- (a) Whether the refund amount claimed has been debited from the electronic credit ledger, in terms of sub-rule (3) of rule 89 of CGST Rules.
- (b) In case of refund of IGST paid on account of zero-rated supplies, whether the amount of IGST has been paid through GSTR-3B return.
- (c) Whether the calculation given by the applicant of export/zero-rated turnover, adjusted aggregate turnover, turnover of inverted duty supplies, as applicable, is correct as per the relevant provisions.
- (d) Whether calculation of Net ITC, wherever applicable, is correct as per the relevant provisions. Also, whether the verification of admissibility of ITC as per the provisions of GST Law has been done or not and the findings thereof.
- (e) Whether it has been verified that ITC on capital goods has not been included in calculation of Net ITC for refund of ITC in zero-rated supplies.
- (f) Whether it has been verified that ITC in respect of input services as well as capital goods is not included in calculation of Net ITC in case of inverted tax structure refund.
- (g) Whether refund has been restricted to the ITC as per those invoices, details of which are uploaded by the supplier in FORM GSTR-1 and are reflected in FORM GSTR-2A of the applicant in terms of Circular No. 135/05/2020-GST, dated 31.03.2020.
- (h) Whether the refund is barred under the provisions of 2nd and 3rd proviso to section 54(3) of the CGST Act, 2017.
- (i) Details of computation of refund claim amount as per the relevant provisions/prescribed formula in the Act/Rules and verification whether the refund amount claimed is correct or not.

- (j) In case of refund on account of inversion, whether the supply qualifies for refund of unutilised ITC under clause (ii) of 1st proviso to section 54(3) of the CGST Act, 2017.
- (k) In case of refund on account of export of goods, whether the details of shipping bill/bill of exports, wherever applicable, have been verified from the ICEGATE portal.
- (l) In case of refund on account of export of services, whether the claimant has furnished the BRC/FIRC/other relevant documents evidencing receipt of export remittances in respect of zero-rated services for which refund is being claimed.
- (m) In case of refund on account of zero-rated supply by DTA to SEZ, whether the said supply is meant for authorized operations on the basis of Letter of Authorisation (LoA). Further, whether the details of supply by the applicant to the SEZ have been cross checked from the SEZ Online portal.
- (n) Whether the documents pertaining to zero-rated supply to SEZ have been endorsed by the specified/authorized officer of the zone.
- (o) Whether the DTA supplier has received the payment from the SEZ recipient in case of supply of services to SEZ.

C. Additional details in case of refund of tax paid on supplies regarded as deemed export:

- (a) Whether necessary procedure was followed while making procurement/ supplying of goods regarded as deemed exports.
- (b) Whether the ITC claimed against the tax paid on such deemed export supplies has been debited from the electronic credit ledger by the recipient for filing application of refund.
- (c) Whether it has been verified that no ITC has been claimed by the recipient when refund is claimed by supplier.

D. Additional details in case of refund of excess balance in cash ledger:

- (a) Whether the amount claimed has been debited from the electronic cash ledger.
- (b) Whether the amount to be refunded has been calculated in accordance with the provisions of section 49(6) of CGST Act.

E. Additional details in case of refund filed under the other categories of refund except those mentioned above:

- (a) Whether the documents furnished/uploaded along with the refund claim have been verified for their correctness from the source like FORM GSTR-1, FORM GSTR-3B, ICEGATE portal etc., wherever required.
- (b) Details of the verification conducted and reasoning for grant/rejection of refund.

- (c) In case of refund ITC filed under "Any Other" category, whether the amount claimed has been debited from the electronic credit ledger, wherever required.

2.1.2 It is mentioned that ACES-GST portal provides the facility for uploading a document in pdf format along with the FORM GST RFD-06 order. The same may be utilized by proper officer for uploading the speaking order along with refund sanction order in FORM GST RFD-06 so that the same is made available to the refund applicant as well as Post-audit/Reviewing Authority online.

2.2 Post-Audit and Review:

2.2.1 Sub-section (2) of section 107 of the CGST Act provides that the Commissioner may examine any decision or order, including an order of refund, with respect to its legality or propriety and he may direct any officer subordinate to him to file an appeal against the said decision or order **within 6 months** of the date of communication of the said decision or order. The said sub-section is reproduced below:

*(2) The Commissioner may, on his own motion, or upon request from the Commissioner of State tax or the Commissioner of Union territory tax, call for and examine the record of any proceedings in which an adjudicating authority has passed any decision or order under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, for the purpose of satisfying himself as to the legality or propriety of the said decision or order and may, by order, direct any officer subordinate to him to apply to the Appellate Authority **within six months** from the date of communication of the said decision or order for the determination of such points arising out of the said decision or order as may be specified by the Commissioner in his order.*

2.2.2 Accordingly, **as per extant practice, all refund orders are required to be reviewed for examination of legality and propriety of the refund order and for taking a view whether an appeal to the appellate authority under provisions of sub-section (2) of section 107 of the CGST Act is required to be filed against the said refund order.**

2.2.3 As already mentioned in Circular No. 17/17/2017-GST, dated 15.11.2017, refund claims shall not be subjected to pre-audit. However, the post-audit of refund claims may continue. Considering the large number of refund claims filed in GST, it has been decided that **post-audit may henceforth be conducted only for refund claims amounting to ₹ 1 Lakh or more till further instructions.**

2.2.4 The post-audit and review of the refund claims shall be conducted as per the following guidelines:

- (a) All the refund orders passed should be immediately transmitted online to the review module after issuance of refund order in FORM GST RFD-06. The review and post-audit officers shall have access to all

documents/statements on ACES-GST portal pertaining to the said refund claims.

- (b) For the purpose of post-audit of refund order, a **Post-Audit Cell** under a Deputy/Assistant Commissioner along with one/two Superintendents and Inspectors as required may be created in Commissionate Headquarters.
- (c) The **post-audit should be concluded within 3 months** from the date of issue of FORM GST RFD-06 order. The findings of the post-audit shall be communicated to the review branch within the said time period of 3 months.
- (d) The **review of refund order shall be completed at least 30 days before the expiry of the time period allowed for filing appeal** under Section 107(2) of the CGST Act.

2.2.5 Till the time the functionality for conducting post-audit online is developed on ACES-GST portal, post-audit of refund orders may be conducted in offline mode. For the said purpose, the refund orders covered under para 2.2.3 above and the relevant documents may be provided to the post-audit cell by the concerned Division through e-Office **within 7 days** of issuance of refund sanction order in FORM GST RFP-06. The report of the post-audit may be furnished by the Post-Audit Cell to the Review Cell through e-Office as per the time-limit specified in para 2.2.4(c) above.

* * *

Circular No. 181/13/2022-GST, dated 10-11-2022

Clarification on refund related issues—inverted duty structure.

Attention is invited to sub-section (3) of section 54 of CGST Act, 2017, which provides for the refund of unutilized input tax credit in cases where credit is accumulated on account of rate of tax of inputs being higher than the rate of tax on output supplies i.e. on account of inverted duty structure. Sub-rule (5) of rule 89 of CGST Rules, 2017 prescribes the formula for grant of refund in cases of inverted duty structure. *Vide* Notification No. 14/2022-Central Tax dated 05.07.2022, amendment has been made in the formula prescribed under sub-rule (5) of rule 89 of the CGST Rules, 2017. Further, *vide* Notification No. 09/2022-Central Tax (Rate) dated 13.07.2022, which has been made effective from 18.07.2022, the restriction has been placed on refund of unutilised input tax credit on account of inverted duty structure in case of supply of certain goods falling under chapter 15 and 27. 2. Representations have been received from the trade and the field formations seeking clarification on various issues pertaining to the implementation of the above notifications. In order to clarify the issues and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”), hereby clarifies the issues as under:

| S. No. | Issues | Clarification |
|--------|---|--|
| 1 | Whether the formula prescribed under sub-rule (5) of rule 89 of the CGST Rules, 2017 for calculation of refund of unutilised input tax credit on account of inverted duty structure, as amended <i>vide</i> Notification No. 14/2022-Central Tax dated 05.07.2022, will apply only to the refund applications filed on or after 05.07.2022, or whether the same will also apply in respect of the refund applications filed before 05.07.2022 and pending with the proper officer as on 05.07.2022? | Vide Notification No. 14/2022-Central Tax dated 05.07.2022, amendment has been made in sub-rule (5) of rule 89 of CGST Rules, 2017, modifying the formula prescribed therein. The said amendment is not clarificatory in nature and is applicable prospectively with effect from 05.07.2022. Accordingly, it is clarified that the said amended formula under sub-rule (5) of rule 89 of the CGST Rules, 2017 for calculation of refund of input tax credit on account of inverted duty structure would be applicable in respect of refund applications filed on or after 05.07.2022. The refund applications filed before 05.07.2022 will be dealt as per the formula as it existed before the amendment made <i>vide</i> Notification No. 14/2022-Central Tax dated 05.07.2022 |
| 2 | Whether the restriction placed on refund of unutilised input tax credit on account of inverted duty structure in case of certain goods falling under chapter 15 and 27 <i>vide</i> Notification No. 09/2022-Central Tax (Rate) dated 13.07.2022, which has been made effective from 18.07.2022, would apply to the refund applications pending as on 18.07.2022 also or whether the same will apply only to the refund applications filed on or after 18.07.2022 or whether the same will be applicable only to refunds pertaining to prospective tax periods ? | Vide Notification No. 09/2022-Central Tax (Rate) dated 13.07.2022, under the powers conferred by clause (ii) of the first proviso to sub-section (3) of section 54 of the CGST Act, 2017, certain goods falling under chapter 15 and 27 have been specified in respect of which no refund of unutilised input tax credit shall be allowed, where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on the output supplies of such specified goods (other than nil rated or fully exempt supplies). The said notification has come into force with effect from 18.07.2022. The restriction imposed <i>vide</i> Notification No. 09/2022-Central |

| S. No. | Issues | Clarification |
|--------|--------|--|
| | | Tax (Rate) dated 13.07.2022 on refund of unutilised input tax credit on account of inverted duty structure in case of specified goods falling under chapter 15 and 27 would apply prospectively only. Accordingly, it is clarified that the restriction imposed by the said notification would be applicable in respect of all refund applications filed on or after 18.07.2022, and would not apply to the refund applications filed before 18.07.2022. |

* * *

Circular No. 188/20/2022-GST, dated 27-12-2022

Subject: Prescribing manner of filing an application for refund by unregistered persons

Instances have been brought to the notice where the unregistered buyers, who had entered into an agreement/contract with a builder for supply of services of construction of flats/building, etc. and had paid the amount towards consideration for such service, either fully or partially, along with applicable tax, had to get the said contract/agreement cancelled subsequently due to non-completion or delay in construction activity in time or any other reasons. In a number of such cases, the period for issuance of credit note on account of such cancellation of service under the provisions of section 34 of the Central Goods and Service Tax Act, 2017 (hereinafter referred to as ‘CGST Act’) may already have got expired by that time. In such cases, the supplier may refund the amount to the buyer, after deducting the amount of tax collected by him from the buyer.

1.2 Similar situation may arise in cases of long-term insurance policies where premium for the entire period of term of policy is paid upfront along with applicable GST and the policy is subsequently required to be terminated prematurely due to some reasons. In some cases, the time period for issuing credit note under the provisions of section 34 of the CGST Act may have already expired and therefore, the insurance companies may refund only the proportionate premium net off GST.

1.3 Representations have been received requesting for providing a facility to such unregistered buyers/recipients for claiming refund of amount of tax borne by them in the event of cancellation of the contract/agreement for supply of services of construction of flat/building or on termination of long-term insurance policy.

2. It would be pertinent to mention that sub-section (1) of section 54 of the CGST Act already provides that any person can claim refund of any tax and interest, if any, paid on such tax or any other amount paid by him, by making an application before the expiry of two years from the relevant date in such form and manner as may be prescribed. Further, in terms of clause (e) of sub-section (8) of section 54 of the CGST Act, in cases where the unregistered person has borne the incidence of tax and not passed on the same to any other person, the said refund shall be paid to him instead of being credited to Consumer Welfare Fund (CWF).

2.1 In order to enable such unregistered person to file application for refund under sub-section (1) of section 54, in cases where the contract/agreement for supply of services of construction of flat/building has been cancelled or where long-term insurance policy has been terminated, a new functionality has been made available on the common portal which allows unregistered persons to take a temporary registration and apply for refund under the category '**Refund for Unregistered person**'. Further, sub-rule (2) of rule 89 of Central Goods and Service Tax Rules, 2017 (hereinafter referred to as 'CGST Rules') has been amended and statement 8 has been inserted in **FORM GST RFD-01** *vide* Notification No. 26/2022-Central Tax dated 26.12.2022to provide for the documents required to be furnished along with the application of refund by the unregistered persons and the statement to be uploaded along with the said refund application.

3. In order to ensure uniformity in the implementation of the above provisions of the law across field formations, the Board, in exercise of its powers conferred by section 168(1) of the CGST Act, hereby clarifies the following:

4. Filing of refund application

4.1 The unregistered person, who wants to file an application for refund under sub-section (1) of section 54 of CGST Act, in cases where the contract/agreement for supply of services of construction of flat/building has been cancelled or where long-term insurance policy has been terminated, shall obtain a temporary registration on the common portal using his Permanent Account Number (PAN). While doing so, the unregistered person shall select the same state/UT where his/her supplier, in respect of whose invoice refund is to be claimed, is registered. Thereafter, the unregistered person would be required to undergo Aadhaar authentication in terms of provisions of rule 10B of the CGST Rules. Further, the unregistered person would be required to enter his bank account details in which he seeks to obtain the refund of the amount claimed. The applicant shall provide the details of the bank account which is in his name and has been obtained on his PAN.

4.2 The application for refund shall be filed in FORM GST RFD-01on the common portal under the category '**Refund for unregistered person**'. The applicant shall upload statement 8(in pdf format) and all the requisite documents as per the provisions of sub-rule (2) of rule 89 of the CGST Rules. The refund amount claimed shall not exceed the total amount of tax declared on the invoices

in respect of which refund is being claimed. Further, the applicant shall also upload the certificate issued by the supplier in terms of clause (kb) of sub-rule (2) of rule 89 of the CGST Rules along with the refund application. The applicant shall also upload any other document(s) to support his claim that he has paid and borne the incidence of tax and that the said amount is refundable to him.

4.3 Separate applications for refund have to be filed in respect of invoices issued by different suppliers. Further, where the suppliers, in respect of whose invoices refund is to be claimed, are registered in different States/UTs, the applicant shall obtain temporary registration in the each of the concerned States/UTs where the said supplier are registered.

4.4 Where the time period for issuance of credit note under section 34 of the CGST Act has not expired at the time of cancellation/termination of agreement/contract for supply of services, the concerned suppliers can issue credit note to the unregistered person. In such cases, the supplier would be in a position to also pay back the amount of tax collected by him from the unregistered person and therefore, there will be no need for filing refund claim by the unregistered persons in these cases. Accordingly, the refund claim can be filed by the unregistered persons only in those cases where at the time of cancellation/termination of agreement/contract for supply of services, the time period for issuance of credit note under section 34 of the CGST Act has already expired.

5. Relevant date for filing of refund:

As per sub-section (1) of section 54 of the CGST Act, time period of two years from the relevant date has been specified for filing an application of refund. Further, the relevant date in respect of cases of refund by a person other than supplier is the date of receipt of goods or services or both by such person in terms of provisions of clause (g) in *Explanation (2)* under section 54 of the CGST Act. However, in respect of cases where the supplier and the unregistered person (recipient) have entered into a long-term contract/agreement for the supply, with the provision of making payment in advance or in instalments, for example- construction of flats or long-term insurance policies, if the contract is cancelled/terminated before completion of service for any reason, there may be no date of receipt of service, to the extent supply has not been made/rendered. Therefore, in such type of cases, it has been decided that for the purpose of determining relevant date in terms of clause (g) of *Explanation (2)* under section 54 of the CGST Act, date of issuance of letter of cancellation of the contract/agreement for supply by the supplier will be considered as the date of receipt of the services by the applicant.

6. Minimum refund amount

Sub-section (14) of section 54 of the CGST Act provides that no refund under sub-section (5) or sub-section (6) shall be paid to an applicant, if amount is less than one thousand rupees. Therefore, no refund shall be claimed if the amount is less than one thousand rupees.

7. The proper officer shall process the refund claim filed by the unregistered person in a manner similar to other RFD-01 claims. The proper officer shall scrutinize the application with respect to completeness and eligibility of the refund claim to his satisfaction and issue the refund sanction order in FORM GST RFD-06 accordingly. The proper officer shall also upload a detailed speaking order along with the refund sanction order in FORM GST RFD-06.

7.1 In cases where the amount paid back by the supplier to the unregistered person on cancellation/termination of agreement/contract for supply of services is less than amount paid by such unregistered person to the supplier, only the proportionate amount of tax involved in such amount paid back shall be refunded to the unregistered person.

Circular No. 197/09/2023-GST, dated 17-7-2023

Subject: Clarification on refund related issues

References have been received from the field formations seeking clarification on various issues relating to GST refunds. In order to clarify these issues and to ensure uniformity in the implementation of the provisions of law in this regard across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”), hereby clarifies the issues detailed hereunder:

1. Refund of accumulated input tax credit under Section 54(3) on the basis of that available as per FORM GSTR 2B:—

1.1 In terms of Para 5 of Circular No. 135/05/2020-GST, dated 31.03.2020, refund of accumulated input tax credit (ITC) is restricted to the input tax credit as per those invoices, the details of which are uploaded by the supplier in FORM GSTR-1 and are reflected in the FORM GSTR-2A of the applicant. Para 5 of the said circular is reproduced below:

“5. Guidelines for refunds of Input Tax Credit under Section 54(3).—5.1

In terms of para 36 of circular No. 125/44/2019-GST dated 18.11.2019, the refund of ITC availed in respect of invoices not reflected in FORM GSTR-2A was also admissible and copies of such invoices were required to be uploaded. However, in wake of insertion of sub-rule (4) to rule 36 of the CGST Rules, 2017 vide notification No. 49/2019-GST dated 09.10.2019, various references have been received from the field formations regarding admissibility of refund of the ITC availed on the invoices which are not reflecting in the FORM GSTR-2A of the applicant.

5.2 The matter has been examined and it has been decided that the refund of accumulated ITC shall be restricted to the ITC as per those invoices, the details of which are uploaded by the supplier in FORM GSTR-1 and are reflected in the FORM GSTR-2A of the applicant. Accordingly, para 36 of the circular No. 125/44/2019-GST, dated 18.11.2019 stands modified to that extent.”

1.2 However, in view of the insertion of clause (aa) in sub-section (2) of section 16 of the CGST Act, 2017 w.e.f. 1st January, 2022 vide Notification No.

39/2021-Central Tax dated 21.12.2021, and the amendment in Rule 36(4) of the Central Goods and Services Tax Rules, 1997 (hereinafter referred to as “CGST Rules”) w.e.f. 1st January, 2022 vide Notification No. 40/2021- Central Tax dated 29.12.2021, doubts are being raised as to whether the refund of the accumulated input tax credit under section 54(3) of CGST Act shall be admissible on the basis of the input tax credit as reflected in FORM GSTR-2A or on the basis of that available as per FORM GSTR-2B of the applicant.

1.3 The matter has been examined and it has been decided that since availment of input tax credit has been linked with FORM GSTR-2B w.e.f. 01.01.2022, availability of refund of the accumulated input tax credit under section 54(3) of CGST Act for a tax period shall be restricted to input tax credit as per those invoices, the details of which are reflected in FORM GSTR-2B of the applicant for the said tax period or for any of the previous tax periods and on which the input tax credit is available to the applicant. Accordingly, para 36 of Circular No. 125/44/2019-GST dated 18.11.2019, which was earlier modified vide Para 5 of Circular No. 135/05/2020-GST dated 31.03.2020, stands modified to this extent. Consequently, Circular No. 139/09/2020-GST dated 10.06.2020, which provides for restriction on refund of accumulated input tax credit on those invoices, the details of which are uploaded by the supplier in FORM GSTR-1 and are reflected in the FORM GSTR-2A of the applicant, also stands modified accordingly

1.4 It is further clarified that as the said amendments in section 16(2)(aa) of CGST Act and Rule 36(4) of CGST Rules have been brought into effect from 01.01.2022, therefore, the said restriction on availability of refund of accumulated input tax credit for a tax period on the basis of the credit available as per FORM GSTR-2B for the said tax period or for any of the previous tax periods, shall be applicable for the refund claims for the tax period of January 2022 onwards. However, in cases where refund claims for a tax period from January 2022 onwards has already been disposed of by the proper officer before the issuance of this circular, in accordance with the extant guidelines in force, the same shall not be reopened because of the clarification being issued by this circular.

2. Requirement of the undertaking in FORM RFD 01 inserted vide Circular No. 125/44/2019-GST, dated 18.11.2019.

2.1 Para 7 of Circular No. 125/44/2019-GST dated 18.11.2019 provides for an undertaking to be provided by the applicant electronically along with the refund claim in FORM RFD-01 in accordance with the Rule 89(1) of CGST Rules. Para 7 of Circular No. 125/44/2019-GST dated 18.11.2019 is reproduced below:

“7. Since the functionality of furnishing of FORM GSTR-2 and FORM GSTR-3 remains unimplemented, it has been decided by the GST Council to sanction refund of provisionally accepted input tax credit. However, the applicants applying for refund must give an undertaking to the effect that the amount of refund sanctioned would be paid back to the Government with

interest in case it is found subsequently that the requirements of clause (c) of sub-section (2) of section 16 read with sub-section (2) of section 42 of the CGST Act have not been complied with in respect of the amount refunded. This undertaking should be submitted electronically along with the refund claim.”

2.2 In accordance with the same, the following undertaking was inserted in FORM GST RFD-01

“I hereby undertake to pay back to the Government the amount of refund sanctioned along with interest in case it is found subsequently that the requirements of clause (c) of subsection (2) of section 16 read with sub-section (2) of section 42 of the CGST/SGST Act have not been complied with in respect of the amount refunded.”

2.3 However, Section 42 of CGST Act has been omitted w.e.f. 1st October, 2022 vide Notification No. 18/2022-CT dated 28.09.2022. Further, an amendment has also been made in Section 41 of the CGST Act, wherein the concept of provisionally accepted input tax credit has been done away with. Besides, FORM GSTR-2 and FORM GSTR-3 have also been omitted from CGST Rules. In view of this, reference to section 42, FORM GSTR-2 and FORM GSTR-3 is being deleted from the said para in the Circular as well as from the said undertaking. Para 7 of Circular No. 125/44/2019-GST dated 18.11.2019 & the undertaking in FORM GST RFD-01 may, therefore, be read as follows:

Para 7: “The applicants applying for refund must give an undertaking to the effect that the amount of refund sanctioned would be paid back to the Government with interest in case it is found subsequently that the requirements of clause (c) of sub-section (2) of section 16 of the CGST Act have not been complied with in respect of the amount refunded. This undertaking should be submitted electronically along with the refund claim.”

Undertaking in FORM GST RFD 01:- “I hereby undertake to pay back to the Government the amount of refund sanctioned along with interest in case it is found subsequently that the requirements of clause (c) of subsection (2) of section 16 of the CGST/ SGST Act have not been complied with in respect of the amount refunded.”

2.4 Consequentially, Annexure-A to the Circular No. 125/44/2019-GST dated 18.11.2019 also stands amended to the following extent:

- (i) “Undertaking in relation to sections 16(2)(c) and section 42(2)” wherever mentioned in the column “Declaration/Statement/Undertaking/ Certificates to be filled online” may be read as “Undertaking in relation to sections 16(2)(c)”.
- (ii) “Copy of GSTR-2A of the relevant period” wherever required as supporting documents to be additionally uploaded stands removed/ deleted.
- (iii) “Self-certified copies of invoices entered in Annexure-B whose details are not found in GSTR-2A of the relevant period” wherever required as supporting documents to be additionally uploaded stands removed/deleted

3. Manner of calculation of Adjusted Total Turnover under sub-rule (4) of Rule 89 of CGST Rules consequent to Explanation inserted in sub-rule (4) of Rule 89 vide Notification No. 14/2022- CT, dated 05.07.2022.

3.1 Doubts have been raised as regarding calculation of “adjusted total turnover” under sub-rule (4) of rule 89 of CGST Rules, in view of insertion of Explanation in sub-rule (4) of rule 89 of CGST Rules vide Notification No. 14/2022-Central Tax dated 05.07.0222. Clarification is being sought as to whether value of goods exported out of India has to be considered as per Explanation under sub-rule (4) of rule 89 of CGST Rules for the purpose of calculation of “adjusted total turnover” in the formula under the said sub-rule.

3.2 In this regard, it is mentioned that consequent to amendment in definition of the “Turnover of zero-rated supply of goods” vide Notification No. 16/2020-Central Tax dated 23.03.2020, Circular 147/03/2021-GST dated 12.03.2021 was issued which inter alia clarified that the same value of zero-rated/ export supply of goods, as calculated as per amended definition of “Turnover of zero-rated supply of goods”, needs to be taken into consideration while calculating “turnover in a state or a union territory”, and accordingly, in “adjusted total turnover” for the purpose of sub-rule (4) of Rule 89.

3.3 On similar lines, it is clarified that consequent to Explanation having been inserted in sub-rule (4) of rule 89 of CGST Rules vide Notification No. 14/2022-CT, dated 05.07.2022, the value of goods exported out of India to be included while calculating “adjusted total turnover” will be same as being determined as per the Explanation inserted in the said sub-rule.

4. Clarification in respect of admissibility of refund where an exporter applies for refund subsequent to compliance of the provisions of sub-rule (1) of rule 96A:

4.1 References have been received citing the instances where exporters have voluntarily made payment of due integrated tax, along with applicable interest, in cases where goods could not be exported or payment for export of services could not be received within time frame as prescribed in clause (a) or (b), as the case may be, of sub-rule (1) of rule 96A of CGST Rules. Clarification is being sought as to whether subsequent to export of the said goods or as the case may be, realization of payment in case of export of services, the said exporters are entitled to claim not only refund of unutilized input tax credit on account of export but also refund of the integrated tax and interest so paid in compliance of the provisions of sub-rule (1) of rule 96A.of CGST Rules.

4.2 It is mentioned that in terms of sub-rule (1) of rule 96A of the CGST Rules, a registered person availing of the option to export without payment of integrated tax is required to furnish a bond or a Letter of Undertaking (LUT), prior to export, binding himself to pay the tax due along with applicable interest within a period of –

- (a) fifteen days after the expiry of three months, or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export, if the goods are not exported out of India; or

- (b) fifteen days after the expiry of one year, or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export, if the payment of such services is not received by the exporter in convertible foreign exchange or in Indian rupees, wherever permitted by the Reserve Bank of India

4.3 In this context, it has been clarified inter alia in para 45 of Circular No. 125/44/2019-GST, dated 18.11.2019 that:

“.....exports have been zero rated under the IGST Act and as long as goods have actually been exported even after a period of three months, payment of Integrated tax first and claiming refund at a subsequent date should not be insisted upon. In such cases, the jurisdictional Commissioner may consider granting extension of time limit for export as provided in the said sub-rule on post facto basis keeping in view the facts and circumstances of each case. The same principle should be followed in case of export of services”

4.4 Further, in Para 44 of the aforesaid Circular, it has been emphasized that the substantive benefits of zero rating may not be denied where it has been established that exports in terms of the relevant provisions have been made.

4.5 The above clarifications imply that as long as goods are actually exported or as the case may be, payment is realized in case of export of services, even if it is beyond the time frames as prescribed in sub-rule (1) of rule 96A, the benefit of zero-rated supplies cannot be denied to the concerned exporters. Accordingly, it is clarified that in such cases, on actual export of the goods or as the case may be, on realization of payment in case of export of services, the said exporters would be entitled to refund of unutilized input tax credit in terms of sub-section (3) of section 54 of the CGST Act, if otherwise admissible.

4.6 It is also clarified that in such cases subsequent to export of the goods or realization of payment in case of export of services, as the case may be, the said exporters would be entitled to claim refund of the integrated tax so paid earlier on account of goods not being exported, or as the case be, the payment not being realized for export of services, within the time frame prescribed in clause (a) or (b), as the case may be, of sub-rule (1) of rule 96A. It is further being clarified that no refund of the interest paid in compliance of sub-rule (1) of rule 96A shall be admissible.

4.7 It may further be noted that the refund application in the said scenario may be made under the category “Excess payment of tax”. However, till the time the refund application cannot be filed under the category “Excess payment of tax” due to non-availability of the facility on the portal to file refund of IGST paid in compliance with the provisions of sub-rule (1) of rule 96A of CGST Rules as “Excess payment of tax”, the applicant may file the refund application under the category “Any Other” on the portal.

Appendix 6

Tax Deduction at Source

*Circular No. 65/39/2018-DOR [F. No. S.31011/11/2018-ST-I-DoR],
dated 14-9-2018*

Subject: Guidelines for Deductions and Deposits of TDS by the DDO under GST

Section 51 of the CGST Act 2017 provides for deduction of tax by the Government Agencies (Deductor) or any other person to be notified in this regard, from the payment made or credited to the supplier (Deductee) of taxable goods or services or both, where the total value of such supply, under a contract, exceeds two lakh and fifty thousand rupees. The amount deducted as tax under this section shall be paid to the Government by deductor within ten days after the end of the month in which such deduction is made along with a return in **FORM GSTR-7** giving the details of deductions and deductees. Further, the deductor has to issue a certificate to the deductee mentioning therein the contract value, rate of deduction, amount deducted etc.

2. As per the Act, every deductor shall deduct the tax amount from the payment made to the supplier of goods or services or both and deposit the tax amount so deducted with the Government account through NEFT to RBI or a cheque to be deposited in one of the authorized banks, using challan on the common portal. In addition, the deductors are entrusted the responsibility of filing return in **FORM GSTR-7** on the common portal for every month in which 2 deduction has been made based on which the benefit of deduction shall be made available to the deductee. All the DDOs in the Government, who are performing the role as deductor have to register with the common portal and get the GST Identification Number (GSTIN).

3. The subject section which provides for tax deduction at source was not notified to come into force with effect from 1st July, 2017, the date from which GST was introduced. Government has recently notified that these provisions shall come into force with effect from 1st October, 2018, *vide* Notification No. 50/2018-C.T., dated 13th September, 2018.

4. For payment process of Tax Deduction at Source under GST two options can be followed, which are as under: Option I : Generation of challan for every payment made during the month Option II : Bunching of TDS deducted from the bills on weekly, monthly or any periodic manner

5. In order to give effect to the above options from 1-10-2018, a process flow of deduction and deposit of TDS by the DDOs has been finalized in consultation with CGA for guidance and implementation by Central and State Government

Authorities. The process flow for Option I and Option II are described as under:

Option I - Individual Bill-wise Deduction and its Deposit by the DDO

6. In this option, the DDO will have to deduct as well as deposit the GST TDS for each bill individually by generating a CPIN (Challan) and mentioning it in the Bill itself.

7. Following process shall be followed by the DDO in this regard:

- (i) The DDO shall prepare the Bill based on the Expenditure Sanction. The Expenditure Sanction shall contain the (a) Total amount, (b) net amount payable to the Contractor/Supplier/Vendor and (c) the 2% TDS amount of GST.
- (ii) The DDO shall login into the GSTN Portal (using his GSTIN) and generate the CPIN (Challan). In the CPIN he shall have to fill in the desired amount of payment against one/many Major Head(s) 3 (CGST/ SGST/UTGST/IGST) and the relevant component (e.g. Tax) under each of the Major Head.
- (iii) While generating the CPIN, the DDO will have to select mode of payment as either (a) NEFT/RTGS or (b) OTC. In the OTC mode, the DDO will have to select the Bank where the payment will be deposited through OTC mode.
- (iv) The DDO shall prepare the bill on PFMS (in case of Central Civil Ministries of GoI), similar payment portals of other Ministries/ Departments of GoI or of State Governments for submission to the respective payment authorities.
- (v) In the Bill, (a) the net amount payable to the Contractor; and (b) 2% as TDS will be specified
- (vi) In case of NEFT/RTGS mode, the DDO will have to mention the CPIN Number (as beneficiary's account number), RBI (as beneficiary) and the IFSC Code of RBI with the request to payment authority to make payment in favour of RBI with these credentials.
- (vii) In case of the OTC mode, the DDO will have to request the payment authority to issue 'A' Category Government Cheque in favour of one of the 25 authorized Banks. The Cheque may then be deposited along with the CPIN with any of branch of the authorized Bank so selected by the DDO.
- (viii) Upon successful payment, a CIN will be generated by the RBI/ Authorized Bank and will be shared electronically with the GSTN Portal. This will get credited in the electronic Cash Ledger of the concerned DDO in the GSTN Portal. This can be viewed and the details of CIN can be noted by the DDO anytime on GSTN portal using his Login credentials.
- (ix) The DDO should maintain a Register as per proforma given in Annexure 'A' to keep record of all TDS deductions made by him during the month. This Record will be helpful at the time of filing Monthly Return (**FORM**

GSTR-7) by the DDO. The DDO may also make use of the offline utility available on the GSTN Portal for this purpose.

- (x) The DDO shall generate TDS Certificate through the GST Portal in **FORM GSTR-7A** after filing of Monthly Return. Option II - Bunching of deductions and its deposit by the DDO

8. Option-I may not be suitable for DDOs who make large number of payments in a month as it would require them to make large number of challans during the month. Such DDOs may exercise this option wherein the DDO will have to deduct the TDS from each bill, for keeping it under the Suspense Head. However, deposit of this bunched amount from the Suspense Head can be made on a weekly, monthly or any other periodic basis.

9. Following process shall be followed by the DDO in this regard:

- (i) The DDO shall prepare the Bill based on the Expenditure Sanction. The Expenditure Sanction shall contain the (a) Total amount, (b) net amount payable to the Contractor/Supplier/Vendor and (c) the 2% TDS amount of GST.
- (ii) The DDO shall prepare the bill on PFMS (in case of Central Civil Ministries of GoI), similar payment portals of other Ministries/ Departments of GoI or of State Governments for submission to the respective payment authorities.
- (iii) In the Bill, it will be specified (a) the net amount payable to the Contractor; and (b) 2% as TDS
- (iv) The TDS amount shall be mentioned in the Bill for booking in the Suspense Head (8658 - Suspense; 00.101 - PAO Suspense; xx – GST TDS)
- (v) The DDO will require to maintain the Record of the TDS so being booked under the Suspense Head so that at the time of preparing the CPIN for making payment on weekly/monthly or any other periodic basis, the total amount could be easily worked out.
- (vi) At any periodic interval, when DDO needs to deposit the TDS amount, he will prepare the CPIN on the GSTN Portal for the amount (already booked under the Suspense Head). 5
- (vii) While generating the CPIN, the DDO will have to select mode of payment as either (a) NEFT/RTGS or (b) OTC. In the OTC mode, the DDO will have to select the Bank where the payment will be deposited through OTC mode.
- (viii) The DDO shall prepare the bill for the bunched TDS amount for payment through the concerned payment authority. In the Bill, the DDO will give reference of all the earlier paid bills from which 2% TDS was deducted and kept in the suspense head. The DDO may also attach a certified copy of the record maintained by him in this regard.
- (ix) The payment authority will pass the bill by clearing the Suspense Head operated against that particular DDO after exercising necessary checks.

- (x) In case of NEFT/RTGS mode, the DDO will have to mention the CPIN Number (as beneficiary's account number), RBI (as beneficiary) and the IFSC Code of RBI with the request to payment authority to make payment in favour of RBI with these credentials.
- (xi) In case of the OTC mode, the DDO will have to request the payment authority to issue 'A' Category Government Cheque in favour of one of the 25 authorized Banks. The Cheque may then be deposited along with the CPIN with any of branch of the authorized Bank so selected by the DDO.
- (xii) Upon successful payment, a CIN will be generated by the RBI/ Authorized Bank and will be shared electronically with the GSTN Portal. This will get credited in the electronic Cash Ledger of the concerned DDO in the GSTN Portal. This can be viewed and the details of CIN can be noted by the DDO anytime on GSTN portal using his Login credentials.
- (xiii) The DDO should maintain a Register as per proforma given in Annexure 'A' to keep record of all TDS deductions made by him during the month. This Record will be helpful at the time of filing Monthly Return (**FORM GSTR-7**) by the DDO. The DDO may also make use of the offline utility available on the GSTN Portal for this purpose. 6
- (xiv) The DDO shall file the Return in **FORM GSTR-7** by 10th of the following month.
- (xv) The DDO shall generate TDS Certificate through the GSTN Portal in **FORM GSTR-7A**.

10. Departments in Central Government should instruct all its DDOs under them to follow the above procedure for payment of GST TDS amount deducted from payments to be made to suppliers.

Circular No.194/06/2023-GST dated 17.07.2023

**Clarification on TCS liability under section 52 of the CGST Act, 2017
in case of multiple E-commerce Operators in one transaction**

Reference has been received seeking clarification regarding TCS liability under section 52 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), in case of multiple E-commerce Operators (ECOs) in one transaction, in the context of Open Network for Digital Commerce (ONDC).

2.1 In the current platform-centric model of e-commerce, the buyer interface and seller interface are operated by the same ECO. This ECO collects the consideration from the buyer, deducts the TCS under Sec 52 of the CGST Act, credits the deducted TCS amount to the GST cash ledger of the seller and passes on the balance of the consideration to the seller after deducting their service charges.

2.2 In the case of the ONDC Network or similar other arrangements, there can be multiple ECOs in a single transaction - one providing an interface to the buyer and the other providing an interface to the seller. In this setup, buyer-side ECO could collect consideration, deduct their commission and pass on the con-

sideration to the seller-side ECO. In this context, clarity has been sought as to which ECO should deduct TCS and make other compliances under section 52 of CGST Act in such situations, as in such models having multiple ECOs in a single transaction, both the Buyer-side ECO and the Seller-side ECO qualify as ECOs as per Section 2(45) of the CGST Act.

3. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the CGST Act, hereby clarifies the issues as under:

Issue 1: In a situation where multiple ECOs are involved in a single transaction of supply of goods or services or both through ECO platform and where the supplier-side ECO himself is not the supplier in the said supply, who is liable for compliances under section 52 including collection of TCS?

Buyer > Buyer side Eco > Supplier side Eco > Supplier

Clarification: In such a situation where multiple ECOs are involved in a single transaction of supply of goods or services or both through ECO platform and where the supplier-side ECO himself is not the supplier of the said goods or services, the compliances under section 52 of CGST Act, including collection of TCS, is to be done by the supplier-side ECO who finally releases the payment to the supplier for a particular supply made by the said supplier through him.

e.g.: Buyer-side ECO collects payment from the buyer, deducts its fees/commissions and remits the balance to Seller-side ECO. Here, the Seller-side ECO will release the payment to the supplier after deduction of his fees/commissions and therefore will also be required to collect TCS, as applicable and pay the same to the Government in accordance with section 52 of CGST Act and also make other compliances under section 52 of CGST Act.

In this case, the Buyer-side ECO will neither be required to collect TCS nor will be required to make other compliances in accordance with section 52 of CGST Act with respect to this particular supply.

Issue 2: In a situation where multiple ECOs are involved in a single transaction of supply of goods or services or both through ECO platform and the Supplier-side ECO is himself the supplier of the said supply, who is liable for compliances under section 52 including collection of TCS?

Buyer > Buyer side Eco > Supplier (also Eco)

Clarification: In such a situation, TCS is to be collected by the Buyer-side ECO while making payment to the supplier for the particular supply being made through it.

e.g. Buyer-side ECO collects payment from the buyer, deducts its fees and remits the balance to the supplier (who is itself an ECO as per the definition in Sec 2(45) of the CGST Act). In this scenario, the Buyer-side ECO will also be required to collect TCS, as applicable, pay the same to the Government in accordance with section 52 of CGST Act and also make other compliances under section 52 of CGST Act.

Appendix 7

Job Work under GST

Circular No. 38/12/2018, dated 26-3-2018

Board clarification on various provisions related to job work

Further, the Board of Indirect Taxes and Customs *vide* its Circular No. 38/12/2018, dated 26th March, 2018 has clarified the various issues have been raised by taxpayers regarding the procedures to be followed for job work and the related compliances requirement for the principal and the job worker. The gist of the said circular with various procedures to comply legal requirements for job work has been summarized as under:

1. Scope/ambit of job work

The job worker is expected to work on the goods sent by the principal. Whether the activity is covered within the scope of job work or not would have to be determined on the basis of facts and circumstances of each case. Further, it is clarified that the job worker, in addition to the goods received from the principal, can use his own goods for providing the services of job work.

2. Requirement of registration for the principal/job worker

The provisions of Section 143 of the CGST Act are applicable to a registered person and it is only a registered person can send the goods for job work under said provisions. It is choice of registered person to avail or not to avail of the benefit of these special provisions of job work.

With regard to registration of job worker, when the job worker and principal are located in the same State in that case job worker is required to take registration only if his aggregate turnover in a financial year has exceeded the threshold limit of registration. Where the principal and the job worker are located in different States, the requirement of registration flows from clause (i) of Section 24 of the CGST Act which provides for compulsory registration any inter-State supply of taxable services irrespective of threshold limit of registration. However, exemption from mandatory registration has granted *vide* Notification No. 10/2017- I.T., dated 13-10-2017 in case of inter-State of supply of services. Hence, a job worker is required to take registration only in cases where his aggregate turnover, to be computed on all India basis, in a financial year exceeds the threshold limit regardless of whether the principal and the job worker are located in the same State or in different States.

3. Documents required for movement of goods for Job working**(i) By the Principal to job worker:**

The principal shall move goods to job worker under cover of Challan in terms of rules 45 and 55 of the CGST Rules. The challan meant for job work shall be prepared in triplicate. Two copies of the challan may be sent to the job worker along with the goods. The job worker should send back one copy of the said challan to the principal along with the processed goods on completion of the job work. The FORM GST ITC-04 will serve as the intimation as envisaged under section 143 of the CGST Act, 2017.

(ii) From one job worker to another job worker:

The goods may move under cover of challan issued either by the principal or the job worker. Alternatively, the challan issued by the principal may be endorsed by the job worker indicating the quantity and description of goods being sent.

(iii) From Job worker to the principal:

The job worker should send one copy of the challan received by him from the principal while returning the goods to the principal after carrying out the job work.

(iv) From supplier to the job worker:

As per instruction of the principal, the supplier may move goods from his premises to job worker premises with a copy of the invoice issued by the supplier in the name the principal as buyer and job worker's name and address should be mentioned as the consignee, in terms of rule 46(o) of the CGST Rules. The principal shall issue the challan under rule 45 of the CGST Rules and send the same to the job worker directly. In case of import of goods by the principal, after customs clearances of imported goods move directly from Customs station of import to premises of job worker with a copy of Bill of Entry and the principal shall issue challan under Rule 45 of the CGST Rules and the challan send directly to the job worker.

(v) In piecemeal return by the job worker:

After completion of job work, if the piecemeal quantities are returned by the job worker to another job worker or to the principal, the challan issued originally by the principal cannot be endorsed and a fresh challan is required to be issued by the job worker.

(vi) Submission of intimation:

It is clarified that it is the responsibility of the principal to include the details of all the challan relating to goods sent by him to one or more job worker or from one job worker to another and its return therefrom. The FORM GST ITC-04 will serve as the intimation as envisaged under section 143 of the CGST Act.

4. Liability to issue invoice, time of supply and value of supply clearance from the job worker premises/place of business

(i) Supply of job work services:

The job worker, as a supplier of services, is liable to pay GST, if he is liable to be registered under Section 25 of the CGST Act. He shall issue an invoice at the time of supply of the services as determined in terms of Section 13 read with Section 31 of the CGST Act. The value of services would be determined in terms of Section 15 of the CGST Act and would include not only the service charges but also the value of any goods or services used by him for supplying the job work services, if recovered from the principal.

It is clarified that the value of moulds and dies, jigs and fixtures or tools provided by the principal may not be included in the value of job work services provided its value has been factored in the price for the supply of such services by the job worker.

(ii) Supply of goods by the principal:

Since the supply is being made by the principal, it is clarified that the time, value and place of supply would have to be determined in the hands of the principal irrespective of the location of the job worker's place of business/premises. Further, the invoice would have to be issued by the principal. It is also clarified that in case of exports directly from the job worker's place of business/premises, the LUT or bond, as the case may be, shall be executed by the principal.

(iii) Supply of waste and scrap generated during the job work

The waste and scrap generated during the job work may be supplied by the registered job worker directly from the place of business or by the principal if job worker is not registered under GST.

5. Violation of conditions laid down in Section 143:

As per provisions contained in Section 143 of the CGST Act, If the inputs or capital goods are neither returned to the principal nor supplied from the job worker premises within one year in case of inputs and three years in case of capital goods, the principal would issue an invoice for the same, pay GST and declare such supplies in his return for the particular month. If such goods are returned by the job worker after stipulated time, the same shall be treated as supply and job worker is liable to pay GST if the job worker not registered in that case principal have to pay GST on reverse charge basis as per Section 9(4) of the CGST Act. However, the said provision has been kept in abeyance till September, 2019. Further, there is no requirement of returning back or supplying the goods from the job worker's premises in case of moulds, dies, jigs, tools and fixtures are concerned.

6. E-Way Bill movement of goods for job work

An e-way bill is required to be generated by every registered person causes movement of goods of consignment value exceeding fifty thousand rupees. However, for inter-State movement of goods e-way bill shall be generated either

the principal or by the registered job worker irrespective of the value of the consignment.

7. Availability of input tax credit by the principal or job worker

It is clarified that, in view of the provisions contained in clause (b) of sub-section (2) of section 16 of the CGST Act, the Input Tax Credit would be available to the principal, irrespective of the fact whether the inputs or capital goods are received by the principal and then sent to the job worker's place of business, without being brought to the premises of the principal. It is also clarified that the job worker is also eligible to avail ITC on inputs, etc. used by him in supplying the job work services if he is registered under GST.

CBIC Circular No. 206/18/2023, dated 31.10.2023

4. Whether job work for processing of "Barley" into "Malted Barley" attracts GST@5% as applicable to "job work in relation to food and food products" or 18% as applicable on "job work in relation to manufacture of alcoholic liquor for human consumption"

4.1 References have been received to clarify whether services by way of job work for conversion of barley into malt attracts GST at 5% prescribed for "job work in relation to all food and food products falling under Chapter 1 to 22 of the customs tariff" or at the rate of 18% prescribed for "services by way of job work in relation to manufacture of alcoholic liquor for human consumption".

4.2 Malt is a food product. It can be directly consumed as part of food preparations or can be used as an ingredient in food products and also used for manufacture of beer and alcoholic liquor for human consumption. However, irrespective of end-use, conversion of barley into malt amounts to job work in relation to food products.

4.3 It is hereby clarified that job work services in relation to manufacture of malt are covered by the entry at Sl. No. 26(i)(f) which covers "job work in relation to all food and food products falling under chapters 1 to 22 of the customs tariff" irrespective of the end use of that malt and attracts 5% GST.

Appendix 8

Electronic Way Bill

Circular No. 41/15/2018-GST, dated 13-4-2018

Additional Instructions for Inspection of Goods in transit

After smooth roll-out of the e-Way Bill system, the CBIC, in case of interception of conveyances for inspection of goods in movement and detention, seizure and release and confiscation of such goods and conveyances. In order to ensure uniformity in the implementation of the provisions of the CGST Act across all the field formations, the CBIC, Vide, Circular No. 41/15/2018-GST, dated 13-4-2018 has issued the following instructions.

- (a) The jurisdictional Commissioner or an officer authorised by him for this purpose shall, by an order, designate an officer/officers as the proper officer/officers to conduct interception and inspection of conveyances and goods in the jurisdictional area specified in such order.
- (b) The proper officer, empowered to intercept and inspect a conveyance, may intercept any conveyance for verification of documents and/or inspection of goods. On being intercepted, the person in charge of the conveyance shall produce the documents related to the goods and the conveyance. The proper officer shall verify such documents and where, *prima facie*, no discrepancies are found, the conveyance shall be allowed to move further. An e-way bill number may be available with the person in charge of the conveyance or in the form of a print out, sms or it may be written on an invoice. All these forms of having an e-way bill are valid. Wherever a facility exists to verify the e-way bill electronically, the same shall be so verified, either by logging on to <http://mis.ewaybillgst.gov.in> or the Mobile App or through SMS by sending EWBVER <EWB_NO> to the mobile number 77382 99899 (For e.g. EWBVER 120100231897).
- (c) For the purposes of verification of the e-way bill, interception and inspection of the conveyance and/or goods, the proper officer under rule 138B of the CGST Rules shall be the officer who has been assigned the functions under sub-section (3) of Section 68 of the CGST Act *vide* Circular No. 3/3/2017-GST, dated 5-7-2017.
- (d) Where the person in charge of the conveyance fails to produce any prescribed document or where the proper officer intends to undertake an inspection, he shall record a statement of the person in charge of the conveyance in **FORM GST MOV-01**. In addition, the proper officer shall issue an order for physical verification/inspection of the conveyance, goods and documents in **FORM GST MOV-02**, requiring

the person in charge of the conveyance to station the conveyance at the place mentioned in such order and allow the inspection of the goods. The proper officer shall, within twenty-four hours of the aforementioned issuance of **FORM GST MOV-02**, prepare a report in Part A of **FORM GST EWB-03** and upload the same on the common portal.

- (e) Within a period of three working days from the date of issue of the order in **FORM GST MOV-02**, the proper officer shall conclude the inspection proceedings, either by himself or through any other proper officer authorised in this behalf. Where circumstances warrant such time to be extended, he shall obtain a written permission in **FORM GST MOV-03** from the Commissioner or an officer authorized by him, for extension of time beyond three working days and a copy of the order of extension shall be served on the person in charge of the conveyance.
- (f) On completion of the physical verification/inspection of the conveyance and the goods in movement, the proper officer shall prepare a report of such physical verification in **FORM GST MOV-04** and serve a copy of the said report to the person in charge of the goods and conveyance. The proper officer shall also record, on the common portal, the final report of the inspection in Part B of **FORM GST EWB-03** within three days of such physical verification/inspection.
- (g) Where no discrepancies are found after the inspection of the goods and conveyance, the proper officer shall issue forthwith a release order in **FORM GST MOV-05** and allow the conveyance to move further. Where the proper officer is of the opinion that the goods and conveyance need to be detained under Section 129 of the CGST Act, he shall issue an order of detention in **FORM GST MOV-06** and a notice in **FORM GST MOV-07** in accordance with the provisions of sub-section (3) of Section 129 of the CGST Act, specifying the tax and penalty payable. The said notice shall be served on the person in charge of the conveyance.
- (h) Where the owner of the goods or any person authorized by him comes forward to make the payment of tax and penalty as applicable under clause (a) of sub-section (1) of Section 129 of the CGST Act, or where the owner of the goods does not come forward to make the payment of tax and penalty as applicable under clause (b) of sub-section (1) of the said section, the proper officer shall, after the amount of tax and penalty has been paid in accordance with the provisions of the CGST Act and the CGST Rules, release the goods and conveyance by an order in **FORM GST MOV-05**. Further, the order in **FORM GST MOV-09** shall be uploaded on the common portal and the demand accruing from the proceedings shall be added in the electronic liability register and the payment made shall be credited to such electronic liability register by debiting the electronic cash ledger or the electronic credit ledger of the concerned person in accordance with the provisions of Section 49 of the CGST Act.

- (i) Where the owner of the goods, or the person authorized by him, or any person other than the owner of the goods comes forward to get the goods and the conveyance released by furnishing a security under clause (c) of sub-section (1) of Section 129 of the CGST Act, the goods and the conveyance shall be released, by an order in **FORM GST MOV-05**, after obtaining a bond in **FORM GST MOV-08** along with a security in the form of bank guarantee equal to the amount payable under clause (a) or clause (b) of sub-section (1) of Section 129 of the CGST Act. The finalization of the proceedings under Section 129 of the CGST Act shall be taken up on priority by the officer concerned and the security provided may be adjusted against the demand arising from such proceedings.
- (j) Where any objections are filed against the proposed amount of tax and penalty payable, the proper officer shall consider such objections and thereafter, pass a speaking order in **FORM GST MOV-09**, quantifying the tax and penalty payable. On payment of such tax and penalty, the goods and conveyance shall be released forthwith by an order in **FORM GST MOV-05**. The order in **FORM GST MOV-09** shall be uploaded on the common portal and the demand accruing from the order shall be added in the electronic liability register and, upon payment of the demand, such register shall be credited by either debiting the electronic cash ledger or the electronic credit ledger of the concerned person in accordance with the provisions of Section 49 of the CGST Act.
- (k) In case the proposed tax and penalty are not paid within fourteen days from the date of the issue of the order of detention in **FORM GST MOV-06**, action under Section 130 of the CGST Act shall be initiated by serving a notice in **FORM GST MOV-10**, proposing confiscation of the goods and conveyance and imposition of penalty.
- (l) Where the proper officer is of the opinion that such movement of goods is being effected to evade payment of tax, he may directly invoke Section 130 of the CGST Act by issuing a notice proposing to confiscate the goods and conveyance in **FORM GST MOV-10**. In the said notice, the quantum of tax and penalty leviable under Section 130 of the CGST Act read with Section 122 of the CGST Act, and the fine in lieu of confiscation leviable under sub-section (2) of Section 130 of the CGST Act shall be specified. Where the conveyance is used for the carriage of goods or passengers for hire, the owner of the conveyance shall also be issued a notice under the third proviso to sub-section (2) of Section 130 of the CGST Act, proposing to impose a fine equal to the tax payable on the goods being transported in lieu of confiscation of the conveyance.
- (m) No order for confiscation of goods or conveyance, or for imposition of penalty, shall be issued without giving the person an opportunity of being heard.

- (n) An order of confiscation of goods shall be passed in **FORM GST MOV-11**, after taking into consideration the objections filed by the person in charge of the goods (owner or his representative), and the same shall be served on the person concerned. Once the order of confiscation is passed, the title of such goods shall stand transferred to the Central Government. In the said order, a suitable time not exceeding three months shall be offered to make the payment of tax, penalty and fine imposed in lieu of confiscation and get the goods released. The order in **FORM GST MOV-11** shall be uploaded on the common portal and the demand accruing from the order shall be added in the electronic liability register and, upon payment of the demand, such register shall be credited by either debiting the electronic cash ledger or the electronic credit ledger of the concerned person in accordance with the provisions of Section 49 of the CGST Act. Once an order of confiscation of goods is passed in **FORM GST MOV-11**, the order in **FORM GST MOV-09** passed earlier with respect to the said goods shall be withdrawn.
- (o) An order of confiscation of conveyance shall be passed in **FORM GST MOV-11**, after taking into consideration the objections filed by the person in charge of the conveyance and the same shall be served on the person concerned. Once the order of confiscation is passed, the title of such conveyance shall stand transferred to the Central Government. In the order passed above, a suitable time not exceeding three months shall be offered to make the payment of penalty and fines imposed in lieu of confiscation and get the conveyance released. The order in **FORM GST MOV-11** shall be uploaded on the common portal and the demand accruing from the order shall be added in the electronic liability register and, upon payment of the demand, such register shall be credited by either debiting the electronic cash ledger or the electronic credit ledger of the concerned person in accordance with the provisions of Section 49 of the CGST Act.
- (p) The order referred to in clauses (n) and (o) above may be passed as a common order in the said **FORM GST MOV-11**.
- (q) In case neither the owner of the goods nor any person other than the owner of the goods comes forward to make the payment of tax, penalty and fine imposed and get the goods or conveyance released within the time specified in **FORM GST MOV-11**, the proper officer shall auction the goods and/or conveyance by a public auction and remit the sale proceeds to the account of the Central Government.
- (r) Suitable modifications in the time allowed for the service of notice or order for auction or disposal shall be done in case of perishable and/or hazardous goods.
- (s) Whenever an order or proceedings under the CGST Act is passed by the proper officer, a corresponding order or proceedings shall be passed by him under the respective State or Union Territory GST Act and if

applicable, under the Goods and Services Tax (Compensations to States) Act, 2017. Further, sub-sections (3) and (4) of Section 79 of the CGST Act/respective State GST Acts may be referred to in case of recovery of arrears of central tax/State tax/Union territory tax.

- (t) The procedure narrated above shall be applicable mutatis mutandis for an order or proceeding under the IGST Act, 2017.
- (u) Demand of any tax, penalty, fine or other charges shall be added in the electronic liability ledger of the person concerned. Where no electronic liability ledger is available in case of an unregistered person, a temporary ID shall be created by the proper officer on the common portal and the liability shall be created therein. He shall also credit the payments made towards such demands of tax, penalty or fine and other charges by debiting the electronic cash ledger of the concerned person.
- (v) A summary of every order in **FORM GST MOV-09** and **FORM GST MOV-11** shall be uploaded electronically in **FORM GST-DRC-07** on the common portal.

* * *

Modification of Inspection of goods in conveyance

*Circular No. 49/23/2018-GST [F. No. CBEC/20/16/03/2017-GST],
dated 21-6-2018*

Subject: Modifications to the procedure for interception of conveyances for inspection of goods in movement, and detention, release and confiscation of such goods and conveyances, as clarified in Circular No. 41/15/2018-GST, dated 13-4-2018 – Reg.

Circular No. 41/15/2018-GST, dated 13-4-2018 was issued to clarify the procedure for interception of conveyances for inspection of goods in movement, and detention, release and confiscation of such goods and conveyances.

2. In order to clarify certain issues regarding the specified procedure in this regard and in order to ensure uniform implementation of the provisions of the CGST Act across all the field formations, the Board, in exercise of the powers conferred under Section 168(1) of the Central Goods and Services Tax Act, hereby issues the following modifications to the said Circular:—

- (i) In para 2 (e) of the said Circular, the expression “three working days” may be replaced by the expression “three days”;
- (ii) The statement after paragraph 3 in **FORM GST MOV-05** should read as: “In view of the above, the goods and conveyance(s) are hereby released on (DD/MM/YYYY) at ____ AM/PM.”

3. Further, it is stated that as per Rule 138C(2) of the Central Goods and Services Tax Rules, 2017, where the physical verification of goods being transported on any conveyance has been done during transit at one place within a State or Union territory or in any other State or Union territory, no further physical verification of the said conveyance shall be carried out again in the State or Union territory, unless a specific information relating to evasion of tax is made

available subsequently. Since the requisite FORMS are not available on the common portal currently, any action initiated by the State tax officers is not being intimated to the central tax officers and *vice-versa*, doubts have been raised as to the procedure to be followed in such situations.

3.1 In this regard, it is clarified that the hard copies of the notices/orders issued in the specified FORMS by a tax authority may be shown as proof of initiation of action by a tax authority by the transporter/registered person to another tax authority as and when required.

3.2 Further, it is clarified that only such goods and/or conveyances should be detained/confiscated in respect of which there is a violation of the provisions of the GST Acts or the rules made thereunder. Illustration: Where a conveyance carrying twenty-five consignments is intercepted and the person-in-charge of such conveyance produces valid e-way bills and/or other relevant documents in respect of twenty consignments, but is unable to produce the same with respect to the remaining five consignments, detention/confiscation can be made only with respect to the five consignments and the conveyance in respect of which the violation of the Act or the rules made thereunder has been established by the proper officer.

* * *

E-way bill in case of storing of goods in godown of transporter

Circular No. 61/35/2018-GST [CBEC-20/13/01/2018-GST], dated 4-9-2018

Subject: E-way bill in case of storing of goods in godown of transporter — Regarding

Various representations have been received on the matter pertaining to the textile sector and problems being faced by weavers & artisans regarding storage of their goods in the warehouse of the transporter. It has been stated that textile traders use transporters' godown for storage of their goods due to their weak financial conditions. The transporters providing such warehousing facility will have to get themselves registered under GST and maintain detailed records in cases where the transporter takes delivery of the goods and temporarily stores them in his warehouse for further transportation of the goods till the consignee/recipient taxpayer's premises. The transport industry is facing difficulties due to the same and a request has been made to treat these godowns as transit godowns.

2. In view of the difficulties being faced by the transporters and the consignee/recipient taxpayer and to ensure uniformity in the procedure across the sectors and the country, the Board in exercise of its power conferred under Section 168(1) of the Central Goods and Services Tax Act, 2017 (hereafter referred to as the CGST Act) hereby clarifies the issues in the succeeding paragraphs.

3. As per rule 138 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the CGST Rules) e-way bill is a document which is required for the movement of goods from the supplier's place of business to the recipient taxpayer's place of business. Therefore, the goods in movement including when they are stored in the transporter's godown (even if the godown is

located in the recipient taxpayer's city/town) prior to delivery shall always be accompanied by a valid e-way bill.

4. Further, Section 2(85) of the CGST Act defines the "place of business" to include "a place from where the business is ordinarily carried out, and includes a warehouse, a godown or any other place where a taxable person stores his goods, supplies or receives goods or services or Circular No. 61/35/2018-GST both". An additional place of business is the place of business from where taxpayer carries out business related activities within the State, in addition to the principal place of business.

5. Thus, in case the consignee/recipient taxpayer stores his goods in the godown of the transporter, then the transporter's godown has to be declared as an additional place of business by the recipient taxpayer. In such cases, mere declaration by the recipient taxpayer to this effect with the concurrence of the transporter in the said declaration will suffice. Where the transporter's godown has been declared as the additional place of business by the recipient taxpayer, the transportation under the e-way bill shall be deemed to be concluded once the goods have reached the transporter's godown (recipient taxpayer's additional place of business). Hence, e-way bill validity in such cases will not be required to be extended.

6. Further, whenever the goods are transported from the transporters' godown, which has been declared as the additional place of business of the recipient taxpayer, to any other premises of the recipient taxpayer then, the relevant provisions of the e-way bill rules shall apply. Hence, whenever the goods move from the transporter's godown (i.e., recipient taxpayer's additional place of business) to the recipient taxpayer's any other place of business, a valid e-way bill shall be required, as per the extant State-specific e-way bill rules.

7. Further, the obligation of the transporter to maintain accounts and records as specified in section 35 of the CGST Act read with rule 58 of the CGST Rules shall continue as a warehouse keeper. Furthermore, the recipient taxpayer shall also maintain accounts and records as required under Rules 56 and 57 of the CGST Rules. Furthermore, as per Rule 56(7) of the CGST Rules, books of accounts in relation to goods stored at the transporter's godown (i.e., the recipient taxpayer's additional place of business) by the recipient taxpayer may be maintained by him at his principal place of business. It may be noted that the facility of declaring additional place of business by the recipient taxpayer is in no way putting any additional compliance requirement on the transporters.

* * *

Modification of the procedure for interception of conveyances for inspection of goods in movement, and detention, release and confiscation of such goods and conveyances, as clarified in Circular Nos. 41/15/2018-GST, dated 13.04.2018 and 49/23/2018-GST, dated 21.06.2018 - regarding

Circular No. 64/38/2018-GST CBEC/20/16/03/2017-GST, dated 14-9-2018

Subject: Modification of the procedure for interception of conveyances for inspection of goods in movement, and detention, release and confiscation of such goods and conveyances, as clarified in Circular Nos. 41/15/2018-GST, dated 13-4-2018 and 49/23/2018-GST, dated 21-6-2018 - Regarding

Kind attention is invited to Circular No. 41/15/2018-GST, dated 13th April, 2018 as amended by Circular No. 49/23/2018-GST, dated 21st June, 2018 *vide* which the procedure for interception of conveyances for inspection of goods in movement, and detention, release and confiscation of such goods and conveyances was specified.

2. Various representations have been received regarding imposition of penalty in case of minor discrepancies in the details mentioned in the e-way bill although there are no major lapses in the invoices accompanying the goods in movement. The matter has been examined. In order to clarify this issue and to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under Section 168 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as 'the CGST Act') hereby clarifies the said issue hereunder.

3. Section 68 of the CGST Act read with Rule 138A of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as 'the CGST Rules') requires that the person in charge of a conveyance carrying any consignment of goods of value exceeding ₹50,000/- should carry a copy of documents viz., invoice/bill of supply/delivery challan/bill of entry and a valid e-way bill in physical or electronic form for verification. In case such person does not carry the mentioned documents, there is no doubt that a contravention of the provisions of the law takes place and the provisions of Section 129 and Section 130 of the CGST Act are invocable. Further, it may be noted that the non-furnishing of information in **Part B of FORM GST EWB-01** amounts to the e-way bill becoming not a valid document for the movement of goods by road as per Explanation (2) to Rule 138(3) of the CGST Rules, except in the case where the goods are transported for a distance of upto fifty kilo metres within the State or Union territory to or from the place of business of the transporter to the place of business of the consignor or the consignee, as the case may be.

4. Whereas, Section 129 of the CGST Act provides for detention and seizure of goods and conveyances and their release on the payment of requisite tax and penalty in cases where such goods are transported in contravention of the provisions of the CGST Act or the rules made thereunder. It has been informed that proceedings under Section 129 of the CGST Act are being initiated for every mistake in the documents mentioned in para 3 above. It is clarified that in case a consignment of goods is accompanied by an invoice or any other specified

document and not an e-way bill, proceedings under Section 129 of the CGST Act may be initiated.

5. Further, in case a consignment of goods is accompanied with an invoice or any other specified document and also an e-way bill, proceedings under Section 129 of the CGST Act may not be initiated, *inter alia*, in the following situations:

- (a) Spelling mistakes in the name of the consignor or the consignee but the GSTIN, wherever applicable, is correct;
- (b) Error in the pin-code but the address of the consignor and the consignee mentioned is correct, subject to the condition that the error in the PIN code should not have the effect of increasing the validity period of the e-way bill;
- (c) Error in the address of the consignee to the extent that the locality and other details of the consignee are correct;
- (d) Error in one or two digits of the document number mentioned in the e-way bill;
- (e) Error in 4 or 6 digit level of HSN where the first 2 digits of HSN are correct and the rate of tax mentioned is correct;
- (f) Error in one or two digits/characters of the vehicle number.

6. In case of the above situations, penalty to the tune of ₹500/- each under Section 125 of the CGST Act and the respective State GST Act should be imposed (₹1000/- under the IGST Act) in **FORM GST DRC-07** for every consignment. A record of all such consignments where proceedings under Section 129 of the CGST Act have not been invoked in view of the situations listed in paragraph 5 above shall be sent by the proper officer to his controlling officer on a weekly basis.

Appendix 9

Export Procedure

Circular No. 41/2018-Cus. [F. No. 484/3/2015], dated 30-10-2018

Subject: Electronic sealing — Deposit in and removal of goods from Customs bonded Warehouses

Reference may be made to Circular No. 39/2018-Cus., dated 23th October, 2018 issued by the Board informing that the updated version of Circular No. 19/2018-Cus., dated 18th June, 2018, introducing electronic sealing for deposit in and removal of goods from Customs Bonded Warehouses, will be implemented from 1-11-2018.

The Board has decided to extend the date of implementation to 1, January, 2019 in order to enable establishment of infrastructure and procurement of seals by warehouse owners.

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Clarification on exports related issues

Circular No. 37/11/2018-GST [F. No. 349/47/2017-GST], dated 15-3-2018

Subject: Clarifications on exports related refund issues — Regarding

Board vide Circular No. 17/17/2017-GST, dated 15th November 2017 and Circular No. 24/24/2017-GST, dated 21st December 2017 clarified various issues in relation to processing of claims for refund. Since then, several representations have been received seeking further clarifications on issues relating to refund. In order to clarify these issues and with a view to ensure uniformity in the implementation of the provisions of the law across field formations, the Board, in exercise of its powers conferred by Section 168(1) of the Central Goods and Services Tax Act, 2017 (CGST Act), hereby clarifies the issues raised as below:

2. Non-availment of drawback: The third proviso to sub-section (3) of section 54 of the CGST Act states that no refund of input tax credit shall be allowed in cases where the supplier of goods or services or both avails of drawback in respect of central tax.

2.1 This has been clarified in Paragraph 8.0 of Circular No. 24/24/2017-GST, dated 21st December 2017. In the said paragraph, reference to “section 54(3)(ii) of the CGST Act” is a typographical error and it should read as “Section 54(3)(i) of the CGST Act”. It may be noted that in the said circular reference has been made only to central tax, integrated tax, State/Union territory tax and not to customs duty leviable under the Customs Act, 1962. Therefore, a supplier availing of drawback only with respect to basic customs duty shall be eligible for refund of unutilized input tax credit of Central Tax/State Tax/Union Territory Tax/Integrated Tax/Compensation Cess under the said provision. It is further

clarified that refund of eligible credit on account of State Tax shall be available even if the supplier of goods or services or both has availed of drawback in respect of central tax.

3. Amendment through Table 9 of GSTR-1: It has been reported that refund claims are not being processed on account of mis-matches between data contained in **FORM GSTR-1**, **FORM GSTR-3B** and shipping bills/bills of export. In this connection, it may be noted that the facility of filing of Table 9 in **FORM GSTR-1**, an amendment table which allows for amendments of invoices/shipping bills details furnished in **FORM GSTR-1** for earlier tax period, is already available. If a taxpayer has committed an error while entering the details of an invoice/shipping bill/bill of export in Table 6A or Table 6B of **FORM GSTR-1**, he can rectify the same in Table 9 of **FORM GSTR-1**.

It is advised that while processing refund claims on account of zero rated supplies, information contained in Table 9 of **FORM GSTR-1** of the subsequent tax periods should be taken into cognizance, wherever applicable.

Field formations are also advised to refer to Circular No. 26/26/2017-GST, dated 29th December, 2017, wherein the procedure for rectification of errors made while filing the returns in **FORM GSTR-3B** has been provided. Therefore, in case of discrepancies between the data furnished by the taxpayer in **FORM GSTR-3B** and **FORM GSTR-1**, the officer shall refer to the said Circular and process the refund application accordingly.

4. Exports without LUT: Export of goods or services can be made without payment of integrated tax under the provisions of Rule 96A of the Central Goods and Services Tax Rules, 2017 (the CGST Rules). Under the said provisions, an exporter is required to furnish a bond or Letter of Undertaking (LUT) to the jurisdictional Commissioner before effecting zero rated supplies. A detailed procedure for filing of LUT has already been specified *vide* Circular No. 8/8/2017-GST, dated 4th October, 2017. It has been brought to the notice of the Board that in some cases, such zero rated supplies have been made before filing the LUT and refund claims for unutilized input tax credit have been filed.

In this regard, it is emphasized that the substantive benefits of zero rating may not be denied where it has been established that exports in terms of the relevant provisions have been made. The delay in furnishing of LUT in such cases may be condoned and the facility for export under LUT may be allowed on ex post facto basis taking into account the facts and circumstances of each case.

5. Exports after specified period: Rule 96A(1) of the CGST Rules provides that any registered person may export goods or services without payment of integrated tax after furnishing a LUT/bond and that he would be liable to pay the tax due along with the interest as applicable within a period of fifteen days after the expiry of three months or such further period as may be allowed by the Commissioner from the date of issue of the invoice for export, if the goods are not exported out of India. The time period in case of services is fifteen days after the expiry of one year or such further period as may be allowed by the

Commissioner from the date of issue of the invoice for export, if the payment of such services is not received by the exporter in convertible foreign exchange.

5.1 It has been reported that the exporters have been asked to pay integrated tax where the goods have been exported but not within three months from the date of the issue of the invoice for export. In this regard, it is emphasized that exports have been zero rated under the Integrated Goods and Services Tax Act, 2017 (IGST Act) and as long as goods have actually been exported even after a period of three months, payment of integrated tax first and claiming refund at a subsequent date should not be insisted upon. In such cases, the jurisdictional Commissioner may consider granting extension of time limit for export as provided in the said sub-rule on post facto basis keeping in view the facts and circumstances of each case. The same principle should be followed in case of export of services.

6. Deficiency memo: It may be noted that if the application for refund is complete in terms of sub-rule (2), (3) and (4) of Rule 89 of the CGST Rules, an acknowledgement in **FORM GST RFD-02** should be issued. Rule 90(3) of the CGST Rules provides for communication in **FORM GST RFD-03** (deficiency memo) where deficiencies are noticed. The said sub-rule also provides that once the deficiency memo has been issued, the claimant is required to file a fresh refund application after the rectification of the deficiencies.

In this connection, a clarification has been sought whether with respect to a refund claim, deficiency memo can be issued more than once. In this regard Rule 90 of the CGST Rules may be referred to, wherein it has been clearly stated that once an applicant has been communicated the deficiencies in respect of a particular application, the applicant shall furnish a fresh refund application after rectification of such deficiencies. It is therefore, clarified that there can be only one deficiency memo for one refund application and once such a memo has been issued, the applicant is required to file a fresh refund application, manually in **FORM GST RFD-01A**. This fresh application would be accompanied with the original ARN, debit entry number generated originally and a hard copy of the refund application filed online earlier. It is further clarified that once an application has been submitted afresh, pursuant to a deficiency memo, the proper officer will not serve another deficiency memo with respect to the application for the same period, unless the deficiencies pointed out in the original memo remain unrectified, either wholly or partly, or any other substantive deficiency is noticed subsequently.

7. Self-declaration for non-prosecution: It is learnt that some field formations are asking for a self-declaration with every refund claim to the effect that the claimant has not been prosecuted.

The facility of export under LUT is available to all exporters in terms of Notification No. 37/2017-CT, dated 4th October, 2017, except to those who have been prosecuted for any offence under the CGST Act or the IGST Act or any of the existing laws in force in a case where the amount of tax evaded exceeds two hundred and fifty lakh rupees. Para 2(d) of the Circular No. 8/8/2017-GST, dated

4th October, 2017, mentions that a person intending to export under LUT is required to give a self-declaration at the time of submission of LUT that he has not been prosecuted. Persons who are not eligible to export under LUT are required to export under bond.

It is clarified that this requirement is already satisfied in case of exports under LUT and asking for self-declaration with every refund claim where the exports have been made under LUT is not warranted.

8. Refund of transitional credit: Refund of unutilized input tax credit is allowed in two to have been availed during the relevant period and thus, cannot be treated as part of 'Net ITC'. scenarios mentioned in sub-section (3) of Section 54 of the CGST Act. These two scenarios are zero rated supplies made without payment of tax and inverted tax structure. In sub-rule (4) and (5) of Rule 89 of the CGST Rules, the amount of refund under these scenarios is to be calculated using the formulae given in the said sub-rules. The formulae use the phrase 'Net ITC' and defines the same as "input tax credit availed on inputs and input services during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both". It is clarified that as the transitional credit pertains to duties and taxes paid under the existing laws viz., under Central Excise Act, 1944 and Chapter V of the Finance Act, 1994, the same cannot be said to have been availed during the relevant period and thus, cannot be treated as part of 'Net ITC'.

9. Discrepancy between values of GST invoice and shipping bill/bill of export: It has been brought to the notice of the Board that in certain cases, where the refund of unutilized input tax credit on account of export of goods is claimed and the value declared in the tax invoice is different from the export value declared in the corresponding shipping bill under the Customs Act, refund claims are not being processed. The matter has been examined and it is clarified that the zero rated supply of goods is effected under the provisions of the GST laws. An exporter, at the time of supply of goods declares that the goods are for export and the same is done under an invoice issued under Rule 46 of the CGST Rules. The value recorded in the GST invoice should normally be the transaction value as determined under Section 15 of the CGST Act read with the rules made thereunder. The same transaction value should normally be recorded in the corresponding shipping bill/bill of export.

9.1 During the processing of the refund claim, the value of the goods declared in the GST invoice and the value in the corresponding shipping bill/bill of export should be examined and the lower of the two values should be sanctioned as refund.

10. Refund of taxes paid under existing laws: Sub-sections (3), (4) and (5) of Section 142 of the CGST Act provide that refunds of tax/duty paid under the existing law shall be disposed of in accordance with the provisions of the existing law. It is observed that certain taxpayers have applied for such refund claims in **FORM GST RFD-01A** also. In this regard, the field formations are advised to reject such applications and pass a rejection order in **FORM GST PMT-03** and

communicate the same on the common portal in **FORM GST RFD-01B**. The procedures laid down under the existing laws viz., Central Excise Act, 1944 and Chapter V of the Finance Act, 1994 read with above referred sub-sections of Section 142 of the CGST Act shall be followed while processing such refund claims.

10.1 Furthermore, it has been brought to the notice of the Board that the field formations are rejecting, withholding or re-crediting CENVAT credit, while processing claims of refund filed under the existing laws. In this regard, attention is invited to sub-section (3) of section 142 of the CGST Act which provides that the amount of refund arising out of such claims shall be refunded in cash. Further, the first proviso to the said sub-section provides that where any claim for refund of CENVAT credit is fully or partially rejected, the amount so rejected shall lapse and therefore, will not be transitioned into GST. Furthermore, it should be ensured that no refund of the amount of CENVAT credit is granted in case the said amount has been transitioned under GST. The field formations are advised to process such refund applications accordingly.

11. Filing frequency of Refunds: Various representations have been made to the Board regarding the period for which refund applications can be filed. Section 2(107) of the CGST Act defines the term “tax period” as the period for which the return is required to be furnished. The terms ‘Net ITC’ and ‘turnover of zero rated supply of goods/services’ are used in the context of the relevant period in rule 89(4) of CGST Rules. The phrase ‘relevant period’ has been defined in the said sub-rule as ‘the period for which the claim has been filed’.

11.1 In many scenarios, exports may not have been made in that period in which the inputs or input services were received and input tax credit has been availed. Similarly, there may be cases where exports may have been made in a period but no input tax credit has been availed in the said period. The above referred rule, taking into account such scenarios, defines relevant period in the context of the refund claim and does not link it to a tax period.

11.2 In this regard, it is hereby clarified that the exporter, at his option, may file refund claim for one calendar month/quarter or by clubbing successive calendar months/quarters. The calendar month(s)/quarter(s) for which refund claim has been filed, however, cannot spread across different financial years.

12. BRC/FIRC for export of goods: It is clarified that the realization of convertible foreign exchange is one of the conditions for export of services. In case of export of goods, realization of consideration is not a pre-condition. In Rule 89(2) of the CGST Rules, a statement containing the number and date of invoices and the relevant Bank Realisation Certificates (BRC) or Foreign Inward Remittance Certificates (FIRC) is required in case of export of services whereas, in case of export of goods, a statement containing the number and date of shipping bills or bills of export and the number and the date of the relevant export invoices is required to be submitted along with the claim for refund. It is therefore clarified that insistence on proof of realization of export proceeds for

processing of refund claims related to export of goods has not been envisaged in the law and should not be insisted upon.

13. Supplies to Merchant Exporters: Notification No. 40/2017-C.T. (Rate), dated 23rd October 2017 and Notification No. 41/2017-I.T. (Rate), dated 23rd October 2017 provide for supplies for exports at a concessional rate of 0.05% and 0.1% respectively, subject to certain conditions specified in the said notifications.

13.1 It is clarified that the benefit of supplies at concessional rate is subject to certain conditions and the said benefit is optional. The option may or may not be availed by the supplier and/or the recipient and the goods may be procured at the normal applicable tax rate.

13.2 It is also clarified that the exporter will be eligible to take credit of the tax @ 0.05%/0.1% paid by him. The supplier who supplies goods at the concessional rate is also eligible for refund on account of inverted tax structure as per the provisions of clause (ii) of the first proviso to sub-section (3) of Section 54 of the CGST Act. It may also be noted that the exporter of such goods can export the goods only under LUT/bond and cannot export on payment of integrated tax. In this connection, notification No. 3/2018-C.T., dated 23-1-2018 may be referred.

14. Requirement of invoices for processing of claims for refund: It has been brought to the notice of the Board that for processing of refund claims, copies of invoices and other additional information are being insisted upon by many field formations.

14.1 It was envisaged that only the specified statements would be required for processing of refund claims because the details of outward supplies and inward supplies would be available on the common portal which would be matched. Most of the other information like shipping bills details etc. would also be available because of the linkage of the common portal with the Customs system. However, because of delays in operationalizing the requisite modules on the common portal, in many cases, suppliers' invoices on the basis of which the exporter is claiming refund may not be available on the system. For processing of refund claims of input tax credit, verifying the invoice details is quintessential. In a completely electronic environment, the information of the recipients' invoices would be dependent upon the suppliers' information, thus putting an in-built check-and-balance in the system. However, as the refund claims are being filed by the recipient in a semi-electronic environment and is completely based on the information provided by them, it is necessary that invoices are scrutinized.

14.2 A list of documents required for processing the various categories of refund claims on exports is provided in the Table below. Apart from the documents listed in the Table below, no other documents should be called for from the taxpayers, unless the same are not available with the officers electronically:

| Table | |
|---|---|
| Type of Refund | Documents |
| Export of Services with payment of tax (Refund of IGST paid on export of services) | Copy of FORM RFD-01A filed on common portal Copy of Statement 2 of FORM RFD-01A Invoices w.r.t. input, input services and capital goods BRC/FIRC for export of services Undertaking/Declaration in FORM RFD-01A |
| Export (goods or services) without payment of tax (Refund of accumulated ITC of IGST/ CGST/SGST/ UTGST/ Cess) | Copy of FORM RFD-01A filed on common portal Copy of Statement 3A of FORM RFD-01A generated on common portal Copy of Statement 3 of FORM RFD-01A Invoices w.r.t. input and input services BRC/FIRC for export of services Undertaking/Declaration in FORM RFD-01A |

15. These instructions shall apply to exports made on or after 1st July, 2017. It is also advised that refunds may not be withheld due to minor procedural lapses or non-substantive errors or omission.

* * *

Revised instruction for Stuffing and sealing of reefer containers.

C.B.I. & C. vide Circular No. 13/2018-Cus., dated 30-5-2018

C.B.I. & C. vide Circular No. 13/2018-Cus., dated May 30, 2018 allows factory stuffing and sealing of reefer containers with perishable/temperature sensitive export goods in presence of Customs officials, in view of the fact that all Ports/ICDs do not have sterile, temperature controlled examination facilities which may lead to contamination or spoilage.

Further CBIC Lays down detailed procedure to be implemented in this regard, which involves application by exporter to jurisdictional Customs Commissioner at least 24 hours prior to stuffing along with list of export goods.

Once permission is granted by the Commissioner, it cannot be withdrawn unless any non-compliance to law, rules or regulations is noticed; Upon supervision by deputed officers, containers would be sealed with RFID e-seals and RMCC may take necessary steps to ensure that such reefer containers are not subjected to examination at port.

In respect of other types of sensitive cargo which may deteriorate or get contaminated upon opening of containers, Commissioner at port may exercise suitable discretion for valid reasons to override RMS instructions, states CBIC while explaining that notwithstanding said relaxation, reefer container(s) may be selected for scanning/examination on specific information/intelligence or

occasional random basis or where it has come to notice that RFID seal has been tampered with after Customs officer's supervision.

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Export Procedure to Bangladesh

Circular No. 42/2018-Cus., [F. No. 550/02/2018-LC], dated 2-11-2018

Subject: Procedure for a Pilot on Transhipment of Export Cargo from Bangladesh to third countries through Land Customs Stations (LCSs) to Kolkata Port/Airport, in containers or closed bodied trucks — Reg.

References have been received from trade and industry for permitting transit of export cargo from Petrapole to Kolkata Port and Nhavasheva Ports/Kolkata Airport for better cargo evacuation and to improve logistics efficiency of the region.

2. The matter has been examined. Section 54 of the Customs Act, 1962 allows for transhipment of goods through India, for which the Board is empowered to prescribe a form - "Bill of Transshipment" and a procedure. Before prescribing the procedure by way of a Regulation, it has been decided that a Pilot Program will be initiated for a period of six months, to gain experience and obtain feedback from industry, so as to build a Regulation which is facilitative as well as include safeguards against any cargo diversion.

3. The facility shall be available from the following LCSs and ports/Air Cargo complexes w.e.f. 5th November 2018: Sl. No. Name of LCSs Name of port/air cargo 1 LCS Petrapole (i) Kolkata Port (ii) Air Cargo complex, Kolkata 2 (i) LCS Petrapole (ii) LCS Gede/Ranaghat By rail to Nhavasheva port

4. The following procedure is being prescribed for allowing the transhipment:—

- (i) A Bill of Transshipment (Annexure-A) in respect of goods (being transported by road in a close bodied truck or as containerized cargo) brought to the LCS intended to be transshipped to Port/Air cargo for export to third countries, shall be filed at the LCS by the Shipping Line or Airline or their authorised representative;
- (ii) the Bill of Transshipment in respect of goods (being transported by rail in a closed wagon or as containerized cargo) brought to the LCS and intended to be transshipped to the Port/ air cargo for export to third countries, shall be filed by the Shipping Line or Airline or their authorised representative at the LCS;
- (iii) the shipping line or airline intending to carry the cargo to be transshipped will be at liberty to authorize a Customs Broker for filing the Bill of Transshipment;
- (iv) The Import Report filed by the transporter (for goods moving by road or rail) shall specify the Port/ air cargo through which the cargo is meant to be transshipped and state the destination port or airport of discharge. No cargo meant for discharge in India is permitted to be brought in the same truck/container/wagon, carrying the transhipment cargo;
- (v) the Bill of Transshipment shall be presented in triplicate to the proper officer (Superintendent of Customs) for permission;

- (vi) While presenting the Bill of Transshipment, the authorised representative of the shipping line or Airline shall produce an Electronic Cargo Tracking System (ECTS) seal for sealing the closed body truck or container, as the case may be. The seal number shall be declared on the Bill of Transshipment;
- (vii) The ECTS seal shall be procured by the shipping line or airline or the authorised customs broker at their own cost. Presently, the ECTS services are being offered by M/s. Transecur Telematics Private Limited (www.transecur.com) under ADB's Pilot Program for monitoring of traffic in transit of Nepal;
- (viii) The Bill of Transshipment shall be accompanied by a Bond (Annexure-B) for an amount equivalent to twice the value of the goods, which may be specific to the consignment or a general bond; there shall be no need for the proper officer to obtain any security or surety;
- (ix) Upon the proper officer (Superintendent) permitting transshipment, the goods may be unloaded from the Bangladeshi vehicle and loaded on to an Indian Truck under customs supervision. However, if the cargo is brought to the LCS by an Indian truck, then the same vehicle may be allowed to carry the cargo to the port or airport. In case of movement by rail, the same shall be undertaken by CONCOR;
- (x) The original of the Bill of Transshipment shall be retained by the LCS while the duplicate copy (transference copy) shall be carried with the cargo by the driver in a sealed envelope to the Kolkata Port/Airport. The triplicate copy shall be retained by the authorised representative of the shipping line or airline.
- (xi) Upon reaching the Port of Loading (Airport/Port), the transference copy of Bill of Transshipment shall be submitted by the person-in-charge of the conveyance to the proper officer of Customs; the proper officer shall check the ECTS web application for seal integrity and if there is no alert regarding unauthorized unsealing, the ECTS seal shall be removed and returned to the person-in-charge of the conveyance.
- (xii) The Proper Officer shall permit the goods to be loaded on board the aircraft or vessel, as the case may be, by recording his order on the Bill of Transshipment;
- (xiii) The details of the Sea or Air manifest (export manifest) shall be recorded on the Bill of Transshipment as well as uploaded on the ECTS web application upon which a "Trip Report" will be generated at the Port or Airport and LCS for record. The Transshipment Bond can then be duly credited or cancelled, as the case may be. There will be no need for a physical copy of the Bill of Transshipment to be sent to the LCS.
- (xiv) In case the trip report indicates any unauthorized un-sealing, the matter shall be brought to the notice of the Deputy/Assistant Commissioner/Superintendent of Customs for action as appropriate.

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Circular No. 14/2020-Customs, dated 21-2-2020

Transportation of goods to and from India through a foreign Territory — Reg

The transportation of goods from one part of India to another through a foreign territory was hitherto covered by the Transportation of Goods (Through Foreign Territory) Regulations, 1965. Such movements were however uncommon and the regulations were not effectively used due to absence of bilateral arrangements with neighbouring countries.

2. In the recent past, India and Bangladesh have signed the Agreement for use of Chattogram and Mongla ports for movement of goods to and from India (hereinafter referred to as the ACMP) on 25.10.2018 and a Standard Operating Procedure (SoP) inter alia prescribing the documentation, procedure and time limits and extension thereof, for movement of goods under the ACMP has also been signed on 05.10.2019. Further, as per the Article VIII of the Trade Agreement between India and Bangladesh signed on 06.06.2015, the two countries have also agreed on a Protocol on Inland Water Transit and Trade between the People's Republic of Bangladesh and the Republic of India on 06.06.2015 (herein after referred to as PIWTT). The ACMP covers movement of goods from one part of India to another through Bangladesh and the PIWTT covers bilateral trade between India and Bangladesh, movement of goods from one part of India to another through Bangladesh and also export to third countries using each other's territories.

3. In view of the above developments, the Transportation of Goods (Through Foreign Territory) Regulations, 1965 have been superseded by the Transportation of Goods (Through Foreign Territory) Regulations, 2020 dated 21st February 2020. The new regulations provide for:

(i) movement of goods from one part of India to another through Bangladesh under the ACMP, (ii) movement of goods from one part of India to another through Bangladesh under the PIWTT; (iii) movement of goods from one part of India to another through land route which lies partly over the territory of a foreign country.

3.1 It is clarified here that for the movements under PIWTT, only transit movements are covered by the new regulations i.e. movement of goods from one part of India to another through Bangladesh. For bilateral trade and export to third countries, the extant provisions shall prevail.

3.2 For any movement under the regulations, the consignor of the goods, the carrier or their authorised agent shall file a Customs Transit Declaration (CTD) and a bond. The format of the CTD and the bond is already prescribed in the regulations.

4. For the purpose of clarity, the procedure for each movement is detailed below:

4.1 India to India movements under the ACMP: The movement of goods using the Chattogram and Mongla ports of Bangladesh is expected to effectively reduce the transportation distance, time as well as the cost of such movement to

and from the North Eastern Region of India (NER). It is clarified that any goods produced or manufactured in India or goods which have been imported and cleared for home consumption may be transported/moved under the Agreement.

4.1.1 It may be noticed that the approved routes as per Article 6 of the ACMP mentions only the Land Customs Stations of entry/exit in India and Bangladesh, and the Chattogram or Mongla ports in Bangladesh. This effectively means that,—

- (i) goods destined to the NER can be sent through any customs station in India via the Chattogram or Mongla ports in Bangladesh and shall have to exit Bangladesh and re-enter India through Agartala Land Customs Station, Dawki Land Customs Station, Sutarkandi Land Customs Stations or Srimantpur Land Customs Stations.
- (ii) goods departing from the NER to other parts of India, will have to enter Bangladesh through Agartala Land Customs Station, Dawki Land Customs Station, Sutarkandi Land Customs Stations or Srimantpur Land Customs Stations. The goods will then move to the Chattogram port or Mongla port in Bangladesh and will land in India at any customs station.

4.1.2 For any movement under the ACMP, the consignor of the goods, the carrier or their authorised agent shall file a CTD and a bond. It may be mentioned here that the format of the CTD has been mutually agreed with Bangladesh. The CTD will serve as a single document where the customs officials of both India as well as Bangladesh can record the controls exercised at each entry/ exit point. Thus in the CTD format, the port in India is to be taken as any Customs Station notified under the Customs Act. The procedures to be followed in Bangladesh also forms part of the SoP on PIWTT.

4.1.3 For ease of reference, the procedure is explained below:

4.1.4 At the port of exit in India:

- (i) The CTD shall be filed in quintuplicate by the consignor of the goods, the carrier or their authorised agent with the Customs at the port of exit in India along with the invoice and bond.
- (ii) The customs officer will approve the CTD, accept the bond and ensure that the cargo is sealed securely with a customs one-time-lock.
- (iii) The customs officer shall endorse all copies of the CTD with the one-time-lock number, retain the quintuplicate copy and hand over the remaining copies to consignor of the goods, the carrier or their authorised agent.

4.1.5 Procedure within Bangladesh: The movement of the goods within Bangladesh will be as per the ACMP and the protocol. The goods in transit upon leaving from the port of entry in Bangladesh shall reach the port of exit in Bangladesh within 7 days, except in the circumstances as provided in the Agreement and the protocol.

(ii) At the port of entry in Bangladesh:

- (a) The consignor of the goods, the carrier or their authorised agent shall submit the four copies of the CTD duly authenticated by the customs at

the port of exit in India to the customs at the port of entry in Bangladesh along with the copy of Bill of lading, Invoice, Packing List and Customs Bond in non-judicial stamp paper. It may be mentioned here that the format of the Bond to be submitted to Bangladesh Customs is part of the SoP on PIWTT. Trade may be advised to submit the Bond to Bangladesh Customs in the format as per the SoP. Trade may also be advised to file the manifest and the CTD, as allowed by Bangladesh Customs, before the arrival of the goods: so as to ensure expeditious evacuation of cargo from the port of entry in Bangladesh.

- (b) The customs officer at the port of entry in Bangladesh may require the goods to be scanned and sealed with an electronic lock and seal as per Bangladesh Customs regulations before allowing onward movement by road within Bangladesh.
- (c) The customs officer at the port of entry in Bangladesh shall endorse all the copies of the CTD, retain the quadruplicate copy and hand over the remaining copies to the consignor of the goods, the carrier or their authorised agent.
- (d) The consignor of the goods, the carrier or their authorised agent shall submit the triplicate copy of the CTD duly endorsed by Bangladesh Customs to the port authorities for releasing the goods for onward movement. (ii) At the port of exit in Bangladesh: The consignor of the goods, the carrier or their authorised agent shall submit the remaining two copies of the CTD with the customs at the port of exit in Bangladesh. The customs officer at the port of exit in Bangladesh shall satisfy himself that the seal has not been tampered with and endorse both copies of the CTD, retain the duplicate copy and hand over the original copy of the CTD to consignor of the goods, the carrier or their authorised agent.

4.1.6 At the port of re-entry into India.

- (a) The proper officer at the customs station of re-entry will check the intactness of the customs one-time-lock, affixed at the customs station of exit and if the seal is found intact, he shall endorse the CTD and allow clearance of the goods;
- (b) In case the customs one-time-lock affixed at the customs station of exit is not found intact, the proper officer shall make due verification of the goods to check whether the goods are in accordance with the CTD and upon being satisfied that there is no irregularity, he shall endorse the CTD and allow clearance of the goods.
- (c) In case the goods are not in accordance with the CTD, the proper officer at the customs station of re-entry shall inform the customs station of exit in India about the irregularity for further action.
- (d) The consignor of the goods, the carrier or their authorised agent shall submit copy of the CTD duly endorsed by the customs officer at the customs station of re-entry in India, to the customs officer at the customs

station of exit in India as a proof of due arrival of the goods who shall credit or close the bond, as the case may be, unless the said endorsement indicates that the goods have not arrived into India as per the CTD.

4.1.7 At present, the CTD will be filed manually both in India and Bangladesh. However, the necessary processes for electronic filing of the CTD are being worked upon. Upon development of electronic filing facility, the manual copies shall be dispensed. It may be noted that the SoP also mentions that the Bangladesh side would dispense with the requirement of submission of manual CTD approved by Indian Customs, once the electronic filing of CTD is developed in the customs computer system of Bangladesh.

4.1.8 Thus the requirement of manual copies of the CTD is subject to development of electronic filing on both countries. Once electronic filing of CTD in EDI is developed, no manual CTD shall be filed. It is also clarified that where the customs officer at the customs station of re-entry in India makes an electronic entry accessible to the customs station of exit in India regarding the due arrival of the goods, the endorsed CTD shall not be required to be submitted for crediting/closing of bonds. The officer at the port of exit shall make the necessary crediting/closing of the Bond, based on the entry in the EDI system.

4.2 India to India movements under the PIWTT and Movements from one part of India to another through land route which lies partly over the territory of a foreign country: The movement of goods using the inland waterways to and from the North East India is expected to effectively reduce the cost of transportation of cargo to the NER especially bulk cargo. It is clarified that any goods produced or manufactured in India or goods which has been cleared for home consumption may be transported/ moved under the PIWTT. Similarly, the movements of goods from India to India via a foreign territory exclusively by a land route would include goods which has been produced or manufactured in India or goods which have been cleared for home consumption.

4.2.1. The movement of the goods under the PIWTT shall be through the routes specified under the protocol from time to time. It may also be noted that Para 23 of the PIWTT allows goods to be transhipped from river crafts to Bangladeshi truck and/or tractor -trailers at Sherpur and Ashuganj in Bangladesh and brought to the Indian border by road. Such re-entry into India is expected through Agartala LCS.

4.2.2 For any movement of goods under the PIWTT or through land routes which lie partially in the territory of a foreign country, the consignor of the goods, the carrier or their authorised agent shall file a CTD and a bond. The format of the CTD and bond is already prescribed in the regulations for this purpose.

4.2.3 For ease of reference, the procedure is explained below:

- (i) at the port of exit in India:
 - (a) The CTD shall be filed in duplicate (two copies) by the consignor of the goods, the carrier or their authorised agent with the Customs at the port of exit in India along with the invoice and bond.

- (b) The customs officer will approve the CTD, accept the bond and ensure that the cargo is sealed securely with a customs one-time-lock and endorse the CTD with the one-time-lock number.
- (c) The customs officer at the port of exit in India shall endorse both copies of the CTD, retain one copy and hand over the other copy to the consignor of the goods, the carrier or their authorised agent
- (ii) at the port of re-entry into India:
 - (a) The proper officer at the customs station of re-entry will check the intactness of the customs one-time-lock, affixed at the customs station of exit and if the seal is found intact, he shall endorse the CTD and allow clearance of the goods;
 - (b) In case the customs one-time-lock affixed at the customs station of exit is not found intact, the proper officer shall make due verification of the goods to check whether the goods are in accordance with the CTD and upon being satisfied that there is no irregularity, he shall endorse the CTD and allow clearance of the goods.
 - (c) In case the goods are not in accordance with the CTD, the proper officer at the customs station of re-entry shall inform the customs station of exit in India about the irregularity for further action.
 - (d) The consignor of the goods, the carrier or their authorised agent shall submit copy of the CTD duly endorsed by the customs officer at the customs station of re-entry in India, to the customs officer at the customs station of exit in India as a proof of due arrival of the goods who shall credit or close the bond, as the case may be, unless the said endorsement indicates that the goods have not arrived into India as per the CTD.

4.2.4 Once electronic filing of CTD in EDI is developed, no manual CTD shall be filed. It is also clarified that where the customs officer at the customs station of re-entry in India makes an electronic entry accessible to the customs station of exit regarding the due arrival of the goods, the endorsed CTD shall not be required to be submitted for crediting/closing of bonds. The officer at the port of exit shall make the necessary crediting/closing of the Bond, based on the entry in the EDI system.

5. A Cross Border Certificate at Hemnagar LCS is required for allowing onward movement of goods through inland waterways. Since the regulations provide that the goods are sealed by the customs station of exit and due safeguards are in place for arrival of the goods at the customs station of re-entry into India, as a step towards trade facilitation, Board has decided to dispense with the requirement of Cross Border Certificate for the purposes of the subject regulations. However, extant provisions regarding Cross Border Certificate shall prevail for other movements.

Circular No. 08/2022-Customs, dated 17-5-2022

Enabling export of Bangladesh goods to India by rail in closed containers—reg.

References have been received in the Board from various Ministries and trade to allow movement of containerized cargo from Bangladesh into India by rail. A request has also been received from the High Commissioner of Bangladesh in New Delhi in which it has been informed that containers going from India to Bangladesh by rail are returning empty after delivering India's export goods there and that Bangladesh companies have expressed interest to use such empty containers to export their products to India.

2. The above request from Bangladesh entails using empty containers returning from Bangladesh after delivering Indian export goods. The carrier will be trains of Indian Railways plying between India and Bangladesh carrying India's containerized export goods to Bangladesh (forward journey) and returning with Bangladesh export goods in the same containers to India (return journey). In both forward and return journeys, the trains will cross the international border through one of the specified Land Customs Stations with rail route namely, Petrapole - Benapole and Gede-Darshana.

3. In respect of the forward journey, attention is invited to Circular No. 52/2017-Customs dated 22.12.2017, as amended, in which movement of India's export goods in containers by rail has been allowed from any Inland Container Depot (ICD) of India to Bangladesh through Gede or Petrapole Land Customs Station (LCS). The said Circular provides for completion of necessary export formalities at the ICD, movement from ICD to LCS under Electronic Cargo Tracking System (ECTS) seals, and removal of seals at the LCS.

4. In the same way, it has been decided that the empty containers returning from Bangladesh to India on a train may be utilized to carry export goods of Bangladesh to India. This shall apply to closed containers moved by Container Corporation of India (CONCOR) carried on trains operated by Indian Railways. While the train will enter into India through the LCS of Petrapole or Gede, the train will be allowed to transit to any ICD of India for Customs clearance of goods. The movement shall be monitored through Electronic Cargo Tracking System (ECTS) from LCS of entry to ICD of destination.

5. The movement through gateway LCS to an ICD, as above, is covered under Section 53 of the Customs Act. For allowing such movement, the said Section requires that the goods are not prohibited for import in terms of Section 11 of the Act and the goods are meant for transit on the same conveyance. Further, Section 55 of the Act provides that import clearance of the goods so transited shall take place at the destination customs station.

6. In view of above, the following procedure is prescribed for movement and clearance of goods imported in containers on trains returning from Bangladesh:

- (i) CONCOR shall execute a running bond with the Commissioner of Customs (Preventive), West Bengal undertaking that—(a) the goods are for transit to an ICD in India and will move on the same train to the said

ICD without any unloading or transhipment on the way; (b) the goods are not prohibited for import in terms of Section 11 of the Customs Act; and (c) the goods shall be properly transported to the destination ICD. The bond shall be for an amount and in the form as prescribed by the said Commissioner.

- (ii) As required under Section 53, CONCOR shall file an Import Report on ICEGATE when the train arrives at the LCS. Import Report shall capture *inter alia* details of the destination ICD, serial number of each container carrying export goods of Bangladesh and serial number of the ECTS seals which shall be put on such containers, in the manner prescribed by the said Commissioner.
- (iii) At the LCS, the containers shall be seated with ECTS seals under Customs supervision. CONCOR shall be responsible for obtaining ECTS seals from the Managed Service Provider. After containers are sealed and Import Report is filed Customs shall check ECTS seal number with number recorded in Import Report, and ECTS seal integrity. Customs officers at the LCS shall make an entry in the ICES System acknowledging arrival of the train, upon which the bond shall be debited for an amount determined on the basis of the details available in the Import Report. Customs shall perform random checks and intelligence based preventive action, and then allow the train with duly sealed containerized cargo to move to the destination ICD.
- (iv) While the goods are in transit between LCS and ICD, the Customs officer at the LCS shall regularly monitor the movement on ECTS web portal. The ECTS seals generate alerts if there is any activity of unauthorised un-sealing, tampering etc. These alerts are transmitted to the Customs officer through SMS on mobile phone and also on email. If the Customs officer at LCS receives any such alert, he shall immediately inform the destination ICD in respect of the affected containers. Where appropriate, he shall also inform the Customs formation nearest to the container location for any possible preventive action.
- (v) At the destination ICD, containers shall be unloaded by the Custodian of the ICD. The Custodian shall check seal integrity and electronically file the Cargo Arrival Report in ICEGATE. In respect of those containers where seals are not found intact, the Custodian shall without fail, immediately bring the matter to the notice of Customs officer at the destination ICD for further necessary action.
- (vi) The containers shall be unsealed by the Customs officer at the destination ICD. He shall also check seal integrity, and where the seal is found intact and there is no alert of unauthorised un-sealing, he shall remove the seals from the containers, upon which trip report will be generated through the ECTS web application. Simultaneously, the Customs officer at gateway LCS shall view the same trip report on the ECTS web application.

- (vii) Where any alert of unauthorised un-sealing is noticed or seal is found tampered, the Customs officer at the ICD shall initiate necessary action to safeguard revenue, in addition to any other action required to be taken under the extant law.
- (viii) Based on the Cargo Arrival Report filed by the Custodian of ICD in ICEGATE and the trip report generated on the ECTS web application, the bond shall be credited by the officer of the concerned LCS.
- (ix) In terms of Section 55 of the Act, the importer(s) shall file Bill(s) of Entry at the destination ICD, where the imported goods will be assessed to duty and cleared as usual.

7. Suitable Public Notice(s) delineating further details to make operational the movement, shall be issued by the Commissioners concerned. A Pilot Run in coordination with CONCOR may also be organized by Commissioner of Customs (Preventive), West Bengal. Difficulties, if any, faced in the implementation of this Circular should be brought to the notice of the Board.

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Circular No. 17/2022-Customs, dated 9-9-2022

Customs procedure for export of cargo in closed containers from ICDs to Bangladesh using inland waterways.

References have been received from line Ministries as well as trade to allow except of goods in closed containers from an Inland Container Depot (ICD) to Bangladesh using Inland waterways. It has been suggested that goods cleared at an ICD for export may be transported to the gateway port of Kolkata or Haldia by road or rail, and further from the gateway port to Bangladesh utilising the Inland waterways route as agreed under the protocol on Inland Water Transit and Trade (PIWTT) between India and Bangladesh. Recently, in the ‘Waterways Conclave 2022’ organized by the Inland Waterways Authority of India (IWAI) in April, 2022, several stakeholders had evinced interest in using the inland waterways for exports to Bangladesh.

2. Earlier, with a view to decongest border points, minimize interventions at the border and provide speedier clearance to exports to neighbouring countries, the Board had issued Circular No.52/2017-Customs dated 22.12.2017, which was amended *vide* Circular No. 32/2018-Customs dated 17.09.2018 and further amended *vide* Circular No. 39/2020-Customs dated 04-09-2020. The said circular 52/2017-Customs, as amended, lays down the procedure for off-border export clearance at an ICD/CFS and subsequent movement of cargo in containers of closed bodied trucks under ECTS seal from the said ICD/CFS to Bangladesh, Nepal or Bhutan through specified Land Customs Stations (LCS). The said Circular envisages movement of cargo by road or rail, but does not provide for use of inland waterways.

3. Therefore, to augment multi-model connectivity approach and leverage the bilaterally agreed inland waterways routes between India and Bangladesh under the PIWTT (hereinafter referred as ‘IBP routes’), the Board has now decided to extend the provision of off-border clearance at ICDs for contained movement of

export cargo under e-seal to Bangladesh using inland waterways, as an additional measure towards trade facilitation. The goods cleared at the ICDs shall be first brought by road or rail to the gateway ports of Kolkata or Haldia, from where the containers shall be loaded on a barge/vessel for further journey by riverine route to Bangladesh through Land Customs Station of Hemnagar.

3.1 This essentially entails two legs of journey:

- (a) the first leg involves movement of customs cleared export cargo, after grant of the Let Export Order, from ICD to gateway port of Kolkata or Haldia by rail or road; and
- (b) the second leg involves the unloading of cargo from train/truck and further loading on to a barge/vessel at the gateway port of Kolkata or Haldia for final exit/cross over to Bangladesh through LCS Hemnagar using the IBP route.

For ensuring secure movement, e-seals shall be used on the containers through the entire journey. Further modalities are explained in the subsequent paragraphs 3.2 and 3.3.

3.2 First of the movement from ICD to gateway port of Kolkata or Haldia by road or rail:

- (i) The exporters shall bring goods meant for export to an ICD, and file a Shipping Bill on EDI. For generation of ETP (Export Transhipment Permit), details of Kolkata Port or Haldia Port, as the case may be, shall be entered as the gateway port.
- (ii) The goods shall be stuffed in containers and each container shall be duly sealed with a tamper proof RFID e-seal. In terms of Para 9(vii) of Circular No.26/2017-Customs, the data such as name of the exporter, IEC code, GSTIN number, description of the goods, tax invoice number, name of the authorized signatory (for affixing the seal) and Shipping Bill number shall be fed in the e-seal, before sealing a container. The unique serial number of RFID e-seal shall be declared in the Shipping Bill.
- (iii) The Shipping Bill shall be assessed and goods shall be examined as per EDI/RMS procedures. LEO shall be granted when all legal and regulatory requirements are met. The integrity of the RFID e-seals on the containers shall be verified with RFID e-seal reader by the Customs Officer before goods leave the ICD.
- (iv) The authorised carrier shall be responsible for the safe and secure transportation of the containerized cargo from the ICD till final exit from LCS Hemnagar. For this purpose, the authorised carrier shall also enter into a transport bond with the jurisdiction Pr. Commissioner of Customs/ Commissioner of Customs of the ICD for an amount and in the manner as prescribed by the said Pr. Commissioner or Commissioner.
- (v) The above steps outlined, and any further procedure prescribed, for the movement of such export cargo from an ICD to the ports of Kolkata or Haldia, shall necessary also follow the extant procedure prescribed for transhipment of export consignments from ICDs to gateway ports.

3.3 Second leg of the movement from gateway port to Bangladesh through LCS using IBP route.

- (vi) At the gateway port, e-Gate pass copy of Shipping Bill shall be presented by the authorised carrier to the Customs officer.
- (vii) Once the containers have been unloaded from the respective carrier (train or truck) for onward loading onto a barge/vessel at the gateway port, the Customs Officer at the port shall first verify the RFID e-seals on all containers, for tampering if any, through RFID reader and only if found in order, endorse the same on the e-Gate pass copy of the Shipping Bill presented by the authorized carrier. In case the RFID reader indicates the e-seal as tampered, such a container shall be subject to 100% examination. During the examination, if the goods are found in order, the consignment shall be allowed for further onward movement. However, if the goods are not found as per the details presented in the Shipping Bill, the matter shall be brought to the notice of the Deputy Commissioner/ Assistant Commissioner of the ICD from where the goods had been cleared for exports and further necessary action shall be initiated as per the extant provisions under the Customs Act, 1962.
- (viii) For loading onto the barge/vessel, the Master of Barge/Vessel shall submit loading/placement plan of the containers to the Customs Officer at the Kolkata or Haldia port, as the case may be, clearly describing the details of placement, container wise and hold wise, along with a schematic diagram showcasing the containers that are placed at each level on the Barge/Vessel. The Customs officer shall read the RFID e-seal on each container before allowing loading onto the Barge/Vessel, for verifying that each container is properly sealed and that the RFID e-seal corresponds to the details captured on the Shipping Bill. The placement of the containers shall be ensured by the Master of Barge/Vessel in such a manner that the sealed side, to the extent possible, is kept accessible for ease of checking at LCS Hemnagar by Customs. The Customs officer at Kolkata/Haldia port shall ensure that placement plan is tamper proof and only limited containers (if any) are inaccessible on account of the design/infrastructure limitation of a hold.
- (ix) Where possible after loading, each hold of the Barge/Vessel shall be covered with heavy-duty tarpaulin secured by rope and sealed with RFID seats, and one Electronic Cargo Tracking System (ECTS) seal shall also be affixed for real time tracking of the cargo. Where tarpaulin cover on a hold is not possible considering the nature of stacking, one container selected randomly by the Customs officer will be additionally sealed with ECTS seal. The Customs officers at the concerned gateway port (Kolkata/Haldia) shall regularly monitor the movement on ECTS web portal. The authorized carrier shall be responsible for obtaining e-seals (RFID and ECTS) from approved vendors.

- (x) The authorised carrier/Barge or Vessel Operator shall file EGM on EDI as per prescribed procedure.
 - (xi) Once the Barge/Vessel sails for Hemnagar from Kolkata/Haldia port, the Customs Officer at the concerned port shall forward a detailed report consisting of the loading/placement plan of the containers on the Barge/Vessel, RFID and ECTS seal numbers with corresponding container details to the Customs officer at LCS Hemnagar through e-office. Scanned copy of the endorsed e-Gate pass Shipping Bill shall also be forwarded with this report.
 - (xii) At LCS Hemnagar, the Customs Officer shall verify integrity of all RFID e-seals as well as the ECTS seal placed on tarpaulin cover and cross-verify the same with report received from officers of Kolkata/Haldia port on e-office, where the tarpaulin cover could not be placed on a hold at Kolkata/Haldia port, the Customs officer at Hemnagar shall verify integrity of integrity of RFID e-seals on all such containers that are accessible for checking, and of the ECTS seal.
 - (xiii) If everything is found in order, the ECTS seals shall be removed and cross border movement of the barge for export to Bangladesh shall be allowed at LCS Hemnagar. The Customs Officer at LCS Hemnagar shall record border crossing report with sailing date and communicate the same through e-office to the Customs officer at the concerned gateway port (Kolkata/Haldia). However, if the seals are found tampered with or the consignment does not confirm to the description in any manner, the Customs officer at Hemnagar shall promptly notify the concerned Customs officer at Kolkata or Haldia port of the discrepancy found and thereafter accompany the barge on its return movement to Kolkata or Haldia for further examination. On reaching Kolkata or Haldia port the containers of the said barge shall be unloaded and examined by the Customs officer of the concerned port.
 - (xiv) Based on the border crossing report shared by Customs officer of LCS Hemnagar, the Customs officer at the gate way port (Kolkata/Haldia) shall enter the sailing date in the EDI system for reconciliation of the Export General Manifest (EGM), upon which the bond for safe movement from ICD till LCS Hemnagar shall be re-credited/discharged at the ICD.
4. Suitable Public Notice(s) delineating the finer procedural details shall be issued by the Kolkata Customs Zone, Difficulties, if any, faced in the implementation of the Circular should be brought to the notice of the Board.
5. The above shall remain applicable till suitable changes are made in ICES by DG System, linking LCS Hemnagar with ICDs. Further, on full implementation of the See Cargo Manifest and Transhipment Regulations, 2018, relevant aspects, if any, prescribed under the said the said regulations, that have applicability to the movements dealt in the present circular shall apply, and this procedure may undergo change for that purpose.

CBIC Circular No. 202/14/2023-GST, dated 27-10-2023

The CBIC vide **Circular No. 202/14/2023-GST dated October 27, 2023** has issued a clarification relating to the export of services – sub-clause (iv) of the Section 2 (6) of the Integrated Goods & Services Tax Act, 2017 ("the IGST Act").

Various representations have been received requesting for clarification regarding admissibility of export remittances received in Special INR Vostro account, as permitted by RBI, for the purpose of consideration of supply of services to qualify as export of services as per the provisions of clause (6) of section 2 of the Integrated Goods & Services Tax Act, 2017 (herein after referred to as the 'IGST Act').

The issue has been examined and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods & Services Tax Act, 2017 (herein after referred to as the 'CGST Act'), hereby clarifies the issue as under:

Relevant legal provisions:

Export of services has been defined under clause (6) of section 2 of IGST Act. As per the said definition, any supply of services needs to fulfill five conditions for it to qualify as export of services. Clause (6) of section 2 of the IGST Act is reproduced below for reference:

- "(6) "export of services" means the supply of any service when, –
- (i) the supplier of service is located in India;
 - (ii) the recipient of service is located outside India;
 - (iii) the place of supply of service is outside India;
 - (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India; and
 - (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8;"

One of the conditions mentioned in sub-clause (iv) of Section 2(6) of the IGST Act is that the payment for such service has been received by the supplier of service in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India.

Reference is invited to RBI's **A.P. (DIR Series) Circular No.10 dated 11th July, 2022 regarding International Trade Settlement in Indian Rupees (INR)**, vide which it has been clarified that to promote growth of global trade with emphasis on exports from India and to support the increasing interest of global trading community in INR, it has been decided to put in place an additional arrangement for invoicing, payment, and settlement of exports / imports in INR. Before putting in place this mechanism, AD banks shall require

prior approval from the Foreign Exchange Department of Reserve Bank of India, Central Office at Mumbai. Para 3 of the Circular is reproduced below:

“3. In terms of Regulation 7(1) of Foreign Exchange Management (Deposit) Regulations, 2016, AD banks in India have been permitted to open Rupee Vostro Accounts. Accordingly, for settlement of trade transactions with any country, AD bank in India may open Special Rupee Vostro Accounts of correspondent bank/s of the partner trading country. In order to allow settlement of international trade transactions through this arrangement, it has been decided that:

- (a) Indian importers undertaking imports through this mechanism shall make payment in INR which shall be credited into the Special Vostro account of the correspondent bank of the partner country, against the invoices for the supply of goods or services from the overseas seller /supplier.
- (b) Indian exporters, undertaking exports of goods and services through this mechanism, shall be paid the export proceeds in INR from the balances in the designated Special Vostro account of the correspondent bank of the partner country.”

Reference is also invited to Para 2.52 (d) of chapter related to General Provisions Regarding Imports and Exports of the Foreign Trade Policy (FTP) 2023, which has come into force from 01.04.2023, which specifies that:

Para 2.52 (d) Invoicing, payment and settlement of exports and imports is also permissible in INR subject to compliances as under RBI's A.P. (DIR Series) Circular No.10 dated 11th July, 2022. Accordingly, settlement of trade transactions in INR shall take place through the Special Rupee Vostro Accounts opened by AD banks in India as permitted under Regulation 7(1) of Foreign Exchange Management (Deposit) Regulations, 2016, in accordance to the following procedures:

- (i) Indian importers undertaking imports through this mechanism shall make payment in INR which shall be credited into the Special Vostro account of the correspondent bank of the partner country, against the invoices for the supply of goods or services from the overseas seller /supplier
- (ii) Indian exporters, undertaking exports of goods and services through this mechanism, shall be paid the export proceeds in INR from the balances in the designated Special Vostro account of the correspondent bank of the partner country.

On perusal of the above, it can be stated that the condition(s) of sub-clause (iv) of Section 2(6) of the IGST Act, 2017, can be considered to be fulfilled when the Indian exporters, undertaking exports of services, are paid the export proceeds in INR from the balances in the designated Special Vostro Account of the correspondent bank of the partner trading country in terms of Regulation 7(1) of Foreign Exchange Management (Deposit) Regulations, 2016, as mandated by

RBI's A.P. (DIR Series) Circular No. 10, dated 11th July, 2022 and reiterated further in Foreign Trade Policy, 2023.

Therefore, it is clarified that when the Indian exporters, undertaking export of services, are paid the export proceeds in INR from the Special Rupee Vostro Accounts of correspondent bank(s) of the partner trading country, opened by AD banks, the same shall be considered to be fulfilling the conditions of sub-clause (iv) of clause (6) of section 2 of IGST Act, 2017, subject to the conditions/restrictions mentioned in Foreign Trade Policy, 2023 & extant RBI Circulars and without prejudice to the permissions/approvals, if any, required under any other law.

Appendix 10

Taxability of “Tenancy Rights” under GST

Circular No. 44/18/2018-CGST, dated 2-5-2018

**Subject: Issue related to taxability of ‘tenancy rights’ under GST —
Regarding Doubts have been raised as to,—**

- (i) Whether transfer of tenancy rights to an incoming tenant, consideration for which is in form of tenancy premium, shall attract GST when stamp duty and registration charges is levied on the said premium, if yes what would be the applicable rate?
 - (ii) Further, in case of transfer of tenancy rights, a part of the consideration for such transfer accrues to the outgoing tenant, whether such supplies will also attract GST?
2. The issue has been examined. The transfer of tenancy rights against tenancy premium which is also known as “pagadi system” is prevalent in some States. In this system the tenant acquires, tenancy rights in the property against payment of tenancy premium (pagadi). The landlord may be owner of the property but the possession of the same lies with the tenant. The tenant pays periodic rent to the landlord as long as he occupies the property. The tenant also usually has the option to sell the tenancy right of the said property and in such a case has to share a percentage of the proceed with owner of land, as laid down in their tenancy agreement. Alternatively, the landlord pays to tenant the prevailing tenancy premium to get the property vacated. Such properties in Maharashtra are governed by Maharashtra Rent Control Act, 1999.
3. As per Section 9(1) of the CGST Act there shall be levied central tax on the intra-State supplies of services. The scope of supply includes all forms of supply of goods and services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business and also includes the activities specified in Schedule II. The activity of transfer of tenancy right against consideration in the form of tenancy premium is a supply of service liable to GST. It is a form of lease or renting of property and such activity is specifically declared to be a service in para 2 of Schedule II i.e. any lease, tenancy, easement, licence to occupy land is a supply of services
4. The contention that stamp duty and registration charges is levied on such transfers of tenancy rights, and such transaction thus should not be subjected to GST, is not relevant. Merely because a transaction or a supply involves execution of documents which may require registration and payment of registration fee and

stamp duty, would not preclude them from the scope of supply of goods and services and from payment of GST. The transfer of tenancy rights cannot be treated as sale of land or building declared as neither a supply of goods nor of services in para 5 of Schedule III to CGST Act, 2017. Thus a consideration for the said activity shall attract levy of GST.

5. To sum up, the activity of transfer of ‘tenancy rights’ is squarely covered under the scope of supply and taxable per-se. Transfer of tenancy rights to a new tenant against consideration in the form of tenancy premium is taxable. However, renting of residential dwelling for use as a residence is exempt [Sl. No. 12 of Notification No. 12/2017-C.T. (Rate)]. Hence, grant of tenancy rights in a residential dwelling for use as residence dwelling against tenancy premium or periodic rent or both is exempt. As regards services provided by outgoing tenant by way of surrendering the tenancy rights against consideration in the form of a portion of tenancy premium is liable to GST.

Appendix 11

Micro, Small and Medium Enterprises

F. No. 349/94/2017-GST (Pt), dated 1-11-2018

Subject: Creation of Feedback and Action Room to facilitate GST Helpdesks set-up by CBIC for MSMEs — Reg.

Reference is invited to the letter of even number dated 29-10-2018 and letter F. No. CBIC-1/CH/2018, dated 31-10-2018 from OSD to Chairman addressed to the Principal Chief Commissioners/Chief Commissioner of Central Tax (copies enclosed as Annexure-I & II). Vide the said letters, request was made to appoint nodal officers in the 80 districts where 100 days program is being launched by the Government of India on 2nd November, 2018 to support and to reach out to the MSMEs. Subsequently, nodal officers were appointed in all these districts.

2. In this regard, it has been now decided that all grievances raised by MSMEs have to be recorded and processed. In order to achieve the same, a Feedback and Action Room (FAR) is required to be set-up. It has also been decided that DGGST would be the nodal agency to run the said FAR. Hence, it is requested to set-up FAR in the office of DGGST. Officers for the same may be nominated from the Delhi & NCR. It is also requested that the FAR should remain open till the nodal offices remain open in the concerned districts.

3. primary work of FAR would be to receive and compile all the issues raised by these nodal officers. These nodal officers would report all the grievances on real time basis to the FAR in a grievance sheet. The format for the grievance sheet is being sent separately to these nodal officers (enclosed as Annexure-IV). Further, FAR would try to provide solutions to these issues on its own. If it is not able to do so, then it may escalate these issues to the concerned offices in CBIC or GSTN. Thereafter, FAR would follow up the issues with these offices and on receipt of the solution, they would send the same directly to the taxpayer with a copy to the concerned nodal officer. FAR is also expected to compile a master record of all grievances, at various stages of resolution, and send a summary report to the Board in a prescribed format (Annexure-V) on daily basis. In a nutshell, FAR would be the facilitating office for these 80 nodal offices. In view of all the above, it is requested that the needful may be done on urgent basis.

* * *

Export Promotion Council Established for MSME Sector

Ministry of Micro, Small and Medium Enterprises (MSME) has recently established an Export Promotion Cell with an aim to create a sustainable ecosystem for entire MSME development. The benefits likely to accrue to the MSMEs are:

- (i) Evaluate readiness of MSMEs to export their products and services
- (ii) Recognize areas where improvements are required in order to be able to export effectively and efficiently
- (iii) Integration of MSME into global value chain. This was stated by Minister of State (Independent Charge) for Micro, Small and Medium Enterprises, Giriraj Singh in the Lok Sabha today, while replying to a question.

The MSME Minister further said that the current status of exports from the MSME sector as per the information received from Directorate General of Commercial Intelligence and Statistics (DGCIS), the value of MSME related products is USD 147,390.08 million and share of MSME related products in the country's exports was 48.56% during 2017-18.

To ensure efficient and effective delivery of all MSME export related interventions, the Ministry proposed to formulate a governing council that will be chaired by Secretary, M/o MSME and Co-chaired by Development Commissioner, M/o MSME. The council will comprise of senior officials and members from M/o MSME, Commerce, MSME Export Promotion Councils, Export Development Authorities, Commodity Boards, and other bodies.

An action plan is also proposed to be put in place to achieve the following objectives:

- Target of USD 100 billion of exports from India by 2020
- Evaluate readiness of MSMEs to export their products and services
- Recognize areas where improvements are required in order to be able to export effectively and efficiently
- Integration of MSMEs into Global Value Chain.

* * *

F. No. 5/2(6)/2022/E-P&G/Policy (E-4020978) dated 4-1-2023

Subject: Applicability of MSMED Act, 2006 on 'Work Contracts'-regarding

This office has been receiving representations from Stakeholders like Industry Associations, Central Ministries/Departments/CPSEs and entrepreneurs regarding applicability of MSMED Act, 2006 on 'Work Contracts'.

2. In this regard, I am directed to clarify that this Ministry has created an online Udyam Registration Portal for registration of Micro, Small and Medium Enterprises (MSMEs) based on the composite criteria of investment in plant and machinery or equipment and turnover of MSMEs.

3. The Udyam Registration Portal is based on "Economic Activities" taken from NIC Code 2008. So far as Udyam Registration is concerned, for every activity in the dropdown menu of the portal, Udyam Registration can be done. There is no activity named "Work Contract" in NIC code 2008. Some activities on the portal are under major activity "manufacturing" while others come under

"Services". An enterprise might be performing purely manufacturing activities or Services or a combination of both.

4. It is further clarified that if an enterprise has Udyam Registration, it can avail the benefit(s) of schemes/programmes of this Ministry subject to the prevailing Guidelines/Circular/Order/Notification of that particular scheme/programme.

F.No.5/2(6)/2022/E-P&G/Policy (E-4020978) dated 04-01-2023

Issued by Deputy Director Policy, MSME Govt. of India. New Delhi.

Subject: Applicability of MSMED Act, 2006 on 'Work Contracts'-regarding.

This office has been receiving representations from Stakeholders like Industry Associations, Central Ministries/Departments/CPSEs and entrepreneurs regarding applicability of MSMED Act, 2006 on 'Work Contracts'.

2. In this regard, I am directed to clarify that this Ministry has created an online Udyam Registration Portal for registration of Micro, Small and Medium Enterprises (MSMEs) based on the composite criteria of investment in plant and machinery or equipment and turnover of MSMEs.

3. The Udyam Registration Portal is based on "Economic Activities" taken from NIC Code 2008. So far as Udyam Registration is concerned, for every activity in the dropdown menu of the portal, Udyam Registration can be done. There is no activity named "Work Contract" in NIC code 2008. Some activities on the portal are under major activity "manufacturing" while others come under "Services". An enterprise might be performing purely manufacturing activities or Services or a combination of both.

4. It is further clarified that if an enterprise has Udyam Registration, it can avail the benefit(s) of schemes/programmes of this Ministry subject to the prevailing Guidelines/Circular/Order/Notification of that particular scheme/programme.

Appendix 12

Casual Taxable Person and Recovery of Excess Input Tax Credit Distributed by an Input Service Distributor

Circular No. 71/45/2018-GST, dated 26-10-2018,

Subject: Clarifications of issues under GST related to casual taxable person and recovery of excess Input Tax Credit distributed by an Input Service distributor – Reg.

Representations have been received seeking clarification on certain issues under the GST laws. The same have been examined and the clarifications on the same are as below:

| Sl. No. | Issue | Clarification |
|--------------------|---|--|
| 1. | Whether the amount required to be deposited as advance tax while taking registration as a casual taxable person (CTP) should be 100% of the estimated gross tax liability or the estimated tax liability payable in cash should be calculated after deducting the due eligible ITC which might be available to CTP? | <p>It has been noted that while applying for registration as a casual taxable person, the FORM GST REG-1 (S. No. 11) seeks information regarding the “estimated net tax liability” only and not the gross tax liability.</p> <p>It is accordingly clarified that the amount of advance tax which a casual taxable person is required to deposit while obtaining registration should be calculated after considering the due eligible ITC which might be available to such taxable person.</p> |
| 2. | As per section 27 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the said Act), period of operation by causal taxable person is ninety days with provision for extension of same by the proper officer for a further period not exceeding ninety days. Various | <ol style="list-style-type: none">1. It is clarified that in case of long running exhibitions (for a period more than 180 days), the taxable person cannot be treated as a CTP and thus such person would be required to obtain registration as a normal taxable person.2. While applying for normal registration the said person should upload a copy of the allotment letter |

| Sl. No. | Issue | Clarification |
|---------|--|--|
| | representations have been received for further extension of the said period beyond the period of 180 days, as mandated in law. | <p>granting him permission to use the premises for the exhibition and the allotment letter/consent letter shall be treated as the proper document as a proof for his place of business.</p> <p>3. In such cases he would not be required to pay advance tax for the purpose of registration.</p> <p>4. He can surrender such registration once the exhibition is over.</p> |
| 3. | Representations have been received regarding the manner of recovery of excess credit distributed by an Input Service Distributor (ISD) in contravention of the provisions contained in section 20 of the CGST Act. | <p>According to Section 21 of the CGST Act where the ISD distributes the credit in contravention of the provisions contained in section 20 of the CGST Act resulting in excess distribution of credit to one or more recipients of credit, the excess credit so distributed shall be recovered from such recipients along with interest and penalty if any.</p> <p>2. The recipient unit(s) who have received excess credit from ISD may deposit the said excess amount voluntarily along with interest if any by Circular No. 71/45/2018-GST Page 3 of 3 using FORM GST DRC-03.</p> <p>3. If the said recipient unit(s) does not come forward voluntarily, necessary proceedings may be initiated against the said unit(s) under the provisions of Section 73 or 74 of the CGST Act as the case may be. FORM GST DRC-07 can be used by the tax authorities in such cases.</p> <p>4. It is further clarified that the ISD would also be liable to a general penalty under the provisions contained in Section 122(1)(ix) of the CGST Act.</p> |

Appx. 11 Casual Taxable Person & Recovery of Excess ITC Distributed 1207
Circular No.199/11/2023-GST

Subject: Clarification regarding taxability of services provided by an office of an organisation in one State to the office of that organisation in another State, both being distinct persons.

Various representations have been received seeking clarification on the taxability of activities performed by an office of an organisation in one State to the office of that organisation in another State, which are regarded as distinct persons under section 25 of Central Goods and Services Tax Act, 2017 (hereinafter referred to as ‘the CGST Act’). The issues raised in the said representations have been examined and to ensure uniformity in the implementation of the law across the field formations, the Board, in exercise of its powers conferred under section 168(1) of the CGST Act hereby clarifies the issue in succeeding paras.

2. Let us consider a business entity which has Head Office (HO) located in State-1 and a branch offices (BOs) located in other States. The HO procures some input services e.g. security service for the entire organisation from a security agency (third party). HO also provides some other services on their own to branch offices (internally generated services). 3. The issues that may arise with regard to taxability of supply of services between distinct persons in terms of sub-section (4) of section 25 of the CGST Act are being clarified in the Table below:

| S.No | Issues | Clarifications |
|------|--|--|
| 1 | whether HO can avail the input tax credit (hereinafter referred to as ‘ITC’) in respect of common input services procured from a third party but attributable to both HO and BOs or exclusively to one or more BOs, issue tax invoices under section 31 to the said BOs for the said input services and the BOs can then avail the ITC for the same or whether it is mandatory for the HO to follow the Input Service Distributor (hereinafter referred to as ‘ISD’) mechanism for distribution of ITC in respect of common input services procured by them from a third party but attributable to both HO and BOs or exclusively to one or more BOs | It is clarified that in respect of common input services procured by the HO from a third party but attributable to both HO and BOs or exclusively to one or more BOs, HO has an option to distribute ITC in respect of such common input services by following ISD mechanism laid down in Section 20 of CGST Act read with rule 39 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as ‘the CGST Rules’). However, as per the present provisions of the CGST Act and CGST Rules, it is not mandatory for the HO to distribute such input tax credit by ISD mechanism. HO can also issue tax invoices under section 31 of CGST Act to the concerned BOs in respect of common input services procured from a third party by HO but |

| S.No | Issues | Clarifications |
|------|--|---|
| | | attributable to the said BOs and the BOs can then avail ITC on the same subject to the provisions of section 16 and 17 of CGST Act. In case, the HO distributes or wishes to distribute ITC to BOs in respect of such common input services through the ISD mechanism as per the provisions of section 20 of CGST Act read with rule 39 of the CGST Rules, HO is required to get itself registered mandatorily as an ISD in accordance with Section 24(viii) of the CGST Act. Further, such distribution of the ITC in respect a common input services procured from a third party can be made by the HO to a BO through ISD mechanism only if the said input services are attributable to the said BO or have actually been provided to the said BO. Similarly, the HO can issue tax invoices under section 31 of CGST Act to the concerned BOs, in respect of any input services, procured by HO from a third party for on or behalf of a BO, only if the said services have actually been provided to the concerned BOs. |
| 2 | In respect of internally generated services, there may be cases where HO is providing certain services to the BOs for which full input tax credit is available to the concerned BOs. However, HO may not be issuing tax invoice to the concerned BOs with respect to such services, or the HO may not be including the cost of a particular component such as salary cost of employees involved in providing said services while issuing tax | The value of supply of services made by a registered person to a distinct person needs to be determined as per rule 28 of CGST Rules, read with sub-section (4) of section 15 of CGST Act. As per clause (a) of rule 28, the value of supply of goods or services or both between distinct persons shall be the open market value of such supply. The second proviso to rule 28 of CGST Rules provides that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value |

Appx. 11 Casual Taxable Person & Recovery of Excess ITC Distributed 1209

| S.No | Issues | Clarifications |
|------|---|--|
| | invoice to BOs for the services provided by HO to BOs. Whether the HO is mandatorily required to issue invoice to BOs under section 31 of CGST Act for such internally generated services, and/ or whether the cost of all components including salary cost of HO employees involved in providing the said services has to be included in the computation of value of services provided by HO to BOs when full input tax credit is available to the concerned BOs | of the goods or services. Accordingly, in respect of supply of services by HO to BOs, the value of the said supply of services declared in the invoice by HO shall be deemed to be open market value of such services, if the recipient BO is eligible for full input tax credit. Accordingly, in cases where full input tax credit is available to a BO, the value declared on the invoice by HO to the said BO in respect of a supply of services shall be deemed to be the open market value of such services, irrespective of the fact whether cost of any particular component of such services, like employee cost etc., has been included or not in the value of the services in the invoice. Further, in such cases where full input tax credit is available to the recipient, if HO has not issued a tax invoice to the BO in respect of any particular services being rendered by HO to the said BO, the value of such services may be deemed to be declared as Nil by HO to BO, and may be deemed as open market value in terms of second proviso to rule 28 of CGST Rules. |
| 3 | In respect of internally generated services provided by the HO to BOs, in cases where full input tax credit is not available to the concerned BOs, whether the cost of salary of employees of the HO involved in providing said services to the BOs, is | In respect of internally generated services provided by the HO to BOs, the cost of salary of employees of the HO, involved in providing the said services to the BOs, is not mandatorily required to be included while computing the taxable value of the supply of such services, even in cases where full input tax credit is not available to the concerned BO |

| <i>S.No</i> | <i>Issues</i> | <i>Clarifications</i> |
|-------------|---|-----------------------|
| | mandatorily required to be included while computing the taxable value of the said supply of services provided by HO to BOs. | |

Appendix 13

GST (Compensation to States) Act, 2017

Circular No. 1/1/2017-Compensation Cess, dated 26-7-2017

Clarification regarding applicability of section 16 of the IGST Act, 2017, relating to zero rated supply for the purpose of Compensation Cess on exports — Regarding.

The issue of zero rating of exports with reference to Compensation Cess has been examined.

2. In this regard section 8 of the Goods and Services tax (Compensation to States) Act, 2017 hereinafter referred to as [GSTC Act, 2017] provides for levy and collection of Compensation Cess and reads as under:

“8. (1) There shall be levied a cess on such intra-State supplies of goods or services or both, as provided for in section 9 of the Central Goods and Services Tax Act, and such inter State supplies of goods or services or both as provided for in section 5 of the Integrated Goods and Services Tax Act, and collected in such manner as may be prescribed, on the recommendations of the Council, for the purposes of providing compensation to the States for loss of revenue arising on account of implementation of the goods and services tax with effect from the date from which the provisions of the Central Goods and Services Tax Act is brought into force, for a period of five years or for such period as may be prescribed on the recommendations of the Council:

(2) The cess shall be levied on such supplies of goods and services as are specified in column (2) of the Schedule, on the basis of value, quantity or on such basis at such rate not exceeding the rate set forth in the corresponding entry in column (4) of the Schedule, as the Central Government may, *on the recommendations of the Council, by notification in the Official Gazette, specify.*”

3. Accordingly, based on the recommendation of GST Council, the effective rates of Compensation Cess leviable on various supplies, stand notified *vide* Notification No. 1/2017-Compensation Cess (Rate).

4. Further, as per sub-section (5) of section 7 of IGST Act, 2017, supply of goods or services or both, when the supplier is located in India and place of supply is outside India, will be treated as inter-state supply. Therefore, exports being inter-state supplies, they will be liable to Compensation Cess. *This however will not be in line with the principle that no taxes be exported, and exports have to be zero rated.*

5. Provisions relating to zero rating of exports are

“16. (1) “zero rated supply” means any of the following supplies of goods or services or both, namely:—

- (a) export of goods or services or both; or
- (b) supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit.

(2) Subject to the provisions of sub-section (5) of section 17 of the Central Goods and Services Tax Act, credit of input tax may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply.

(3) A registered person making zero rated supply shall be eligible to claim refund under either of the following options, namely:—

- (a) he may supply goods or services or both under bond or Letter of Undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilised input tax credit; or
- (b) he may supply goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder”.

6. Moreover, the section 11 of the Goods and Services tax (Compensation to States) Act, 2017, provides that:

11. (1) The provisions of the Central Goods and Services Tax Act, and the rules made thereunder, including those relating to assessment, input tax credit, non-levy, short-levy, interest, appeals, offences and penalties, shall, as far as may be, *mutatis mutandis*, apply, in relation to the levy and collection of the cess leviable under section 8 on the intra-State supply of goods and services, as they apply in relation to the levy and collection of central tax on such intra-State supplies under the said Act or the rules made thereunder.

(2) The provisions of the Integrated Goods and Services Tax Act, and the rules made thereunder, including those relating to assessment, input tax credit, non-levy, short-levy, interest, appeals, offences and penalties, shall, *mutatis mutandis*, apply in relation to the levy and collection of the cess leviable under section 8 on the inter-State supply of goods and services, as they apply in relation to the levy and collection of integrated tax on such inter-State supplies under the said Act or the rules made thereunder :

Provided that the input tax credit in respect of cess on supply of goods and services leviable under section 8, shall be utilised only towards payment of said cess on supply of goods and services leviable under the said section.

7. Therefore, sub-section (2) of section 11 of the Goods and Services tax (Compensation to States) Act, 2017 provides that provisions of Integrated Goods

and Services Tax Act, and the rules made thereunder, shall, *mutatis mutandis*, apply in relation to the levy and collection of the cess leviable under section 8 on the inter-State supply of goods and services, as they apply in relation to the levy and collection of integrated tax on such inter-State supplies under the said Act or the rules made thereunder.

8. In view of the above, it is hereby clarified that provisions of section 16 of the IGST Act, 2017, relating to zero rated supply will apply *mutatis mutandis* for the purpose of Compensation Cess (wherever applicable), that is to say that:

- (a) Exporter will be eligible for refund of Compensation Cess paid on goods exported by him [on similar lines as refund of IGST under section 16(3)(b) of the IGST, 2017]; or
- (b) No Compensation Cess will be charged on goods exported by an exporter under bond and he will be eligible for refund of input tax credit of Compensation Cess relating to goods exported [on similar lines as refund of input taxes under section 16(3)(a) of the IGST, 2017]

* * *

Circular No. 68/42/2018-GST, dated 5-10-2018

Notifications issued under CGST Act, 2017 applicable to Goods and Services Tax (*Compensation to States*) Act, 2017.

Representations have been received by the Board regarding the entitlement of UN and specified international organizations, foreign diplomatic mission or consular posts, diplomatic agents and consular offices post therein to refund of Compensation Cess payable on intra-State and inter-State supply of goods or services or both received by them.

2. The issue has been examined. Section 55 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as 'CGST Act') provides that the Government may, on the recommendation of the council, specify UN agencies and organizations notified under the UNPI Act, 1947, Consulates, Embassies of foreign countries and any other person to be entitled to claim refund of the taxes paid on the notified supplies of goods and services, subject to such conditions and restrictions as may be prescribed. Notification No. 16/2017-C.T. (Rate), dated 28-6-2017 has been issued specifying UN and specified international organizations, foreign diplomatic missions or consular posts in India, or diplomatic agents or career consular officers posted therein for the purposes of the said section.

3. Section 11 of the Goods and Services Tax (*Compensation to States*) Act, 2017 (hereinafter referred to as 'the Compensation Cess Act'), provides that provisions of CGST Act and IGST Act apply in relation to levy and collection of Compensation Cess. Further, Section 9(2) of the Compensation Cess Act provides that for all the purposes of claiming refunds, except the form to be filed, the provisions of the CGST Act and the rules made thereunder, shall apply in relation to the levy and collection of Compensation Cess. Therefore, notifications issued under the CGST Act except those prescribing rate or granting exemptions, are applicable for the purpose of the Compensation Cess Act.

4. Accordingly, Notification No. 16/2017-C.T. (Rate), dated 28-6-2017 shall be applicable for the purposes of refund of Compensation Cess to UN and specified international organizations, foreign diplomatic missions or consular posts in India, or diplomatic agents or career consular officers posted therein.

5. In view of the above, it is clarified that UN and specified international organizations, foreign diplomatic missions or consular posts in India, or diplomatic agents or career consular officers posted therein, having being specified under Section 55 of the CGST Act, 2017, are entitled to refund of Compensation Cess payable on intra-State and inter-State supply of goods or services or both received by them subject to the same conditions and restrictions, *mutatis mutandis*, as prescribed in Notification No. 16/2017-C.T. (Rate), dated 28-6-2017.

* * *

Circular No. 79/53/2018-GST, dated 31-12-2018

Clarification on refund related issues – Reg.

Various representations have been received seeking clarification on various issues relating to refund. In order to clarify these issues and to ensure uniformity in the implementation of the provisions of law across field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”), hereby clarifies the issues detailed hereunder:

Physical submission of refund claims with jurisdictional proper officer:

2. Due to the non-availability of the complete electronic refund module, a work around was prescribed *vide* Circular No. 17/17/2017-GST, dated 15.11.2017 and Circular No. 24/24/2017-GST, dated 21.12.2017, wherein a taxpayer was required to file FORM GST RFD-01A on the common portal, generate the Application Reference Number (ARN), take print-outs of the same, and submit it physically in the office of the jurisdictional proper officer, along with all the supporting documents. It has been learnt that this requirement of physical submission of documents in the jurisdictional tax office is causing undue hardship to the taxpayers. Therefore, in order to further simplify the refund process, the following instructions, in partial modification of the aforesaid circulars, are issued:

- (a) All documents/undertaking/statements to be submitted along with the claim for refund in FORM GST RFD-01A shall be uploaded on the common portal at the time of filing of the refund application. Circular No. 59/33/2018-GST, dated 04.09.2018 specified that instead of providing copies of all invoices, a statement of invoices needs to be submitted in a prescribed format and copies of only those invoices need to be submitted the details of which are not found in FORM GSTR-2A for the relevant period. It is now clarified that the said statement and these invoices, instead of being submitted physically, shall be electronically uploaded on the common portal at the time of filing the

claim of refund in FORM GST RFD-01A. Neither the application in FORM GST RFD-01A, nor any of the supporting documents, shall be required to be submitted physically in the office of the jurisdictional proper officer.

- (b) However, the taxpayer will still have the option to physically submit the refund application to the jurisdictional proper officer in FORM GST RFD-01A, along with supporting documents, if he so chooses. A taxpayer who still remains unallocated to the Central or State Tax Authority will necessarily have to submit the refund application physically. They can choose to do so before the jurisdictional proper officer of either the State or the Central tax authority, as was earlier clarified *vide* Circular No. 17/17/2017-GST, dated 15.11.2017.
- (c) The ARN will be generated only after the claimant has completed the process of filing the refund application in FORM GST RFD-01A, and has completed uploading of all the supporting documents/undertaking /statements/invoices and, where required, the amount has been debited from the electronic credit/cash ledger.
- (d) As soon as the ARN is generated, the refund application along with all the supporting documents shall be transferred electronically to the jurisdictional proper officer who shall be able to view it on the system. The application shall be deemed to have been filed under rule 90(2) of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as "CGST Rules") on the date of generation of the said ARN and the time limit of 15 days to issue an acknowledgement shall be counted from that date. This will obviate the need for a claimant to visit the jurisdictional tax office for the submission of the refund application. Accordingly, the acknowledgement for the complete application or deficiency memo, as the case may be, would be issued by the jurisdictional tax officer based on the documents so received electronically from the common portal. However, the said acknowledgement or deficiency memo shall continue to be issued manually for the time being.
- (e) If a refund application is electronically transferred to the wrong jurisdictional officer, he/she shall reassign it to the correct jurisdictional officer electronically within a period of three days. In such cases, the application shall be deemed to have been filed under rule 90(2) of the CGST Rules only after it has been so reassigned. Deficiency memos shall not be issued in such cases merely on the ground that the applications were received electronically in the wrong jurisdiction. Where the facility of electronic re-assignment is not available, the present arrangement shall continue.
- (f) It has already been clarified *vide* Circular No. 70/44/2018-GST, dated 26.10.2018 that after the issuance of a deficiency memo, taxpayers would be required to submit the rectified refund application under the

earlier Application Reference Number (ARN) only. It is further clarified that the rectified application, which is to be treated as a fresh refund application, will be submitted manually in the office of the jurisdictional proper officer

3. It may be noted that the documents/statements/undertakings/invoices to be submitted along with the refund application in FORM GST RFD-01A are the same as have been prescribed under the CGST Rules and various Circulars issued on the subject from time to time. Only the method of submission of these documents/statements/undertakings/invoices is being changed from the physical mode to the electronic mode. It may also be noted that the other stages of processing of a refund claim submitted in FORM GST RFD-01A by the jurisdictional tax officer shall continue to be carried out manually for the time being, as is being presently done.

Calculation of refund amount for claims of refund of accumulated Input Tax Credit (ITC) on account of inverted duty structure:

4. Representations have been received stating that while processing the refund of unutilized ITC on account of inverted tax structure, the departmental officers are denying the refund of ITC of GST paid on those inputs which are procured at equal or lower rate of GST than the rate of GST on outward supply, by not including the amount of such ITC while calculating the maximum refund amount as specified in rule 89(5) of the CGST Rules. The matter has been examined and the following issues are clarified:

- (a) Refund of unutilized ITC in case of inverted tax structure, as provided in section 54(3) of the CGST Act, is available where ITC remains unutilized even after setting off of available ITC for the payment of output tax liability. Where there are multiple inputs attracting different rates of tax, in the formula provided in rule 89(5) of the CGST Rules, the term "Net ITC" covers the ITC availed on all inputs in the relevant period, irrespective of their rate of tax.
- (b) The calculation of refund of accumulated ITC on account of inverted tax structure, in cases where several inputs are used in supplying the final product/output, can be clearly understood with help of the following example: (i) Suppose a manufacturing process involves the use of an input A (attracting 5 per cent GST) and input B (attracting 18 per cent GST) to manufacture output Y (attracting 12 per cent GST). (ii) The refund of accumulated ITC in the situation at (i) above, will be available under section 54(3) of the CGST Act read with rule 89(5) of the CGST Rules, which prescribes the formula for the maximum refund amount permissible in such situations. (iii) Further assume that the claimant supplies the output Y having value of ₹3,000/- during the relevant period for which the refund is being claimed. Therefore, the turnover of inverted rated supply of goods and services will be ₹3,000/-. Since the claimant has no other outward supplies, his adjusted total turnover will also be ₹3,000/-. (iv) If we assume that Input A, having value of ₹500/- and

Input B, having value of ₹2,000/-, have been purchased in the relevant period for the manufacture of Y, then Net ITC shall be equal to ₹385/- (₹25/- and ₹360/- on Input A and Input B respectively). (v) Therefore, multiplying Net ITC by the ratio of turnover of inverted rated supply of goods and services to the adjusted total turnover will give the figure of ₹385/-. (vi) From this, if we deduct the tax payable on such inverted rated supply of goods or services, which is ₹360/-, we get the maximum refund amount, as per rule 89(5) of the CGST Rules which is ₹25/-.

Disbursal of refund amounts after sanction:

5. Section 56 of the CGST Act clearly states that if any tax ordered to be refunded is not refunded within 60 days of the date of receipt of application, interest at the rate of 6 per cent (notified *vide* notification No. 13/2017-Central Tax dated 28.06.2017) on the refund amount starting from the date immediately after the expiry of sixty days from the date of receipt of application (ARN) till the date of refund of such tax shall have to be paid to the claimant. It may be noted that any tax shall be considered to have been refunded only when the amount has been credited to the bank account of the claimant. Therefore, interest will be calculated starting from the date immediately after the expiry of sixty days from the date of receipt of the application till the date on which the amount is credited to the bank account of the claimant. Accordingly, all tax authorities are advised to issue the final sanction orders in FORM GST RFD-06 within 45 days of the date of generation of ARN, so that the disbursement is completed within 60 days by both Central and State Tax Authorities for CGST/IGST/UTGST/Compensation Cess and SGST respectively. Refund applications that have been generated on the portal but not physically received in the jurisdictional tax offices:

6. There are a large number of applications for refund in FORM GST RFD-01A which have been generated on the common portal but have not yet been physically received in the jurisdictional tax offices. With the implementation of electronic submission of refund application, as detailed in para 2 above, this problem is expected to reduce. However, for the applications (except those relating to refund of excess balance in the electronic cash ledger) which have been generated on the common portal before the issuance of this Circular and which have not yet been physically received in the jurisdictional offices (list of all applications pertaining to a particular jurisdictional office which have been generated on the common portal, if not already available, may be obtained from DG-Systems), the following guidelines are laid down:

- (a) All refund applications in which the amount claimed is less than the statutory limit of ₹1,000/- should be rejected and the amount re-credited to the electronic credit ledger of the applicant through the issuance of FORM GST RFD-01B.
- (b) For all applications wherein an amount greater than ₹1000/- has been claimed, a list of applications which have not been received in the jurisdictional tax office within a period of 60 days starting from the date

of generation of ARN may be compiled. A communication may be sent to all such claimants on their registered email ids, informing that the application needs to be physical submitted to the jurisdictional tax office within 15 days of the date of the email. The contact details and the address of the jurisdictional officer may also be provided in the said communication. The claimant may be further informed that if he/she fails to physically submit the application within 15 days of the date of the email, the application shall be summarily rejected and the debited amount, if any, shall be re-credited to the electronic credit ledger.

7. For the applications generated on the common portal before the issuance of this Circular in relation to refund of excess balance from the electronic cash ledger which have not yet been received in the jurisdictional office, the amount debited in the electronic cash ledger in such applications may be re-credited through FORM GST RFD-01B provided that there are no liabilities in the electronic liability register. The said amount shall be re-credited even though the return in FORM GSTR-3B, as the case may be for the relevant period has not been filed.

8. For the refund applications generated on the common portal after the issuance of this Circular, and for the refund applications generated on the common portal before the issuance of this Circular and which have been physically received in the jurisdictional tax offices before the issuance of this Circular, the existing guidelines, as modified by this Circular may be followed. Issues related to refund of accumulated Input Tax Credit of Compensation Cess:

9. Several representations have been received requesting clarifications on certain issues related to refund of accumulated input tax credit of compensation cess on account of zero-rated supplies made under Bond/Letter of Undertaking. These issues have been examined and are clarified as below:

(a) Issue: A registered person uses inputs on which compensation cess is leviable (E.g. coal) to export goods on which there is no levy of compensation cess (E.g. aluminum). For the period July, 2017 to May, 2018, no ITC is availed of the compensation cess paid on the inputs received during this period. ITC is only availed of the CGST, SGST/UTGST or IGST charged on the invoices for these inputs. This ITC is utilized for payment of IGST on export of goods. *Vide* Circular No. 45/19/2018-GST dated 30.05.2018, it was clarified that refund of accumulated ITC of compensation cess on account of zero-rated supplies made under Bond/Letter of Undertaking is available even if the exported product is not subject to levy of cess. After the issuance of this Circular, the registered person decides to start exporting under bond/LUT without payment of tax. He also decides to avail (through the return in FORM GSTR-3B) the ITC of compensation cess, paid on the inputs used in the months of July, 2017 to May, 2018, in the month of July, 2018. The registered person then goes on to file a refund claim for ITC accumulated on account of exports for the month of July, 2018 and includes the said accumulated ITC for the month of July, 2018. How should the amount of compensation cess to be refunded be calculated?

Clarification: In the instant case, refund on account of compensation cess is to be recomputed as if the same was available in the respective months in which the refund of unutilized credit of CGST/SGST/UTGST/IGST was claimed on account of exports made under LUT/Bond. If the aggregate of these recomputed amounts of refund of compensation cess is less than or equal to the eligible refund of compensation cess calculated in respect of the month in which the same has actually been claimed, then the aggregate of the recomputed refund of compensation cess of the respective months would be admissible. Further, the recomputed amount of eligible refund (of compensation cess) in respect of past periods, as aforesaid, would not be admissible in respect of consignments exported on payment of IGST. This process would be applicable for application for refund of compensation cess (not claimed earlier) in respect of the past period.

Issue: A registered person uses coal for the captive generation of electricity which is further used for the manufacture of goods (say aluminium) which are exported under Bond/Letter of Undertaking without payment of duty. Refund claim is filed for accumulated Input Tax Credit of compensation cess paid on coal. Can the said refund claim be rejected on the ground that coal is used for the generation of electricity which is an intermediate product and not the final product which is exported and since electricity is exempt from GST, the ITC of the tax paid on coal for generation of electricity is not available?

Clarification: There is no distinction between intermediate goods or services and final goods or services under GST. Inputs have been clearly defined to include any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business. Since coal is an input used in the production of aluminium, albeit indirectly through the captive generation of electricity, which is directly connected with the business of the registered person, input tax credit in relation to the same cannot be denied.

(c) Issue: A registered person avails ITC of compensation cess (say, of ₹100/-) paid on purchases of coal every month. At the same time, he reverses a certain proportion (say, half i.e. ₹50/-) of the ITC of compensation cess so availed on purchases of coal which are used in making zero rated outward supplies. Both these details are entered in the FORM GSTR-3B filed for the month as a result of which an amount of ₹50/- only is credited in the electronic credit ledger. The reversed amount (₹50/-) is then shown as a 'cost' in the books of accounts of the registered person. However, the registered person declares ₹100/- as 'Net ITC' and uses the same in calculating the maximum refund amount which works out to be ₹50/- (assuming that export turnover is half of total turnover). Since both the balance in the electronic credit ledger at the end of the tax period for which the claim of refund is being filed and the balance in the electronic credit ledger at the time of filing the refund claim is ₹50/- (assuming that no other debits/credits have happened), the system will proceed to debit ₹50/- from the ledger as the claimed refund amount. The question is whether the proper officer should sanction ₹50/- as the refund amount or ₹25/- (i.e. half of the

ITC availed after adjusting for reversals)?

Clarification: ITC which is reversed cannot be held to have been 'availed' in the relevant period. Therefore, the same cannot be part of refund of unutilized ITC on account of zero-rated supplies. Moreover, the reversed ITC has been accounted as a cost which would have reduced the income tax liability of the claimant. Therefore, the same amount cannot, at the same time, be refunded to him/her in the ratio of export turnover to total turnover. However, if the said reversed amount is again availed in a later tax period, subject to the restriction under section 16(4) of the CGST Act, it can be refunded in the ratio of export turnover to total turnover in that tax period in the same manner as detailed in para 9(a) above. This is subject to the restriction that the accounting entry showing the said ITC as cost is also reversed.

Non-consideration of ITC of GST paid on invoices of earlier tax period availed in subsequent tax period:

10. Presently, ITC is reflected in the electronic credit ledger on the basis of the amount of the ITC availed on self declaration basis in FORM GSTR-3B for a particular tax period. It may happen that the goods purchased against a particular tax invoice issued in a particular month, say August 2017, may be declared in the FORM GSTR-3B filed for a subsequent month, say September 2017. This is inevitable in cases where the supplier raises an invoice, say in August, 2017, and the goods reach the recipient's premises in September, 2017. Since GST law mandates that ITC can be availed only after the goods are received, the recipient can only avail the ITC on such goods in the FORM GSTR-3B filed for the month of September, 2017. However, it has been observed that field officers are excluding such invoices from the calculation of refund of unutilized ITC filed for the month of September, 2017.

11. In this regard, it is clarified that "Net ITC" as defined in rule 89(4) of the CGST Rules means input tax credit availed on inputs and input services during the relevant period. Relevant period means the period for which the refund claim has been filed. Input tax credit can be said to have been „availed“ when it is entered into the electronic credit ledger of the registered person. Under the current dispensation, this happens when the said taxable person files his/her monthly return in FORM GSTR-3B. Further, section 16(4) of the CGST Act stipulates that ITC may be claimed on or before the due date of filing of the return for the month of September following the financial year to which the invoice pertains or the date of filing of annual return, whichever is earlier. Therefore, the input tax credit of invoices issued in August, 2017, "availed" in September, 2017 cannot be excluded from the calculation of the refund amount for the month of September, 2017. Misinterpretation of the meaning of the term "inputs":

12. It has been represented that on certain occasions, departmental officers do not consider ITC on stores and spares, packing materials, materials purchased for machinery repairs, printing and stationery items, as part of Net ITC on the grounds that these are not directly consumed in the manufacturing process and

therefore, do not qualify as input. There are also instances where stores and spares charged to revenue are considered as capital goods and therefore the ITC availed on them is not included in Net ITC, even though the value of these goods has not been capitalized in his books of account by the claimant.

13. In relation to the above, it is clarified that the input tax credit of the GST paid on inputs shall be available to a registered person as long as he/she uses or intends to use such inputs for the purposes of his/her business and there is no specific restriction on the availment of such ITC anywhere else in the GST Act. The GST paid on inward supplies of stores and spares, packing materials etc. shall be available as ITC as long as these inputs are used for the purpose of the business and/or for effecting taxable supplies, including zero-rated supplies, and the ITC for such inputs is not restricted under section 17(5) of the CGST Act. Further, capital goods have been clearly defined in section 2(19) of the CGST Act as goods whose value has been capitalized in the books of account and which are used or intended to be used in the course or furtherance of business. Stores and spares, the expenditure on which has been charged as a revenue expense in the books of account, cannot be held to be capital goods.

Refund of accumulated ITC of input services and capital goods arising on account of inverted duty structure:

14. Section 54(3) of the CGST Act provides that refund of any unutilized ITC may be claimed where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies). Further, section 2(59) of the CGST Act defines inputs as any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business. Thus, inputs do not include services or capital goods. Therefore, clearly, the intent of the law is not to allow refund of tax paid on input services or capital goods as part of refund of unutilized input tax credit. Accordingly, in order to align the CGST Rules with the CGST Act, notification No 26/2018-Central Tax dated 13.06.2018 was issued wherein it was stated that the term Net ITC, as used in the formula for calculating the maximum refund amount under rule 89(5) of the CGST Rules, shall mean input tax credit availed on inputs during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both. In view of the above, it is clarified that both the law and the related rules clearly prevent the refund of tax paid on input services and capital goods as part of refund of input tax credit accumulated on account of inverted duty structure.

15. All previous Circulars/Instructions issued on the subject stand modified accordingly. It is requested that suitable trade notices may be issued to publicize the contents of this circular.

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Frequently Asked Questions on Composition Levy***Q1. What is composition levy under GST?***

Ans. The composition levy is an alternative method of levy of tax designed for small taxpayers whose turnover is up to ₹75 lakhs (₹50 lakhs in case of few States).

The objective of composition scheme is to bring simplicity and to reduce the compliance cost for the small taxpayers. Moreover, it is optional and the eligible person opting to pay tax under this scheme can pay tax at a prescribed percentage of his turnover every quarter, instead of paying tax at normal rate.

Q2. What is the specified rate of composition levy?

| S. No. | Category of Registered person | Rate of Tax |
|---------------|---|---|
| 1 | Manufacturers, other than manufacturers of such goods as may be notified by the Government (Ice cream, Pan Masala, Tobacco products etc.) | 2% (1% Central Tax plus 1% State Tax) of the turnover |
| 2 | Restaurant Services | 5% (2.5% Central Tax plus 2.5% SGST) of the turnover |
| 3 | Traders or any other supplier eligible for composition levy | 1% (0.5% Central Tax plus 0.5% State Tax) of the turnover |

Q3. What is the eligibility category for opting for composition levy? Which are the Special Category States in which the turnover limit for Composition Levy for Central Tax and State Tax purpose shall be ₹50 lakhs?

Ans. Composition scheme is a scheme for payment of GST available to small taxpayers whose aggregate turnover in the preceding financial year did not cross ₹75 lakhs. In the case of the following States, the limit of turnover is ₹50 lakhs :-
 (a) Arunachal Pradesh (b) Assam (c) Manipur (d) Meghalaya (e) Mizoram (f) Nagaland (g) Sikkim (h) Tripura (i) Himachal Pradesh

Q4. Who are the persons not eligible for composition scheme?

Ans. Following persons are not allowed to opt for the composition scheme:

- (a) a casual taxable person or a non-resident taxable person;
- (b) suppliers whose aggregate turnover in the preceding financial year crossed ₹75 lakhs;
- (c) supplier who has purchased any goods or services from unregistered supplier unless he has paid GST on such goods or services on reverse charge basis;
- (d) supplier of services, other than restaurant service;
- (e) persons supplying goods which are not taxable under GST law;
- (f) persons making any inter-State outward supplies of goods;
- (g) suppliers making any supply of goods through an electronic commerce operator who is required to collect tax at source under Section 52; and
- (h) a manufacturer of following goods:

| S. No. | Classification (Tariff Item/ Chapter) | Descriptions |
|-----------|--|---|
| 1 | 2105 00 00 | Ice cream and other edible ice, whether or not containing cocoa |
| 2 | 2106 90 20 | Pan masala |
| 3 | 24 | Tobacco and manufactured tobacco substitutes |

Note: There is no restriction on procuring goods from inter-State suppliers by persons opting for the composition scheme

Q5. When will a person opting for composition levy pay tax?

Ans. A person opting for composition levy will have to pay tax on quarterly basis before 18th of the month succeeding the quarter during which the supplies were made.

Q6. A person availing composition scheme during a financial year crosses the turnover of ₹75 lakhs/₹50 lakhs during the course of the year i.e. say he crosses the turnover of ₹75 lakhs/₹50 lakhs in December? Will he be allowed to pay tax under composition scheme for the remainder of the year i.e. till 31st March?

Ans. No. The option to pay tax under composition scheme lapses from the day on which his aggregate turnover during the financial year exceeds the

specified limit (₹75 lakhs/₹50 lakhs). He is required to file an intimation for withdrawal from the scheme in **FORM GST CMP-04** within seven days from the day on which the threshold limit has been crossed. However, such person shall be allowed to avail the input tax credit in respect of the stock of inputs and inputs contained in semi-finished or finished goods held in stock by him and on capital goods held by him on the date of withdrawal and furnish a statement within 30 days of withdrawal containing the details of such stock held in **FORM GST ITC-01** on the common portal.

Q7. How will the aggregate turnover be computed for the purpose of composition?

Ans. Aggregate turnover will be computed on the basis of turnover on an all India basis and will include value of all taxable supplies, exempt supplies and exports made by all persons with same PAN, but would exclude inward supplies under reverse charge as well as Central, State/Union Territory and Integrated taxes and cess.

Q8. Can a person who has opted to pay tax under the composition scheme avail Input Tax Credit on his inward supplies?

Ans. No. A taxable person opting to pay tax under the composition scheme is out of the credit chain. He cannot take credit on his input supplies. When he switch over from composition scheme to normal scheme, eligible credit on the date of transition would be allowed (refer Q.6 above).

Q9. Can a registered person, who purchases goods from a taxable person paying tax under the composition scheme, avail credit of tax paid on purchases made from the composition dealer?

Ans. No as the composition dealer cannot collect tax paid by him on outward supplies from his customers, the registered person making purchases from a taxable person paying tax under the composition scheme cannot avail credit.

Q10. Can a person paying tax under the composition scheme issue a tax invoice under GST?

Ans. No. He can issue a bill of supply in lieu of tax invoice.

Q11. Are monthly returns required to be filed by the person opting to pay tax under the composition scheme?

Ans. No. Such persons need to electronically file quarterly returns in **Form GSTR-4** on the GSTN common portal by the 18th of the month succeeding the quarter. For example return in respect of supplies made during July, 2017 to September, 2017 is required to be filed by 18th October, 2017.

Q12. What are the basic information that need to be furnished in GSTR-4?

Ans. It would contain details of the turnover in the State or Union territory, inward supplies of goods or services or both and tax payable.

Q13. A person opting to pay tax under the composition scheme receives inputs/input services from an unregistered person. Will the composition taxpayer have to pay GST under reverse charge? If yes, in what manner?

Ans. Yes. Tax will have to be paid on such supplies by the composition taxpayer under reverse charge mechanism. The tax can be paid by the 18th day of

the month succeeding the quarter in which such supplies were received. The information relating to such supplies should be shown by the composition taxpayer in Table 4 of return in **FORM GSTR-4**.

Q14. What is the form in which an intimation for payment of tax under composition scheme needs to be made by the taxable person?

Ans. The intimation is to be filed electronically in **FORM GST CMP-01** or **FORM GST CMP-02**.

Q15. A person registered under existing law (Central Excise/Service Tax/VAT) and who has been granted registration on a provisional basis wants to opt for composition scheme. How and when can he do that?

Ans. Such a person has to electronically file a duly signed/verified intimation in **FORM GST CMP-01**, on the common portal, prior to 22nd June, 2017 or such further period as may be allowed by the Commissioner.

Q16. What are the other compliances which a provisionally registered person opting to pay tax under the composition levy need to make?

Ans. Such person is required to furnish the details of stock, including the inward supply of goods received from unregistered persons, held by him on the day preceding the date from which he opts to pay tax under the composition scheme, electronically, in **FORM GST CMP-03**, on the common portal, either directly or through a Facilitation Centre notified by the Commissioner, within a period of sixty days from the date on which the option for composition levy is exercised or within such further period as may be extended by the Commissioner in this behalf.

Q17. Can a person making application for fresh registration under GST opt for composition levy at the time of making application for registration?

Ans. Yes. Such persons can give the option to pay tax under the composition scheme in **Part B** of **FORM GST REG-01**. This will be considered as an intimation to pay tax under the composition scheme.

Q18. Can the option to pay tax under composition levy be exercised at any time of the year?

Ans. No. The option is required to be given electronically in **FORM GST CMP-02**, prior to the commencement of the relevant financial year.

Q19. Can a person who has already obtained registration, opt for payment under composition levy? If so, how?

Ans. Yes. Such persons need to give intimation electronically in **FORM GST CMP-02** but from beginning of the financial year only.

Q20. What are the compliances from ITC reversal point of view that need to be made by a person opting for composition levy?

Ans. The registered person opting to pay tax under composition scheme is required to pay an amount equal to the input tax credit in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date of exercise of option. The ITC on inputs

shall be calculated proportionately on the basis of corresponding invoices on which credit had been availed by the registered taxable person on such inputs. In respect of capital goods held in stock on the day immediately preceding the date of exercise of option, the input tax credit involved in the remaining useful life in months shall be computed on pro rata basis, taking the useful life as 5 years. Assume capital goods have been in use for 4 years, 6 months and 15 days. The useful remaining life in months will be 5 months ignoring the part of the month. If ITC on such capital goods is taken as C, ITC attributable to the remaining useful life will be C multiplied by 5/60. This would be the amount payable on capital goods. The ITC amount shall be determined separately for Integrated Tax, Central Tax and State Tax/Union Territory Tax. The payment can be made by debiting electronic credit ledger, if there is sufficient balance in the said ledger, or by debiting electronic cash ledger. The balance, if any in the electronic credit ledger would lapse. Such persons also have to furnish the statement in **FORM GST ITC-03** which is a declaration for intimation of ITC reversal/payment of tax on inputs held in stock, inputs contained in semi-finished and finished goods held in stock and capital goods under Section 18(4) of the CGST Act, 2017 within a period of sixty days from the commencement of the relevant financial year.

Q21. In case a person has registration in multiple States? Can he opt for payment of tax under composition levy only in one State and not in other State?

Ans. The option to pay tax under composition scheme will have to be exercised for all States.

Q22. What is the effective date of composition levy?

Ans. There can be three situations: Situation Effective date of composition levy Persons who have been granted provisional registration and who opt for composition levy (Intimation under Rule 3(1)) The appointed date is 22nd June, 2017 Persons opting for composition levy at the time of making application for new registration in the same registration application itself (Intimation under Rule 3(2)) Effective date of registration; Intimation shall be considered only after the grant of registration and his option to pay tax under Section 10 shall be effective from the effective date of registration Persons opting for composition after obtaining registration (Intimation under Rule 3(3)) The beginning of the financial year

Q23. What are the other conditions and restrictions subject to which a person is allowed to avail of composition scheme?

Ans. The person exercising the option to pay tax under Section 10 shall comply with the following other conditions (in addition to what is stated in answer to Q.4 above), namely:—

- (a) he shall mention the words “composition taxable person, not eligible to collect tax on supplies” at the top of the bill of supply issued by him; and

- (b) he shall mention the words “composition taxable person” on every notice or signboard displayed at a prominent place at his principal place of business and at every additional place or places of business.

Q24. What is the validity of composition levy?

Ans. The option to pay tax under composition levy would remain valid so long as conditions mentioned in Section 10 of the CGST Act, 2017 and Rule 3 to 5 of the CGST Rules, 2017 remain satisfied.

Q25. Can a person paying tax under composition levy, withdraw voluntarily from the scheme? If so, how?

Ans. Yes. The registered person who intends to withdraw from the composition scheme can file a duly signed or verified application in **FORM GST CMP-04**. Every person who has filed an application for withdrawal from the composition scheme, may electronically furnish, a statement in **FORM GST ITC-01** containing details of the stock of inputs and inputs contained in semi-finished or finished goods held in stock by him on the date of withdrawal, within a period of thirty days of withdrawal.

Q26. What action can be taken by the proper officer for contravention of any provisions of composition levy and how?

Ans. Where any contravention is observed by the proper officer wherein the registered person was not eligible to pay tax under the composition scheme or has contravened the provisions of the CGST Act, 2017 or provisions of Chapter II of the CGST Rules, 2017, he may issue a notice to such person in **FORM GST CMP-05** to show cause within fifteen days of the receipt of such notice as to why the option to pay tax under the composition scheme shall not be denied. Upon receipt of the reply to the said show cause notice in **FORM GST CMP-06**, the proper officer shall issue an order in **FORM GST CMP-07** within a period of thirty days of the receipt of such reply, either accepting the reply, or denying the option to pay tax under the composition scheme from the date of the option or from the date of the event concerning such contravention, as the case may be.

Q27. In case the option to pay tax under composition levy is denied by the proper officer, can the person avail ITC on stock after denial?

Ans. Yes. ITC can be availed by filing, a statement in **FORM GST ITC-01** (containing details of the stock of inputs and inputs contained in semi-finished or finished goods held in stock) by him on the date on which the option is denied as per order in **FORM GST CMP-07**, within a period of thirty days from the order.

Q28. Will withdrawal intimation in any one place be applicable to all places of business?

Ans. Yes. Any intimation or application for withdrawal in respect of any place of business in any State or Union Territory, shall be deemed to be an intimation in respect of all other places of business registered on the same Permanent Account Number.

Q29. Can supplier of Services opt for composition levy?

Ans. No, the only exception being supplier of restaurant services.

Q30. What are the penal consequences if a person opts for the composition scheme in violation of the conditions?

Ans. If a taxable person has paid tax under the composition scheme though he was not eligible for the scheme then the person would be liable to penalty and the provisions of Section 73 or 74 shall be applicable for determination of tax and penalty.

Q31. Can a person paying tax under composition scheme make supplies of goods to SEZ?

Ans. No. Supplies to SEZ from domestic tariff area will be treated as inter-State supply. A person paying tax under composition scheme cannot make inter-State outward supply of goods. Thus, for making supplies to an SEZ unit, a person needs to take registration as a regular taxpayer. The supplies to SEZ will be zero rated and the supplier will be entitled to make supplies without payment of tax or if he pays tax, he will be entitled to refund of tax so paid.

Q32. A registered person has excess ITC of ₹10, 000/- in his last VAT return for the period immediately preceding the appointed day. Under GST he opts for composition scheme. Can he carry forward the aforesaid excess ITC to GST?

Ans. The registered person will not be able to carry forward the excess ITC of VAT to GST if he opts for composition scheme.

E-Way Bill System FAQ

General Portal

What is the common portal for generation of E-way Bill?

The common portal for generation of E-way Bill is <https://ewaybillgst.gov.in>
I am not getting OTP on my mobile, what should I do?

Please check if you have activated ‘Do Not Disturb (DND)’ facility on your mobile or your service provider network may be busy. You can also use OTP, which is sent on your email-id.

E-way Bill system is slow, how should I proceed?

Please check your internet connectivity.

E-way Bill pages or menu list are not being shown properly, what should I do?

Please check whether your system has proper version of the browser as suggested by the E-way Bill portal and also check the security settings of the browser and display property of the system. The site is best viewed on Internet Explorer 11 or above, Firefox 43.5 or above and Chrome 45 or above.

Registration

I have already registered in GST Portal. Whether I need to register again on the e-Way Portal?

Yes. All the registered persons under GST need to register on the portal of E-way Bill namely: www.ewaybillgst.gov.in using his GSTIN. Once GSTIN is entered, the system sends an OTP to his registered mobile number, registered with GST Portal and after authenticating the same, the system enables him to

generate his/her username and password for the E-way Bill system. After generation of username and password of his/her choice, he/she may proceed to make entries to generate E-way Bill.

Whenever I am trying to register, the system is saying you have already registered, how should I proceed?

This is indicating that you (your GSTIN) have already registered on the E-way Bill portal and have created your username and password on the E-way Bill system. Please use these credentials to log into the E-way Bill system. If you have forgotten username or password, then please use the 'Forgot Username' or 'Forgot Password' facility provided on the portal to recollect your username or create new password accordingly.

Whenever I am trying to register, the system is saying there is no contact (Mobile) number with this GSTIN in GST Common Portal, how should I resolve this issue?

This is indicating that E-way Bill system is unable to get the contact details (mobile number or e-mail address) for your GSTIN from the GST Common Portal (www.gst.gov.in). Please contact GST helpdesk 0120-4888999.

Whenever, I'm trying to register with my GSTIN, the system is saying 'Invalid GSTIN' or the details for this GSTIN are not available in GST Common Portal. How should I resolve this issue?

This is indicating that the GSTIN entered by you is wrong or your GSTIN details is not available in the GST Common Portal. Please check the GSTIN entered or go to the GST portal (www.gst.gov.in) and check the details of your GSTIN under 'Search Taxpayer' tab.

Whenever I am trying to register, the system is showing wrong address or mobile number. How should I resolve this issue?

This is indicating that you might have updated your business registration details in the GST Common Portal recently. Please click the 'Update from Common Portal' button on the E-way Bill portal, to pull the latest data from the GST Common Portal. If even after this action, wrong data is displaying, kindly update the details in GST common portal through amendment process.

Enrolment

Why the transporter needs to enroll on the E-way Bill system?

There may be some transporters, who are not registered under the Goods and Services Tax Act, but such transporters cause the movement of goods for their clients. They need to enroll on the E-way Bill portal to get 15 digit Unique Transporter Id.

What is TRANSIN or Transporter ID?

TRANSIN or Transporter id is 15 digit unique number generated by EWB system for unregistered transporter, once he enrolls on the system which is similar to GSTIN format and is based on state code, PAN and Check sum digit. This TRANSIN or Transporter id can be shared by transporter with his clients,

who may enter this number while generating E-way Bills for assigning goods to him for transportation.

How does the unregistered transporter get his unique id or transporter id?

The transporter is required to provide the essential information for enrolment on the EWB portal. The transporter id is created by the EWB system after furnishing the requisite information. The details of information to be furnished is available in the user manual.

I am unable to enrol as transporter as the system is saying ‘PAN details are not validated’

This is indicating that PAN name and Number, entered by you, are not getting validated by the CBDT/Income Tax system. Please enter exact name and number as in income tax database.

I am unable to enrol as transporter as the system is saying ‘Aadhaar details are not validated’

This is indicating that Aadhaar Number, name in Aadhaar and mobile number, entered by you, are not getting validated by the Aadhaar system. Please enter correct details. However, the Aadhaar number is not must for enrolment process and the person can enroll giving his PAN Number also.

Whenever, I am trying to enroll as transporter, the system is saying you are already registered under GST system and go and register using that GSTIN

This is indicating that you are a registered taxpayer with valid GSTIN, since a validation is done on the PAN you have entered. You need not enroll again as transporter but use your GSTIN to register on E-way Bill portal.

Whenever I am trying to enroll as a transporter, the system is saying you have already enrolled.

This is indicating that you have already enrolled on the E-way Bill portal by providing your PAN, business and other details and created your username and password. Please use them to log into the E-way Bill system. If you have forgotten the username or password, then please use the ‘Forgot Username’ or ‘Forgot Password’ facility provided on the portal to recollect your username or create new password accordingly.

Login

Whenever, I am trying to login the system says ‘Invalid Login...Please check your username and password. How should I resolve this issue?

This is indicating that you are trying to login to the E-way Bill system with incorrect username and password. Please check the username and password being used to login to the system. If you have forgotten the username or password, then please use the ‘Forgot Username’ or ‘Forgot Password’ facility provided on the portal to recollect your username or create new password accordingly.

Whenever, I am trying to login the system says ‘Your account has been frozen’. How should I resolve this issue?

This is indicating that your account has been frozen because you might have cancelled your registration or your GSTIN has been de-activated in the GST Common Portal. Please visit the GST Common Portal (www.gst.gov.in) to find the status of your GSTIN under ‘Search Taxpayer’ tab. In case you are able to log in on GST portal but not log on e-Way Bill portal, please lodge your grievance at <https://selfservice.gstsysten.in/>.

Whenever, I am trying to login the system says ‘your account has been blocked...Pl try after 5 minutes. How should I resolve this issue?

This is indicating that you had tried to login to the E-way Bill system with incorrect username and password for more than 5 times. Hence, the system has blocked your account for security reasons and it will be unblocked after 5 minutes.

What should I do, if I am not remembering my username and password?

If you have forgotten the username or password, then use the ‘Forgot Username’ or ‘Forgot Password’ facility provided on the portal to recollect your username or create new password accordingly. The user needs to enter some details after authenticating the same via an OTP, then, user will be provided with the username and password.

E-way Bill

What is an E-way Bill?

E-way Bill is a document required to be carried by a person in charge of the conveyance carrying any consignment of goods of value exceeding fifty thousand rupees as mandated by the Government in terms of Section 68 of the Goods and Services Tax Act read with Rule 138 of the rules framed thereunder. It is generated from the GST Common Portal for E-way Bill system by the registered persons or transporters who cause movement of goods of consignment before commencement of such movement.

Why is the E-way Bill required?

Section 68 of the Act mandates that the Government may require the person in charge of a conveyance carrying any consignment of goods of value exceeding such amount as may be specified to carry with him such documents and such devices as may be prescribed. Rule 138 of CGST Rules, 2017 prescribes E-way Bill as the document to be carried for the consignment of goods in certain prescribed cases. Hence E-way Bill generated from the common portal is required.

Who all can generate the E-way Bill?

The consignor or consignee, as a registered person or a transporter of the goods can generate the E-way Bill. The unregistered transporter can enroll on the common portal and generate the E-way Bill for movement of goods for his clients. Any person can also enroll and generate the E-way Bill for movement of goods for his/her own use.

What are pre-requisites to generate the E-way Bill?

The pre-requisite for generation of E-way Bill is that the person who generates E-way Bill should be a registered person on GST portal and he should register in the E-way Bill portal. If the transporter is not registered person under GST it is mandatory for him to get enrolled on E-way Bill portal (<https://ewaybillgst.gov.in>) before generation of the E-way Bill. The documents such as tax invoice or bill of sale or delivery challan and Transporter's Id, who is transporting the goods with transporter document number or the vehicle number in which the goods are transported, must be available with the person who is generating the E-way Bill.

If there is a mistake or wrong entry in the E-way Bill, what has to be done?

If there is a mistake, incorrect or wrong entry in the E-way Bill, then it cannot be edited or corrected. Only option is cancellation of E-way Bill and generate a new one with correct details.

Whether E-way Bill is required for all the goods that are being transported?

The E-way Bill is required to transport all the goods except exempted under the notifications or rules. Movement of handicraft goods or goods for job-work purposes under specified circumstances also requires E-way Bill even if the value of consignment is less than fifty thousand rupees. Kindly refer to the E-way Bill rules for other exemptions.

Is there any validity period for E-way Bill?

Yes. Validity of the E-way Bill depends upon the distance the goods have to be transported. In case of regular vehicle or transportation modes, for every 100 KMs or part of its movement, one day validity has been provided. And in case of Over Dimensional Cargo vehicles, for every 20 KMs or part of its movement, one day validity is provided. And this validity expires on the midnight of last day.

While calculating time validity for E-way Bill, how is a day determined?

This can be explained by following examples—

- (i) Suppose an E-way Bill is generated at 00:04 hrs. on 14th March. Then first day would end on 12:00 midnight of 15-16 March. Second day will end on 12:00 midnight of 16-17 March and so on.
- (ii) Suppose an E-way Bill is generated at 23:58 hrs. on 14th March. Then first day would end on 12:00 midnight of 15-16 March. Second day will end on 12:00 midnight of 16-17 March and so on.

Which types of transactions that need the E-way Bill?

For transportation of goods in relation to all types of transactions such as outward supply whether within the State or inter-State, inward supply whether from within the State or from inter-State including from an unregistered persons or for reasons other than supply also E-way Bill is mandatory. Please refer relevant notifications/rules for details. However, from 1st April, 2018, e-way is required only for interstate movement. The e-way requirement for intra state movement will be notified later.

What is the Part-A Slip?

Part-A Slip is a temporary number generated after entering all the details in PART-A. This can be shared or used by transporter or yourself later to enter the PART-B and generate the E-way Bill. This will be useful, when you have prepared invoice relating to your business transaction, but don't have the transportation details. Thus you can enter invoice details in Part A of E-way Bill and keep it ready for entering details of mode of transportation in Part B of E-way Bill.

When I enter the details in E-way Bill form, the system is not generating E-way Bill, but showing Part-A Slip?

If you don't enter the vehicle number for transportation by road or transport document number for other cases, the system will show you the PART-A slip. It indicates that you have not completed the E-way Bill generation process. Only when you enter the Part-B details, E-way Bill will be generated.

How to generate E-way Bill from Part-A Slip?

Part-A Slip is entry made by user to temporarily store the document details on the E-way Bill system. Once the goods are ready for movement from the business premises and transportation details are known, the user can enter the Part-B details and generate the E-way Bill for movement of goods. Hence, Part-B details convert the Part-A slip into E-way Bill.

What are the documents that need to be carried along with the goods being transported?

The person in charge of a conveyance shall carry the invoice or bill of supply or delivery challan, bill of entry as the case may be and a copy of the E-way Bill number generated from the common portal. Please refer relevant rules for details.

How to generate the E-way Bill from different registered place of business?

The registered person can generate the E-way Bill from his account from any registered place of business. However, he/she needs to enter the address accordingly in the E-way Bill. He/she can also create sub-users for a particular business place and assigned the role for generating the E-way Bill to that sub user for that particular business place.

How does taxpayer enter Part-A details and generate E-way Bill, when he is transporting goods himself?

Sometimes, taxpayer wants to move the goods himself. E-way Bill Portal expects the user to enter transporter ID or vehicle number. So if he wants to move the goods himself, he can enter his GSTIN in the transporter Id field and generate Part-A Slip. This indicates to the system that he is a transporter and he can enter details in Part-B later when transportation details are available.

What has to be entered in GSTIN column, if consignor or consignee is not having GSTIN?

If the consignor or consignee is unregistered taxpayer and not having GSTIN, then user has to enter 'URP' [Unregistered Person] in corresponding GSTIN column.

When does the validity of the E-way Bill start?

The validity of the E-way Bill starts when first entry is made in Part-B i.e. vehicle entry is made first time in case of road transportation or first transport document number entry in case of rail/air/ship transportation, whichever is the first entry. It may be noted that validity is not re-calculated for subsequent entries in Part-B.

How is the validity of the E-way Bill calculated?

The validity period of the EWB is calculated based on the ‘approx. distance’ entered while generating the EWB. For every 100 Kms one day is a validity period for EWB as per rule and for part of 100 KM one more day is added. For ex. If approx. distance is 310 Kms then validity period is 3+1 days. For movement of Over Dimensional Cargo (ODC), the validity is one day for every 20 KM (instead of 100 KM) and for every 20 KM or part thereof one more day is added. Please refer relevant rules for details.

How the distance has to be calculated, if the consignments are imported from or exported to other country?

The approximate distance for movement of consignment from the source to destination has to be considered based on the distance within the country. That is, in case of export, the consignor place to the place from where the consignment is leaving the country, after customs clearance and in case of import, the place where the consignment is reached the country to the destination place and cleared by Customs.

Whether E-way Bill is required, if the goods are being purchased and moved by the consumer to his destination himself?

Yes. As per the E-way Bill rules, E-way Bill is required to be carried along with the goods at the time of transportation, if the value is more than ₹50,000/- Under this circumstance, the consumer can get the E-way Bill generated from the taxpayer or supplier, based on the bill or invoice issued by him. The consumer can also enroll as citizen and generate the E-way Bill himself.

Can the E-way Bill be modified or edited?

The E-way Bill once generated cannot be edited or modified. Only Part-B can be updated. However, if E-way Bill is generated with wrong information, it can be cancelled and generated afresh. The cancellation is required to be done within twenty four hours from the time of generation.

Before submission, the system is not allowing to edit the details. What is the reason?

The system allows editing the details of E-way Bill entries before submission. However, if the products/commodities details are entered, it will not allow editing some fields as the tax rates will change. To enable this, please delete the products and edit the required fields and enter the products again.

The system shows the ‘Invalid Format’ when we are trying to enter the vehicle number. What is the reason?

The system expects you to enter the vehicle number details in proper format. Please see the format details in the help with the vehicle entry field.

What are the formats of vehicle number entry?

To enable proper entry of the vehicle number, the following formats have been provided for the vehicle numbers.

| Format | RC Numbers | Example Entry |
|------------------|------------------------------------|---------------|
| ABC1234 | DEF 234 | DEF0234 |
| AB123456 | UP 1 345 | UP010345 |
| AB12A1234 | AP 5 P 23 | AP05P0023 |
| AB12AB1234 | TN 10 DE 45 | TN10DE0045 |
| AB12ABC1234 | KE 3 PEW 1265 | KE03PEW1265 |
| DFXXXXXXXXXXXXXX | For Defence Vehicle, start with DF | DF02K123 |
| TRXXXXXXXXXXXXXX | For Temp RC Vehicle, start with TR | TRKA01000002 |
| BPXXXXXXXXXXXXXX | For Bhutan Vehicle, start with BP | |
| NPXXXXXXXXXXXXXX | For Nepal Vehicle, start with BP | |

How to enter the vehicle number DL1AB123 as there is no format available for this in E-way Bill system?

If the RC book has vehicle number like DL1A123, then you enter as DL01A0123. The vehicle entered in the E-way Bill system is only for information and GST officer will accept this variation.

How can anyone verify the authenticity or the correctness of E-way Bill?

Any person can verify the authenticity or the correctness of E-way Bill by entering EWB No, EWB Date, Generator ID and Doc No in the search option of EWB Portal.

How to generate E-way Bill for multiple invoices belonging to same consignor and consignee?

If multiple invoices are issued by the supplier to recipient, that is, for movement of goods of more than one invoice of same consignor and consignee, multiple EWBs have to be generated. That is, for each invoice, one EWB has to be generated, irrespective of the fact whether same or different consignors or consignees are involved. Multiple invoices cannot be clubbed to generate one EWB. However after generating all these EWBs, one Consolidated EWB can be prepared for transportation purpose, if goods are going in one vehicle.

What has to be done by the transporter if consignee refuses to take goods or rejects the goods for any reason?

There is a chance that consignee or recipient may reject to take the delivery of consignment due to various reasons. Under such circumstances, the transporter can get one more E-way Bill generated with the help of supplier or recipient by indicating supply as ‘Sales Return’ with relevant documents, return the goods to the supplier as per his agreement with him.

What has to be done, if the validity of the E-way Bill expires?

If validity of the E-way Bill expires, the goods are not supposed to be moved. However, under circumstance of ‘exceptional nature and trans-shipment’, the transporter may extend the validity period after updating reason for the extension and the details in **PART-B of FORM GST EWB-01**.

Can I extend the validity of the E-way Bill?

Yes, one can extend the validity of the E-way Bill, if the consignment is not being reached the destination within the validity period due to exceptional circumstance like natural calamity, law and order issues, trans-shipment delay, accident of conveyance, etc. The transporter needs to explain this reason in details while extending the validity period.

How to extend the validity period of E-way Bill?

There is an option under E-way Bill to extend the validity period. This option is available for extension of E-way Bill before 4 hours and after 4 hours of expiry of the validity. Here, transporter will enter the E-way Bill number and enter the reason for the requesting the extension, from place (current place), approximate distance to travel and Part-B details. It may be noted that he cannot change the details of Part-A. He will get the extended validity based on the remaining distance to travel.

Who can extend the validity of the E-way Bill?

The transporter, who is carrying the consignment as per the E-way Bill system at the time of expiry of validity period, can extend the validity period.

How to handle “Bill to” - “Ship to” invoice in E-way Bill system?

Sometimes, the taxpayer raises the bill to somebody and sends the consignment to somebody else as per the business requirements. There is a provision in the E-way Bill system to handle this situation, called as ‘Bill to’ and ‘Ship to’.

In the E-way Bill form, there are two portions under ‘TO’ section. In the left hand side - ‘Billing To’ GSTIN and trade name is entered and in the right hand side - ‘Ship to’ address of the destination of the movement is entered. The other details are entered as per the invoice.

In case ship to State is different from Bill to State, the tax components are entered as per the billing State party. That is, if the Bill to location is inter-State for the supplier, IGST is entered and if the Bill to Party location is intra-State for the supplier, the SGST and CGST are entered irrespective of movement of goods whether movement happened within State or outside the State.

How to handle “Bill from” - “Dispatch from” invoice in E-way Bill system?

Sometimes, the supplier prepares the bill from his business premises to consignee, but moves the consignment from some others' premises to the consignee as per the business requirements. This is known as 'Billing From' and 'Dispatching From'. E-way Bill system has provision for this. In the E-way bill form, there are two portions under 'FROM' section. In the left hand side - 'Bill From' supplier's GSTIN and trade name are entered and in the right hand side - 'Dispatch From', address of the dispatching place is entered. The other details are entered as per the invoice. In case Bill From location State is different from the State of Dispatch the Tax components are entered as per the State (Bill From). That is, if the billing party is inter-State for the supplier, IGST is entered and if the billing party is intra-State for the supplier, the SGST and CGST are entered irrespective of movement of goods whether movement happened within State or outside the State.

How the transporter is identified or assigned the E-way Bill by the taxpayer for transportation?

While generating E-way Bill the taxpayer has a provision to enter the transporter id in the transportation details section. If he enters 15 digits transporter id provided by his transporter, the E-way Bill will be assigned to that transporter. Subsequently, the transporter can log in and update further transportation details in Part B of E-way Bill.

How to generate E-way Bill, if the goods of one invoice is being moved in multiple vehicles simultaneously?

Where the goods are being transported in a semi knocked down or completely knocked down condition, the EWB shall be generated for each of such vehicles based on the delivery challans issued for that portion of the consignment as per CGST Rule 55 which provides as under:

- (a) Supplier shall issue the complete invoice before dispatch of the first consignment;
- (b) Supplier shall issue a delivery challan for each of the subsequent consignments, giving reference of the invoice;
- (c) each consignment shall be accompanied by copies of the corresponding delivery challan along with a duly certified copy of the invoice; and
- (d) Original copy of the invoice shall be sent along with the last consignment

Please note that multiple EWBs are required to be generated in this situation. That is, the EWB has to be generated for each consignment based on the delivery challan details along with the corresponding vehicle number.

Updating Transportation/vehicle/Part-B details

Whether Part-B is must for E-way Bill?

E-way Bill is complete only when Part-B is entered. Otherwise printout of EWB would be invalid for movement of goods. Filling up of Part-B of the E-way Bill is a must for movement of the goods, except for within the same State

movement between consignor place to transporter place, if distance is less than 50 Kms.

Can I transport the goods with the E-way Bill without vehicle details in it?

No. One needs to transport the goods with an E-way Bill specifying the vehicle number, which is carrying the goods. However, where the goods are transported for a distance of less than fifty kilometers within the State from the place of business of consignor to the place of transporter for further transportation, then the vehicle number is not mandatory. Similar exception upto 50 KM has been given for movement of goods from place of business of transporter to place of business of consignee.

Whether the E-way Bill is required for movement of consignment for weighment to the weighbridge?

No E-way Bill is required for movement of goods upto a distance of 20 Km from the place of business of consignor to a weighbridge for weighment or from the weighbridge back to the place of business of consignor, within the same State, subject to the condition that the movement of goods is accompanied by a delivery challan issued in accordance with Rule 55.

Who all can update the vehicle number for the E-way Bill?

The Vehicle number can be updated by the generator of the E-way Bill or the transporter assigned by the generator for that particular E-way Bill.

Can Part-B of E-way Bill entered/updated by any other transporter?

The present transporter can fill or update PART-B of the EWB. The E-way Bill can be assigned from one transporter to another transporter, for further movement of consignment. Under this circumstance, the latest transporter, assigned for that E-way Bill, can update Part-B of EWB.

If the vehicle, in which goods are being transported, having E-way Bill is changed, then what is required to be done?

The E-way Bill for transportation of goods should always have the vehicle number that is actually carrying the goods. There may be requirement to change the vehicle number after generating the E-way Bill or after commencement of movement of goods, due to trans-shipment or due to breakdown of vehicle. In such cases, the transporter or generator of the E-way Bill can update the new vehicle number in Part B of the EWB.

What is to be done (in an EWB) if the vehicle breaks down?

If the vehicle breaks down, when the goods are being carried with an EWB, then transporter can get the vehicle repaired and continue the journey in the same EWB. If he has to change the vehicle, then he has to enter the new vehicle details in that EWB, on the E-way Bill portal, using 'Update vehicle number' option in Part B and continue the journey in new vehicle, within the original validity period of E-way Bill.

How many times can Part-B or Vehicle number be updated for an E-way Bill?

The user can update Part-B (Vehicle details) as many times as he wants for movement of goods to the destination. However, the updating should be done within the validity period.

Can the E-way Bill entry be assigned to another transporter by authorized transporter?

The authorized transporter can assign the E-way Bill to any enrolled or registered transporter for further transportation of the goods. Subsequently, the new transporter can only update the Part-B of the EWB.

In case of transportation of goods via rail/air/ship mode, when is user required to enter transport document details, as it is available only after submitting of goods to the concerned authority?

Where the goods are transported by railways or by air or vessel, the Part B of the E-way Bill can be updated either before or after the commencement of movement. But, where the goods are transported by railways, the railways shall not deliver the goods, unless the E-way Bill as required under these rules is produced to them, at the time of delivery.

If the goods having E-way Bill has to pass through trans-shipment and through different vehicles, how it has to be handled?

Some of the consignments are transported by the transporter through transshipment using different vehicles before it is delivered to the recipient at the place of destination. Hence for each movement from one place to another, the transporter needs to update the vehicle number in which he is transporting that consignment in part B of the E Way Bill.

Can I use different modes of transportation to carry the goods having an E-way Bill? If so, how to update the details?

Yes. One can transport goods through different modes of transportation - Road, Rail, Air, Ship. However, PART-B of E-way Bill have to be updated with the latest mode of transportation or conveyance number using 'Update vehicle number/mode of transport' option in the Portal. That is, at any point of time, the details of conveyance specified in the E-way Bill on the portal, should match with the details of conveyance through which goods are actually being transported.

How to enter multiple modes of transportation, i.e., road, rail, ship, air for the same E-way Bill?

One E-way Bill can go through multiple modes of transportation before reaching destination. As per the mode of transportation, the EWB can be updated with new mode of transportation by using 'Update Vehicle Number'.

Let us assume the goods are moving from Cochin to Chandigarh through road, ship, air and road again. First, the taxpayer generates the EWB by entering first stage of movement (by road) from his place to ship yard and enters the vehicle number. Next, he will submit the goods to ship yard and update the mode

of transportation as Ship and transport document number on the E-way Bill system. Next, after reaching Mumbai, the taxpayer or concerned transporter updates movement as road from ship yard to airport with vehicle number. Next the taxpayer or transporter updates, using ‘update vehicle number’ option, the Airway Bill number. Again after reaching Delhi, he updates movement through road with vehicle number. This way, the E-way Bill will be updated with multiple mode of transportation.

How does transporter come to know that particular E-way Bill is assigned to him?

The transporter comes to know that EWBS are assigned to him by the taxpayers for transportation, in one of the following ways:

- After login at EWB portal, the transporter can go to reports section and select ‘EWB assigned to me for trans’ and see the list. He can also see these details in his dashboard, after login to EWB portal.
- The transporter can go to ‘Update Vehicle No’ and select ‘Generator GSTIN’ option and enter taxpayer GSTIN of taxpayer, who has assigned the EWB to him.

How to handle the goods which move through multiple trans-shipment places?

Some of the consignments move from one place to another place till they reach their destinations. Under this circumstance, each time the consignment moves from one place to another, the transporter needs to enter the vehicle details using ‘Update Vehicle Number’ option in part B of the EWB, when he starts moving the goods from that place. The transporter can also generate ‘Consolidated EWB’ with the EWB of that consignment with other EWBS and move the consignment to next place. This has to be done till the consignment reaches destination. But it should be within the validity period of a particular EWB.

How does the transporter handle multiple E-way Bills which pass through transshipment from one place to another in different vehicles, to reach the destinations?

Some of the transporters move the consignments from one place to another place before the goods reach the destination, as per the movement of vehicles. Sometimes the consignments are moved to 8-10 branches of the transporter, before they reach their destination. The consignments reach the particular branch of transporter from different places in different vehicles. These consignments are sorted out, to be transported to different places in different Vehicles. Now, the concerned branch user instead of updating the vehicle for each one of the EWBS, can generate ‘Consolidated EWB’ for multiple EWBS which are going in one vehicle towards next branch/destination.

Cancelling E-way Bill

Can the E-way Bill be deleted or cancelled?

The E-way Bill once generated cannot be deleted. However, it can be cancelled by the generator within 24 hours of generation. If a particular EWB has

been verified by the proper officer, then it cannot be cancelled. Further, E-way Bill can be cancelled if either goods are not transported or are not transported as per the details furnished in the E-way Bill.

Whether the E-way Bill can be cancelled? If yes, under what circumstances?

Yes, E-way Bill can be cancelled if either goods are not transported or are not transported as per the details furnished in the E-way Bill. The E-way Bill can be cancelled within 24 hours from the time of generation.

Rejecting E-way Bill

Who can reject the E-way Bill and Why?

The person who causes transport of goods shall generate the E-way Bill specifying the details of other person as a recipient of goods. There is a provision in the common portal for the other party to see the E-way Bill generated against his/her GSTIN. As the other party, one can communicate the acceptance or rejection of such consignment specified in the E-way Bill. If the acceptance or rejection is not communicated within 72 hours from the time of generation of E-way Bill or the time of delivery of goods whichever is earlier, it will be deemed that he has accepted the details.

How does the taxpayer or recipient come to know about the E-way Bills generated on his GSTIN by other person/party?

As per the rule, the taxpayer or recipient can reject the E-way Bill generated on his GSTIN by other parties. The following options are available for him to see the list of E-way Bills:

- He can see the details on the dashboard, once he logs into the system.
- He will get one SMS everyday indicating the total E-way Bill activities on his GSTIN.
- He can go to reject option and select date and see the E-way Bills. Here, system shows the list of E-way Bills generated on his GSTIN by others.
- He can go to report and see the 'EWBs by other parties'.

Consolidated E-way Bill

What is consolidated E-way Bill?

Consolidated E-way Bill is a document containing the multiple E-way Bills for multiple consignments being carried in one conveyance (goods vehicle). That is, the transporter, carrying multiple consignments of various consignors and consignees in one vehicle can generate and carry one consolidated E-way Bill instead of carrying multiple E-way Bills for those consignments.

Who can generate the consolidated E-way Bill?

A transporter can generate the consolidated E-way Bills for movement of multiple consignments in one vehicle.

What is the validity of consolidated E-way Bill?

Consolidated EWB is like a trip sheet and it contains details of different EWBs in respect of various consignments being transported in one vehicle and these EWBs will have different validity periods.

Hence, Consolidated EWB does not have any independent validity period. However, individual consignment specified in the Consolidated EWB should reach the destination as per the validity period of the individual EWB.

What has to be done, if the vehicle number has to be changed for the consolidated E-way Bill?

There is an option available under the ‘Consolidated EWB’ menu as ‘regenerate CEWB’. This option allows you to change the vehicle number to existing Consolidated EWB, without changing the individual EWBs. This generates a new CEWB, which has to be carried with new vehicle. Old CEWB will become invalid for use.

Can the ‘consolidated E-way Bill’ (CEWB) have the goods/E-way Bills which are going to be delivered before reaching the destination defined for CEWB?

Yes, the consolidated E-way Bill can have the goods or E-way Bills which will be delivered to multiple locations as per the individual EWB included in the CEWB. That is, if the CEWB is generated with 10 EWBs to move 3 consignments to destination Y and 7 consignments to destination X, then on the way the transporter can deliver 3 consignments to destination Y out of 10 and move with remaining 7 consignments to the destination X with the same CEWB. Alternatively, two CEWB can be generated one for 3 consignments for destination Y and another CEWB for 7 consignments for destination X.

Other modes

What are the modes of E-way Bill generation, the taxpayer can use?

The E-way Bill can be generated by the registered person in any of the following methods;—

- Using Web based system
- Using SMS based facility
- Using Android App
- Bulk generation facility
- Using Site-to-Site integration
- Using GSP (Goods and Services Tax Suvidha Provider)

How can the taxpayer use the SMS facility to generate the E-way Bill?

The taxpayer has to register the mobile numbers through which he intends to generate the E-way Bill on the E-way Bill system. Please see the user manual for SMS based E-way Bill generation available on the portal for further details.

How can the taxpayer use the Android App to generate the E-way Bill?

The taxpayer has to register the IMEI (International Mobile Equipment Identity) number of the mobile phones through which he intends to generate the E-way Bill on the E-way Bill system. Please see the user manual for Mobile App based E-way Bill generation available on the portal for further details.

How to download mobile app?

The mobile app is available only for the taxpayers and enrolled transporters. It is not available in Play Store. The main user has to login and select the ‘for mobile app’ under registration menu. The system asks to select the user/sub-user and enter the IMEI number of the user. Once it is entered, the concerned user gets the link in his registered mobile to download the app through SMS. Now, the user has to download the app by clicking that link and enable it to get installed on the mobile.

What is bulk generation facility and who can use it?

Through this facility, user can upload multiple invoices and generate multiple E-way bill at one go. This facility can be used by the taxpayers or transporters who have automated their invoice generation system. In one go, they can prepare bulk requests for E-way Bills in a file from their automated system, and upload it on the common portal and generate E-way Bill in one go. This avoids duplicate data entry into E-way Bill system and avoids data entry mistakes also. Any taxpayer or transporter can use the bulk generation facility.

How to use the bulk generation facility?

To use the bulk generation facility, one has to prepare the E-way Bill requests through JSON file. This can be done in two ways - registered taxpayer or transporter can prepare the JSON file directly from his automated system. If he is unable do so, he can use excel based bulk generation tool available on the portal. The invoice and other details need to entered as per the format and JSON file can be generated. This JSON file need to be uploaded in the portal for generation of multiple E-way Bills. For more details, please refer to the ‘user manual of the bulk generation’ and ‘bulk generation tools’ under tool section at EWB portal and follow the instructions.

Bulk generation facility can be used for what activities on E-way Bill portal?

One can use bulk generation facility for

- Generation of E-way Bills,
- Updation of Part-B of E-way Bills
- Generation of Consolidated E-way Bills

Please refer to the user manual of the bulk generation tools on the portal

What are the benefits of the bulk generation facility?

Benefits of the bulk generation facility are as follows:

- * Generation of multiple E-way Bills in one go.
- * It avoids duplicate keying in of the invoices to generate E-way Bills.
- * It avoids the data entry mistakes while keying in for generation of E-way Bills.

How can the registered person integrate his/her system with E-way Bill system to generate the E-way Bills from his/her system?

The integration between E-way Bill system and registered persons' system can be done through APIs. For availing this facility, the registered person should

register the server details of his/her systems (through which he wants to generate the E-way Bill using the APIs of E-way Bill system) with E-way Bill system. For further details, please go through the user manual.

What is API Interface?

API interface is a site-to-site integration of two systems. Using this, the taxpayer can link his IT system with EWB system to generate EWB directly from his IT solution without keying in the details for EWB form in the Portal. This reduces duplicate data entry and eliminates the data entry mistakes.

What are the benefits of API Interface?

Presently registered person generates invoices from his IT system and logs into EWB system and enters E-way Bill details and generate E-way Bills. Here, the taxpayer has to make double entries - once for Invoice generation in his system and second time for E-way Bill generation. He can integrate his system with EWB system through API. The EWB details are sent from taxpayer system to E-way Bill system through APIs and generation of E-way Bill happens at E-way Bill system instantaneously. The E-way Bill data is send back to the taxpayer system by the E-way Bill system so that EWB data can be stored in the taxpayers system itself. This will lead saving of manpower and cost of operator for this purpose. Secondly API interface will eliminate data entry mistakes/errors being made by operator. It also saves time. Thirdly E-way Bill number can be stored by the taxpayer system in his database with the corresponding invoice. Even in the invoice itself, EWB number can be printed so that printout of EWB need not be taken out and carried out along with the vehicle, separately.

What are the pre-requisite for using API interface?

API interface is a site-to-site integration of website of taxpayer with the EWB system. API interface can be used by large taxpayers, who need to generate more than 1000 invoices/E-way Bills per day. However, the taxpayer should meet the following criteria to use the API interface:

- His invoicing system should be automated with IT solutions.
- He should be ready to change his IT system to integrate with EWB system as per API guidelines.
- He should be generating at least 1000 invoices/E-way Bills per day.
- His system should have SSL based domain name.
- His system should have Static IP Address.
- He should have pre-production system to test the API interface.

Other Options

How does the taxpayer become transporter in the E-way Bill system?

Generally, registered GSTIN holder will be recorded as supplier or recipient and he will be allowed to work as supplier or recipient. If registered GSTIN holder is transporter, then he will be generating EWB on behalf of supplier or recipient. He needs to enter both supplier and recipient details while generating EWB, which is not allowed as a supplier or recipient.

To change his position from supplier or recipient to transporter, the taxpayer has to select the option ‘Register as Transporter’ under registration and update his profile. Once it is done with logout and re-login, the system changes taxpayer as transporter and allows him to enter details of both supplier and recipient in EWB as per invoice.

How does the taxpayer update his latest business name, address, mobile number or e-mail id in the E-way Bill system?

EWB System (www.ewaybillgst.gov.in) is dependent on GST Common portal (www.gst.gov.in) for taxpayers registration details like legal name/trade name, business addresses, mobile number and e-mail id. EWB System will not allow taxpayer to update these details directly in the EWB portal. If taxpayer changes these details at GST Common portal, it will be updated in EWB system within a day automatically. Otherwise, the taxpayer can update the same instantaneously by selecting the option ‘Update My GSTIN’ in the E-way Bill system and the details will be fetched from the GST common portal (www.gst.gov.in) and updated in the E-way Bill system.

Why do I need sub-users?

Most of the times, the taxpayer or authorized person himself cannot operate and generate EWBS. He may in that case authorize his staff or operator to do that. He would not like to avoid sharing his user credentials with them. In some firms, the business activities will be operational 24/7 and some firms will have multiple branches. Under these circumstances, the main user can create sub-users and assign different roles to them. He can assign generation of EWB or rejection or report generation activities based on requirements to different sub-users.

This facility helps him to monitor the activities done by sub-users. However, the main user should ensure that whenever employee is transferred or resigned, the sub-user account is frozen/blocked to avoid mis-utilisation.

How many sub-users can be created?

For every principal/additional place of business, user can create maximum of 3 sub-users. That is, if taxpayer has only (one) principal business place (and no additional place of business), he can create 3 sub-users. If tax payer has 3 additional places and one principal place of business (i.e. 4 places), then he can create 12 (4 X 3) sub users.

Why are the reports available only for a particular day?

The user is allowed to generate report on daily basis. Because of criticality of the system for performance for 24/7 operation, the reports are limited to be generated for a day. The user can change date and generate the report for that date. Hence, the user is advised to generate report daily and save in his system.

Why masters have to be entered?

EWB system has an option to enter the masters of user - client master, supplier master, transporter master and product master. If user creates these masters, it will simplify the generation of E-way Bill for him. That is, the system

auto populates the details like trade/legal name, GSTIN, address on typing few character of client or supplier, HSN Code, tax rates etc. It also avoids data entry mistakes by operator while keying in the details.

Can I upload the masters available in my system?

Yes, you can upload your customers, suppliers and product details into E-way Bill system by preparing the data as per the format provided in the tools option in the portal and upload in the master option after logging in.

What is a detention report under grievance menu?

If the goods or the vehicle of the taxpayer or transporter has been detained by the tax officers for more than 30 minutes, then the transporter can enter the detention report on EWB Portal, which will reach the designated officer immediately, so that he can take an appropriate action accordingly.

When is a detention report to be raised?

Where a vehicle has been intercepted and detained for a period exceeding thirty minutes, the transporter may upload the said information in the EWB system. The detention report will go to the concerned senior GST State/Central officer to redress the grievance.

Miscellaneous

What is Over Dimensional Cargo?

Over Dimensional Cargo mean a cargo carried as a single indivisible unit and which exceeds the dimensional limits prescribed in Rule 93 of the Central Motor Vehicle Rules, 1989 made under the Motor Vehicles Act, 1988.

How the consignor is supposed to give authorization to transporter or E-commerce Operator and courier agency for generating PART-A of E-way Bill?

It is their mutual agreement and way out to do the same. If a transporter or courier agency or the E-commerce Operator fills PART-A, it will be assumed by the department that they have got authorization from consignor for filling PART-A.

In case of Public transport, how to carry E-way Bill?

In case of movement of goods by public transport, E-way Bill shall be generated by the person who is causing the movement of the goods, in case of any verification; he can show E-way Bill number to the proper officer.

What is the meaning of consignment value?

It is the value of the goods declared in invoice, a bill of challan or a delivery challan, as the case may be, issued in respect of the said consignment and also include Central Tax, State or Union Territory Tax, Integrated Tax and Cess charged, if any. But, it will not include value of exempt supply of goods, where the invoice is issued in respect of both exempt and taxable supply. It will also not include value of freight charges for the movement charged by transporter.

In case of movement of goods by Railways, is there a requirement for railway to carry E-way Bill along with goods?

In case of movement of goods by Railways, there is no requirement to carry E-way Bill along with the goods, but railways has to carry invoice or delivery

challan or bill of supply as the case may be along with goods. Further, E-way Bill generated for the movement is required to be produced at the time of delivery of the goods. Railways shall not deliver goods unless the E-way Bill required under rules is produced at the time of delivery. But for the purposes of E-way Bill, the expression ‘transported by railways’ does not include the ‘leasing of parcel space by Railways’.

If the value of the goods carried in a single conveyance is more than 50,000/- though value of all or some of the individual consignments is below ₹50,000/-, does transporter need to generate E-way Bill for all such smaller consignments?

As Rule 138(7) will be notified from a future date, hence till the notification for that effect comes, transporter needs not generate E-way Bill for consignments having value less than ₹50,000/-, even if the value of the goods carried in single conveyance is more than ₹50,000/-, till the said sub-rule is notified.

Does the vehicle carrying goods from CSD to unit run canteens need E-way Bill?

No, these are exempted supply and therefore have been exempted from the requirement of carrying E-way Bill.

Is the E-way Bill required for the movement of empty cargo containers?

No, such movement has been exempted from E-way Bill.

Does the movement of goods under Customs seal require E-way Bill?

No, such movement has been exempted from E-way Bill.

Does the movement of goods which are in transit to or from Nepal/Bhutan, require E-way Bill for movement?

No, such movement has been exempted from E-way Bill.

Is the temporary vehicle number allowed for E-way Bill generation?

Yes, temporary vehicle number can also be inserted as vehicle number for the purpose of E-way Bill generation.

Whether E-way Bill is required for intra -State movement of goods?

At present E-way Bill is required only for inter-State movement of goods. For intra-State movement of goods the requirement for E-way Bill will be introduced in a phased manner, for which rules will be notified by respective states separately.

I am dealer in tractors. I purchased 20 tractors from the manufacturer. These tractors are not brought on any motorized conveyance as goods but are brought to my premise by driving them. Also, these tractors have not got the vehicle number. Is E-way Bill required in such cases?

E-way Bill is required in such cases. The temporary number or any identifiable number with the tractor have to be used for filling details of the vehicle number for the purpose of E-way Bill generation.

Who is responsible for EWB generation in case DTA sales from SEZ/FTWZ?

There is no special provision for such supply and hence the registered person who causes movement of goods shall be responsible for the generation of E-way Bill as per the rules.

In many cases where manufacturer or wholesaler is supplying to retailers, or where a consolidated shipment is shipped out, and then distributed to multiple consignees, the recipient is unknown at the time the goods are dispatched from shipper's premises. A very common example is when FMCG companies send a truck out to supply kirana stores in a particular area. What needs to be done in such cases?

In such cases, movement is caused on behalf of self. No supply is being made. In such cases, delivery challan may be used for generation of E-way Bills. All the provisions for delivery challan need to be followed along with the rules for E-way Bills.

What should be the value in E-way Bill in case goods are sent on lease basis as the value of machine is much higher than leasing charges?

The value of goods needs to be mentioned as per the explanation 2 of the sub-rule (1) of Rule 138.

Expired stock has no commercial value, but is often transported back to the seller for statutory and regulatory requirements, or for destruction by seller himself. What needs to be done for such cases of transportation of the expired stock?

E-way Bills are required even in cases where goods are moved for reasons other than supply. Delivery Challan has to be the basis for generation of E-way Bill in such cases.

Whether shipping charges charged by E-commerce companies needs to be included in 'consignment value' though the same is not mentioned on merchant's invoice?

Consignment value of goods would be the value determined in accordance with the provisions of Section 15. It will also include the Central Tax, State or Union Territory Tax, Integrated Tax and Cess charged, if any. So shipping charges charged by E-by the e-commerce companies need not be included in the 'consignment value'.

Where an invoice is in respect of both goods and services, whether the consignment value should be based on the invoice value (inclusive of value of services) or only on the value of goods. Further, whether HSN wise details of service is also required to be captured in Part A of the E-way Bill in such case.

Consignment value and HSN needs to be determined for goods only not for services as only the goods are in movement and E-way Bill needs to be generated accordingly.

E-way Bill - Issues regarding “Bill To Ship To” for E-way Bill under CGST Rules, 2017:—Responding to a number of representations received seeking clarifications in relation to requirement of E-way Bill for “Bill To Ship To” model of supplies, where there are three persons involved in a transaction, namely: “A” is the person who has ordered, “B” to send goods directly to “C” the C.B.I. & C., observing that in this complete scenario two “supplies are involved and accordingly two tax invoices are required to be issued, Invoice-1, which would be issued by “B” to “A” and Invoice-2 which would be issued by “A” to “C”, has clarified that as per the CGST Rules, 2017 either “A” or “B” can generate the E-way Bill and only one E-way Bill is required to be generated as per the procedure prescribed.—*C.B.I. & C. Press Release 152/2018, dated 23-4-2018.*

New FAQs (Dated: 1-10-2018)

1. What should I do if I don't have ‘Transporter Id’ but want to enter and generate ‘Part-A slip’?

This is not possible as per Rule 138(3). If the tax payer is not having the details of ‘Transporter Id’ but he still wants to enter and generate the ‘Part-A Slip’, then he has to compulsorily enter the ‘Transporter Id’ to generate the ‘Part-A Slip’ to enable the transporter to enter Part-B.

2. What should I do if I want to generate ‘PART-A Slip’ and want to transport the goods myself later?

If the user wants to generate the ‘Part-A slip’ and wants to transport the goods himself later, then he has to enter his GSTIN as the ‘Transporter Id’ and generate ‘Part-A slip’. Once he gets the conveyance details he can update the Part-B by using ‘Update Part-B/Vehicle’ sub-option provided under E-way Bill menu and start the movement of goods.

3. When to extend the validity of E-way Bill?

The Generator or Transporter can extend the validity of the E-way Bill, if the consignment is not being reached the destination within the validity period due to following circumstances:

Delay due to vehicle breakdown.

Natural calamity

Law & order issue on the transit

Accident of conveyance

Trans-shipment delay etc.

The Generator or Transporter can extend the validity of E-way Bill only between 8 hours before and 8 hours after the expiry time of the existing E-way Bill validity.

For example, if the validity of the E-way Bill is till midnight of 2nd Oct., 2018, then the user can extend the same after 4 PM on 2nd Oct., 2018 or before 8 AM on 3rd Oct., 2018.

4. What should I do if PIN code is shown as invalid?

If the PIN code entered by the user is shown as invalid by the system, the user needs to recheck the PIN code again. Still if it is valid PIN Code as per user, then the generator can select the state manually from the dropdown list and proceed further to next stage.

5. What happens if the total invoice value does not match with the sum of assessable value, tax value and other values?

Ideally, the total invoice value should match with the sum of assessable value, tax value and other values. The system matches it even if there is a variation of ₹2.00 as this variation is allowed to take care rounding of decimal values. If the total invoice value is greater than sum of total of taxable value, applicable taxes and charges, the system will alert the user through pop-up message and user can still proceed further for generating the E-way Bill. But if the total invoice value is less than the sum total of taxable value, applicable taxes and charges, system will not allow the user to proceed further without correcting the invoice value.

6. Why message is sent if total invoice value is more than ₹10 Crores?

It has been observed in the E-way Bill system that some of the E-way Bills have abnormal total invoice values, which could have been entered knowingly or unknowingly by the user while generating the E-way Bill details. If the entries are correct, he can continue with the E-way Bill usage. If unknowingly, this mistake has happened, the user can take a corrective measure of cancelling that E-way Bill and generating the other one.

In addition to the pop-up displayed at the time of entering the total invoice value, an additional pop-up will be displayed at the time of submission of the E-way Bill Entry form. A SMS is also sent to the registered mobile number of the generator alerting him that invoice value of E-way Bill is more than ₹10 Crores has been generated.

7. Is it mandatory to select the rate of tax while entering the goods details?

No, it is not mandatory to select the tax rates or to enter the tax amounts while generating the E-way Bill.

8. What if my GSTIN in E-way Bill portal is cancelled but is active in GSTN common portal and I want to login in the E-way Bill portal?

If the taxpayer's GSTIN is cancelled in the E-way Bill system but is active in the GST common portal and the taxpayer wants to login and generate the E-way Bill, he has to first go to the Taxpayer search option in the Home page of E-way Bill portal. He has to then enter his GSTIN and system will show his corresponding GSTIN details existing in GST Common Portal. If the status of GSTIN is active, taxpayer can login and generate the E-way Bill.

I have amended by GST registration details in GST Common Portal, but it is not being shown on the E-way Bill system. What should I do?

In such case the taxpayer has to login and use the “My GSTIN from CP” sub-option provided under “Update” option in the main menu.

9. When should I use Multi-Vehicle option?

When the taxpayer or transporter wants to move the consignment of one E-way Bill in multiple vehicles, after moving to transshipment place, he can use the “Change to Multi Vehicle” sub-option provided under “E-way Bill” option in the main menu.

For example, let's say one E-way Bill is generated to move the consignment from place A to place C. Here, the consignment moves from A to B via Rail or bigger vehicle. Now, it is not possible to move the consignment from B to C in the same mode of transportation due to unavailability of that mode or may be due to hilly region where big vehicles cannot be used. In such cases, the consignment can be moved in multiple smaller vehicles using the Multi-Vehicle option.

10. As an unregistered transporter, how can enter my branch details in the E-way Bill portal?

If the transporter is having additional places of business in addition to the registered place of business, he can use the “Update Additional Place” sub-option provided under “Update” option in the main menu of E-way Bill system to add/amend the additional places of business.

11. What should be done if goods movement is done in batches or lots?

As per the Rule 55(5), one needs to issue the tax invoice for the complete quantity that is being moved in batches or lots. Then he has to prepare the delivery challan for each batch or lot and generate corresponding E-way Bill for that batch or lot and move the consignment with delivery challan, copy of invoice and E-way Bill number. However, the last batch or lot should have the original invoice along with delivery challan and E-way Bill number. On the E-way Bill system, he needs to select SKD/CKD/Lots sub-supply type to generate the E-way Bill for these kinds of batches and lots with delivery challan details.

**NATIONAL ACADEMY OF CUSTOMS, INDIRECT TAXES AND
NARCOTICS (NACIN)**

Frequently Asked Questions on E-way Bill

Q1. What is an E-way Bill?

Ans. E-way Bill (**FORM GST EWB-01**) is an electronic document (available to supplier/recipient/transporter) generated on the common portal evidencing movement of goods of consignment value more than ₹500000/. It has two Components-Part A comprising of details of GSTIN of supplier & recipient, place of delivery (indicating PIN Code also), document (Tax invoice, Bill of Supply, Delivery Challan or Bill of Entry) number and date, value of goods, HSN code, and reasons for transportation; and Part B - comprising of transport details - transport document number (Goods Receipt Number or Railway Receipt Number or Airway Bill Number or Bill of Lading Number) and Vehicle number for road.

Q2. What is the common portal for E-way Bill?

Ans. The Common Goods and Services Tax Electronic Portal for furnishing electronic way bill is www.ewaybillgst.gov.in.

Q3. What is consignment value?

Ans. The consignment value of goods shall be the value, determined in accordance with the provisions of Section 15 of the CGST Act, 2017, declared in an invoice, a bill of supply or a delivery challan, as the case may be, issued in respect of the said consignment and also includes the Central Tax, State or Union Territory Tax, Integrated Tax and Cess charged, if any, in the document.

Q4. Whether consignment value of goods shall include tax also? In case of movement other than by way of supply, value may not be available? How to value such cases?

Ans. As per Explanation 2 to Rule 138(1) of CGST Rules, 2017, the consignment value shall also include the Central Tax, State or Union Territory Tax, Integrated Tax and Cess charged, if any, in the document. Furthermore, in view of the valuation provisions in Section 15 of the CGST Act, 2017, Customs duty shall also be includable in the value of goods. In case of movement of goods for reasons other than supply, the movement would be occasioned by means of a delivery challan which is a mandatory document. The delivery challan has to necessarily contain the value of goods as per Rule 55 of the CGST Rules, 2017. The value given in the delivery challan should be adopted in the E-way Bill.

Q5. What are the benefits of E-way Bill?

Ans. Following benefits are expected from E-way Bill mechanism (i) Physical interface to pave way for digital interface resulting in elimination of state boundary check-posts (ii) It will facilitate faster movement of goods (iii) It will improve the turnaround time of trucks and help the logistics industry by increasing the average distances travelled, reducing the travel time as well as costs.

Q6. When will the E-way Bill provisions be implemented?

Ans. The E-way Bill provisions in respect of inter-State supplies of goods shall be implemented w.e.f. 1st February, 2018. The States may choose their own timings for implementation of E-way Bill for intra-State movement of goods on any date before 1st June, 2018.

Q7. When should an E-way Bill be generated?

Ans. As per Rule 138 of the CGST Rules, 2017, an E-way Bill has to be generated prior to the commencement of transport of goods.

Q8. Whether E-way Bill need to be generated for all movements of goods?

Ans. E-way Bill is not required to be generated in the following cases: (a) Transport of goods as specified in Annexure to Rule 138 of the CGST Rules, 2017 which is reproduced below : S/No. Description of Goods 1 Liquefied petroleum gas for supply to household and non-domestic exempted category (NDEC) customers 2 Kerosene oil sold under PDS 3 Postal baggage transported

by Department of Posts 4 Natural or cultured pearls and precious or semi-precious stones; precious metals and metals clad with precious metal (Chapter 71) 5 Jewellery, goldsmiths' and silversmiths' wares and other articles (Chapter 71) 6 Currency 7 Used personal and household effects 8 Coral, unworked (0508) and worked coral (9601) (b) Goods being transported by a non-motorised conveyance; (c) Goods being transported from the port, airport, air cargo complex and land customs station to an inland container depot or a container freight station for clearance by Customs; and (d) In respect of movement of goods within such areas as are notified under Rule 138(14)(d) of the SGST Rules, 2017 of the concerned State. (e) where the goods, other than de-oiled cake, being transported are specified in the Schedule appended to Notification No. 2/2017-C.T. (Rate), dated the 28th June, 2017 (f) where the goods being transported are alcoholic liquor for human consumption, petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas or aviation turbine fuel; and (g) where the goods being transported are treated as no supply under Schedule III of the Act.

Q9. Whether an E-way Bill is to be issued, even when there is no supply?

Ans. Yes. Even if the movement of goods is caused due to reasons others than supply, the E-way Bill is required to be issued. Reasons other than supply include movement of goods due to job-work, replacement under warranty, recipient not known, supply of liquid gas where quantity is not known, supply returns, exhibition or fairs, for own use, Sale on approval basis and others etc.

Q10. Who should generate E-way Bill?

Ans. An E-way Bill contains two parts - Part A to be furnished by the registered person who is causing movement of goods of consignment value exceeding ₹50,000/- and part B (transport details) is to be furnished by the person who is transporting the goods. Where the goods are transported by a registered person-whether as consignor or recipient, the said person shall have to generate the E-way Bill (by furnishing information in part B on the common portal) Where the e-way is not generated by registered person and the goods are handed over to the transporter, for transportation of goods by road, the registered person shall furnish the information relating to the transporter in **Part B of FORM GST EWB-01** on the common portal and the E-way Bill shall be generated by the transporter on the said portal on the basis of the information furnished by the registered person in **Part A of FORM GST EWB-01**. In a nutshell, E-way Bill is to be generated by the consignor or consignee himself (if the transportation is being done in own/hired conveyance or by railways by air or by Vessel) or the transporter (if the goods are handed over to a transporter for transportation by road). Where neither the consignor nor consignee generates the E-way Bill and the value of goods is more than ₹50,000/- it shall be the responsibility of the transporter to generate it. In case the goods to be transported are supplied through an E-commerce Operator, the information in Part A may be furnished by such E-commerce Operator.

Q11. Who has to generate E-way Bill in case of transportation of goods by rail, air or vessel?

Ans. The registered person, being the supplier or recipient, is required to generate E-way Bill by furnishing the information in part B of the E-way bill viz transport document number (Goods Receipt Number or Railway Receipt Number or Airway Bill Number or Bill of Lading Number).

Q12. Who causes movement of goods?

Ans. The movement of goods can be caused by the supplier, if he is registered and he undertakes to transport the goods. In case the recipient undertakes to transport or arrange transport, the movement would be caused by him. In case the goods are supplied by an unregistered supplier to a recipient who is registered, the movement shall be said to be caused by such recipient if the recipient is known at the time of commencement of the movement of goods.

Q13. Is there any time gap allowed between furnishing information in Part-A and updating transport details in Part-B?

Ans. On furnishing of Part-A, a unique number will be generated on the portal which shall be valid for 72 hours for updation of **Part B** of **FORM GST EWB-01**.

Q14. Is it mandatory to generate E-way Bill? What if not done? What are the consequences for non-issuance of E-way Bill?

Ans. It is mandatory to generate E-way Bill in all cases where the value of consignment of goods being transported is more than ₹50,000/- and it is not otherwise exempted in terms of Rule 138(14) of CGST Rules, 2017. Further no E-way Bill is required to be generated in respect of goods being transported by a non-motorised conveyance; goods being transported from the port, airport, air cargo complex and land customs station to an inland container depot or a container freight station for clearance by Customs; and in respect of movement of goods within such areas as are notified under Rule 138(14)(d) of the SGST Rules, 2017 of the concerned State. If E-way Bills, wherever required, are not issued in accordance with the provisions contained in Rule 138, the same will be considered as contravention of rules. As per Section 122(1)(xiv) of CGST Act, 2017, a taxable person who transports any taxable goods without the cover of specified documents (E-way Bill is one of the specified documents) shall be liable to a penalty of ₹10,000/- or tax sought to be evaded (wherever applicable) whichever is greater. Moreover, as per Section 129(1) of CGST Act, 2017, where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the Rules made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure.

Q15. Is E-way Bill required when the goods are supplied by an unregistered supplier?

Ans. Where the goods are supplied by an unregistered supplier to a recipient who is registered, the movement shall be said to be caused by such recipient if

the recipient is known at the time of commencement of movement of goods. The recipient shall be liable to generate E-way Bill. There could be three possibilities as below: Situation Movement caused by Impact Recipient is unknown Unregistered person E-way Bill not required; However, the supplier has an option to generate E-way Bill under “citizen” option on the E-way Bill portal Recipient is known and is unregistered Unregistered person E-way Bill not required; However, the supplier has an option to generate E-way Bill under “citizen” option on the E-way Bill portal Recipient is known and is registered Deemed to be caused by the Registered recipient Recipient to generate E-way Bill.

Q16. What are the reasons for transportation to be furnished in the part A of E-way Bill?

Ans. E-way Bill is to be issued for movement of goods, irrespective of the fact whether the movement of goods is caused by reasons of supply or otherwise. The format for **GST EWB-01** lists ten reasons for transportation viz Supply, Export or Import, Job Work, SKD or CKD, Recipient not known, Line Sales, Sales Return, Exhibition or fairs, for own use and Others, one of which can be chosen.

Q17. Whether an unregistered transporter need to compulsorily enroll on the E-way bill system?

Ans. Yes, in terms of Rule 58 of the CGST Rules, 2017 read with Section 35(2) of the CGST Act, 2017, a transporter and operator of godown or warehouse, if not already registered, shall have to enrol on the common portal by filing **GST ENR-01**. The transporter enrolled in any one State or UT shall be deemed to be enrolled in other States as well. The unregistered transporter gets a transporter Id when he enrolls on the system.

Q18. What is invoice reference number?

Ans. A registered person may obtain an Invoice Reference Number from the common portal by uploading, on the said portal, a tax invoice issued by him in **FORM GST INV-1** and produce the same for verification by the proper officer in lieu of the tax invoice and such number shall be valid for a period of thirty days from the date of uploading. In the above case, the registered person will not have to upload the information in **Part A of FORM GST EWB-01** for generation of E-way Bill and the same shall be auto-populated by the common portal on the basis of the information furnished in **FORM GST INV-1**.

Q19. Can the E-way Bill be cancelled if the goods are not transported after generation of E-way Bill?

Ans. Where an E-way Bill has been generated, but goods are either not being transported or are not being transported as per the details furnished in the E-way Bill, the E-way Bill may be cancelled electronically on the common portal, either directly or through a Facilitation Centre notified by the Commissioner, within 24 hours of generation of the E-way Bill. However, if the e-way has been verified in transit in accordance with the provisions of Rule 138B of the CGST Rules, 2017, the same cannot be cancelled.

Q20. What happens if the conveyance is changed en-route?

Ans. Where the goods are transferred from one conveyance to another, the consigner or the recipient, who has provided information in **Part-A** of the **FORM GST EWB-01**, or the transporter shall, before such transfer and further movement of goods, update the details of conveyance in the E-way Bill on the common portal in **FORM GST EWB-01**. Any transporter transferring goods from one conveyance to another in the course of transit shall, before such transfer and further movement of goods, update the details of the conveyance in the E-way Bill on the common portal in **FORM GST EWB-01**.

Q21. Can the transporter assigned by a supplier or recipient further re-assign the E-way Bill to another transporter?

Ans. The consignor or the recipient, who has furnished the information in Part-A, or the transporter, may assign the E-way Bill number to another registered or enrolled transporter for updating the information in Part-B for further movement of consignment. However once the details of the conveyance have been updated by the transporter in **Part B** of **FORM GST EWB-01**, the consignor or recipient, as the case maybe, who has furnished the information in **Part-A** of **FORM GST EWB-01** shall not be allowed to assign the E-way Bill number to another transporter.

Q22. How does transporter come to know that particular E-way Bill has been assigned to him?

Ans. The transporter comes to know the EWBS assigned to him by the taxpayers for transportation, in one of the following ways: The transporter can go to reports section and select ‘EWB assigned to me for trans’ and see the list. The transporter can go to ‘Update Vehicle No’ and select ‘Generator GSTIN’ option and enter taxpayer GSTIN, who has assigned or likely to assign the EWBS to him. The taxpayer can contact and inform the transporter that the particular EWB is assigned to him.

Q23. How does the supplier or recipient come to know about the E-way Bills generated on his GSTIN by other person/party?

Ans. The supplier or the recipient can view the same from either of the following options: He can view on his dashboard, after logging on to the system; He can go to reject option and select date and see the E-way Bills generated on his GSTIN by others. He can go to report section and see the ‘EWBs by other parties’. He will get one SMS everyday indicating the total E-way Bill activities on his GSTIN.

Q24. How does the taxpayer become transporter in the E-way Bill system?

Ans. To change his position from supplier or recipient to transporter, the taxpayer has to select the option ‘Register as Transporter’ under registration and update his profile. Once it is done, the system changes tax payer as transporter.

Q25. How many times can Part-B or Vehicle number be updated for an E-way Bill?

Ans. The Part-B (Vehicle details) can be updated as many times as one wants for movement of goods to the destination. However, the updating should be done within the validity period and at any given point of time, the vehicle number updated should be that of the one which is actually carrying the goods. The validity of E-way Bill is not recalculated for subsequent entries in Part-B.

Q26. What is the concept of acceptance of E-way Bill by the recipient?

Ans. The details of E-way Bill generated shall be made available to the - (a) supplier, if registered, where the information in **Part A** of **FORM GST EWB-01** has been furnished by the recipient or the transporter; or (b) recipient, if registered, where the information in **Part A** of **FORM GST EWB-01** has been furnished by the supplier or the transporter, on the common portal, and the supplier or the recipient, as the case maybe, shall communicate his acceptance or rejection of the consignment covered by the E-way Bill. In case, the person to whom the information in Part-A is made available, does not communicate his acceptance or rejection within seventy-two hours of the details being made available to him on the common portal, it shall be deemed that he has accepted the said details.

Q27. What happens if multiple consignments are transported in one conveyance?

Ans. Where multiple consignments are intended to be transported in one conveyance, the transporter may indicate the serial number of E-way Bills generated in respect of each such consignment electronically on the common portal and a consolidated E-way Bill in **FORM GST EWB-02** may be generated by him on the common portal prior to the movement of goods. The various situations where multiple consignments are transported in one conveyance may be as under: Situation Impact Multiple consignments in one conveyance; all more than ₹50000/-; and the consignor has generated E-way Bill for all the consignments. A consolidated E-way Bill in **FORM GST EWB-2** may be generated on the common portal prior to the movement Multiple consignments in one conveyance; all more than ₹50000/-; but the consignor has not generated E-way Bill Transporter shall generate individual **FORM GST EWB-01** and may also generate consolidated E-way Bill **FORM GST EWB-02** Multiple consignments in one conveyance; a few less than ₹50000/- and E-way Bill not generated for these consignments (less than ₹50,000/-) Transporter shall generate **FORM GST EWB-01** (for consignments of value more than ₹50000/-) and may generate E-way Bill for consignments less than ₹50,000/-; and may also generate consolidated E-way Bill **FORM GST EWB-02**.

Q28. Many distributors transport goods of multiple customers and know the details of the requirement only at the time of delivery? What to do if name of the consignee is not known?

Ans. Such movement of goods would be for reasons other than supply. The reasons for transportation will have to be mentioned in the Part A of the E-way Bill.

Q29. What is the validity period of E-way Bill?

Ans. The validity of E-way Bill remains valid for a time period which is based on distance to be travelled by the goods as below: Distance Validity Period Less than 100 Km One day For every 100 km thereafter Additional one day

Q30. What is a day for E-way Bill? How to count hours/day in E-way Bill?

Ans. This has been explained in Rule 138(10) of CGST Rules, 2017. The “relevant date” shall mean the date on which the E-way Bill has been generated and the period of validity shall be counted from the time at which the E-way Bill has been generated and each day shall be counted as twenty-four hours.

Q31. Can the validity period of E-way Bill be extended?

Ans. In general No. However, Commissioner may extend the validity period only by way of issuance of a notification for certain categories of goods which shall be specified later. Also, if under circumstances of an exceptional nature, the goods cannot be transported within the validity period of the E-way Bill, the transporter may generate another E-way Bill after updating the details in **Part B** of FORM GST EWB-01.

Q32. What is the validity period of consolidated E-way Bill?

Ans. A consolidated E-way Bill has no separate validity and will be governed by the underlying validity period of the individual E-way Bills.

Q33. Can a E-way Bill be modified?

Ans. No. Part-A of an E-way Bill once generated, cannot be modified. However, Part-B can be updated as many times as the transport vehicle is changed within the overall validity period. The validity period is not changed when the Part-B is updated.

Q34. Is it necessary to feed information and generate E-way Bill electronically in the common portal?

Ans. Yes. The facility of generation and cancellation of E-way Bill is also available through SMS.

Q35. What is EBN? Who gives it?

Ans. Upon generation of the E-way Bill on the common portal, a unique E-way Bill number (EBN) shall be made available to the supplier, the recipient and the transporter on the common portal. The common portal will generate the EBN.

Q36. Whether E-way Bill generated in one State is valid in another State?

Ans. Yes it is valid throughout the country.

Q37. What if one consignment, is transported in CKD/SKD condition in multiple transport vehicles?

Ans. As per Rule 55(5) of the CGST Rules, 2017, in such cases, the supplier shall issue the complete invoice before dispatch of the first consignment and shall issue a delivery challan for each of the subsequent consignments, giving reference of the invoice Each such subsequent consignment shall be accompanied by copies of the corresponding delivery challan along with a duly certified copy

of the invoice; and the original copy of the invoice shall be sent along with the last consignment. Every consignment shall also be accompanied with a separate E-way Bill.

Q38. Can a transport vehicle be intercepted?

Ans. Yes, the Commissioner or an officer empowered by him in this behalf may authorise the proper officer to intercept any conveyance to verify the E-way Bill or the E-way Bill number in physical form for all inter-State and intra-State movement of goods. Physical verification of a specific conveyance can also be carried out by any officer, on receipt of specific information on evasion of tax, after obtaining necessary approval of the Commissioner or an officer authorised by him in this behalf.

Q39. Are there any checks and balances on excessive use of power of interception of vehicles and inspection of goods?

Ans. A summary report of every inspection of goods in transit shall be recorded online on the common portal by the proper officer in **Part A of FORM GST EWB-03** within twenty-four hours of inspection and the final report in **Part B of FORM GST EWB-03** shall be recorded within three days of such inspection. Once physical verification of goods being transported on any conveyance has been done during transit at one place within the State or in any other State, no further physical verification of the said conveyance shall be carried out again in the State, unless a specific information relating to evasion of tax is made available subsequently. Where a vehicle has been intercepted and detained for a period exceeding thirty minutes, the transporter may upload the said information in **FORM GST EWB-04** on the common portal.

Q40. What is the responsibility of transporters, owners or operators of godown or warehouse?

Ans. As per Section 35(2) of the CGST Act, 2017, every owner or operator of warehouse or godown or any other place used for storage of goods and every transporter, irrespective of whether he is a registered person or not, shall maintain records of the consigner, consignee and other relevant details of the goods in such manner as prescribed in Rule 58 of the CGST Rules, 2017.

Q41. What has to be done by the transporter if consignee refuses to take goods or rejects the goods?

Ans. The transporter can get one more E-way Bill generated with the help of supplier or recipient by indicating supply as 'Sales Return' and with relevant document details and return the goods to supplier.

Q42. What are the documents to be carried by the person in charge of a conveyance while transporting goods?

Ans. The person in charge of a conveyance shall carry - (a) the invoice or bill of supply or delivery challan, as the case may be; and (b) a copy of the E-way Bill or the E-way Bill number, either physically or mapped to a Radio Frequency Identification Device (RFID) embedded on to the conveyance in such manner as may be notified by the Commissioner.

Q43. What are RFIDs?

Ans. RFIDs are Radio Frequency Identification Device used for identification. The Commissioner may require RFIDs to be embedded on to the conveyance in such manner as may be notified. The Commissioner shall get RFID readers installed at places where the verification of movement of goods is required to be carried out and verification of movement of vehicles shall be done through such device readers where the E-way Bill has been mapped with the said device.

Q44. Is it necessary that the E-way Bill has to be mapped to a RFID device?

Ans. It is optional. However, The Commissioner may, by notification, require a class of transporters to obtain a unique Radio Frequency Identification Device and get the said device embedded on to the conveyance and map the E-way Bill to the Radio Frequency Identification Device prior to the movement of goods.

Q45. Are there any special situations where E-way Bill needs to be issued even if the value of the consignment is less than ₹50,000/-?

Ans. As per the provisos to Rule 138(1) of CGST Rules, 2017, where goods are sent by a principal located in one State to a job worker located in any other State, the E-way Bill shall have to be generated by the principal irrespective of the value of the consignment. Also, where handicraft goods are being transported from one State to another by a person who has been exempted from the requirement of obtaining registration, the E-way Bill shall have to be generated by the said person irrespective of the value of the consignment.

Q46. Can a tax payer update his business name, address, mobile number or email id in the E-way Bill system?

Ans. No. EWB System will not allow tax payer to update these details directly. The taxpayer has to change these details at GST Common portal, from where it will be updated in EWB system.

Q47. What are the modes of E-way Bill generation?

Ans. The E-way Bill can be generated through multiple modes viz the common portal for E-way Bill or Using SMS based facility or Android App or Site-to-Site integration or GSP (Goods and Services Tax Suvidha Provider). For using the SMS facility, a person has to register the mobile numbers through which he wants to generate the E-way Bill on the E-way Bill system. For using Android App, the tax payer has to register the EMEI numbers of the mobiles through which he wants to generate the E-way Bill on the E-way Bill system. For site to site integration, the APIs of the E-way Bill system have to be used for integrating the system.

Q48. What is the role of sub-users in E-way Bill system? How can sub-users be activated?

Ans. A taxpayer can create sub-users in the E-way Bill system and assign specific roles to them like generation of EWB or rejection or report generation

activities based on requirements. This helps the large firms with multi locations/shifts to distribute work.

Q49. Whether information submitted for E-way Bill can be used for filing GST Returns?

Ans. The information furnished in the Part-A of E-way Bill shall be made available to the registered supplier on the common portal who may utilize the same for furnishing details in GSTR-1.

Q50. Whether individuals while shifting their personal belongings will have to generate E-way Bill?

Ans. No. Used personal and household effects are specifically exempted from the requirement of E-way Bill as explained in Q8 above.

FAQ: MSME

Question 1: What is GST?

Answer: GST stands for Goods and Services Tax, which is levied on supply of goods or services. “Supply” is a legal term which has very broad sweep and various types of economic activities are covered by it. For example, sale of goods is a type of supply.

Question 2: On what supply is GST levied?

Answer: GST is levied on all types of supplies which are - (i) made for a consideration and (ii) are for the purpose of furtherance of business. There are some exceptions when these conditions are not met, yet supply is considered to have been made, for example, interstate stock transfer of goods even without consideration or importation of services even if not in the furtherance of business.

Question 3: Will GST be levied on all goods or services or both?

Answer: No, GST will not be levied on alcohol for human consumption. GST on Crude, Motor Spirit (Petrol), High Speed Diesel, Aviation Turbine Fuel and Natural Gas will be levied with effect from a date to be decided by the GST Council. Electricity and sale of land and building are exempted from levy of GST. Securities are neither goods nor services for the purposes of the CGST Act, 2017 and therefore supply of securities is not taxable.

Question 4: How many types of GST will be levied on different kinds of supply of goods or services?

Answer: GST is a dual levy to be simultaneously levied by both Centre and State. On every supply within a State/Union Territory without legislature (intra-State supply), GST levied will have two components - Central Tax and State Tax/Union Territory Tax popularly called CGST and SGST/UTGST. On every supply across States (inter-State), Integrated Tax popularly called IGST will be levied. The rate of CGST and SGST/UTGST would be equal. IGST would be levied at a rate equal to the sum total of CGST and SGST/UTGST.

Question 5: Whether a registered person will have to approach two authorities - Centre as well as State for various permissions, audit etc. under the Act?

Answer: No, a registered person will have to approach only one tax authority for all practical purposes. Each registered person would have one tax administration office, either of the Centre or of the State. Legal provisions (called cross empowerment) have been made to ensure that one officer can discharge all functions under CGST, SGST and IGST Act. The registered person would be informed of the tax administration concerned with him. A single registration is granted for the purposes of CGST, SGST/UTGST and IGST.

Question 6: What is destination based consumption tax?

Answer: When a supply originates in one State and is consumed in another State, tax can accrue to either of the two States. In a destination based consumption tax, taxes accrue to the State where the supply is consumed. In origin based tax, the tax accrues to the State where the supply originates. GST is basically a destination based consumption tax. For example, if a car is manufactured in Chennai but is purchased eventually by a consumer in Mumbai, SGST (or the State component in IGST) would accrue to Maharashtra and not to Tamil Nadu.

Question 7: Who will pay GST?

Answer: GST is generally paid by the supplier, i.e. the one who makes the supply after collecting it from the recipient. The supplier collects GST from the recipient of the supply as part of the consideration. However, in a few exceptional cases, the recipient, would be liable to pay GST to the Government on reverse charge basis.

Question 8: What is Input Tax Credit?

Answer: A person doing business will be purchasing goods/ availing services for making further supplies in the course or furtherance of business. When such purchases are made by him, tax would have been charged by his supplier and collected from him. Since tax is collected from him, he can avail credit of the tax paid by him to his supplier (that is to say, he can use this amount for making payment of tax due from him on further supply made by him). This is known as input tax credit for the recipient.

Question 9: Is GST going to increase compliance burden on the trade?

Answer: No. On the contrary GST will result in streamlining of processes and reduction of compliance burden. GST is a simple tax which uniformly applies across the country. GST has been designed to have minimal human interface and would be implemented through strong IT platform run by GSTN. Also, in the earlier regime there were multiple compliances required for taxes such as Central Excise, Service Tax, VAT etc. with Centre and State. GST makes it single and uniform compliance for indirect taxes across the country. Under GST, there is just one interface with no face-to-face meeting between taxpayers and tax authorities and practically every activity will be done online.

Question 10: What is the threshold for registration in GST?

Answer: A person having business which has aggregate turnover of more than ₹20 lakhs calculated for a given PAN across the country would need to register under GST. There are some exceptions to this rule as mentioned in Section 24 of the CGST Act, 2017. Aggregate turnover is defined in Section 2(6) of the said Act. For example, assume that a taxable person's business is in many States on same PAN. All supplies are below ₹10 lakhs but collectively they are above ₹20 lakhs. He would be required to register under GST.

Question 11: Is an agriculturist liable to registration?

Answer: No. An agriculturist, to the extent of supply of produce out of cultivation of land, is not liable to registration.

Question 12: What is the most important precaution to be taken to avail the facility of threshold exemption?

Answer: An MSME availing threshold exemption should not make any inter-State supply whatsoever, though the MSME may receive supply from other States. They may, however, make inter-State supply of services.

Question 13: I am engaged exclusively in the business of supplying goods or services which are exempt from GST. Am I liable for registration?

Answer: No.

Question 14: How do I make supply, if I have not applied for registration?

Answer: You should apply for registration at the earliest on the GST common portal and obtain Application Reference Number (ARN). You need not disrupt your business and may continue to make supplies on invoices without GSTIN. The application for registration must be made within 30 days of the turnover crossing ₹20 lakhs or attracting any of the conditions mentioned in Section 24 of the CGST Act, 2017. After registration, you can issue revised invoices as permitted under Section 31(3)(a) of the said Act. These supplies should be shown in the return and taxes paid on them.

Question 15: How can an application for fresh registration be made under GST? Within what time will registration be granted?

Answer: Application for fresh registration is to be made electronically on the GST common portal (www.gst.gov.in) in **FORM GST REG-01**. If the details and documents are in order, registration will be granted within 3 working days, except in cases where an objection has been raised within this period in which case registration will be granted within a maximum period of 17 days.

Question 16: I was registered under VAT but not under Central Excise. Do I need to apply for new registration?

Answer: No. Existing registrants of VAT having valid PAN have been issued Provisional ID and password. If you have not received provisional ID, please contact your tax administration to obtain the same. This Provisional Identity Number (PID) would eventually be your GSTIN, when the migration process is completed.

Question 17: If I have obtained provisional GSTIN (PID), can I use the same on the invoice to make supply without waiting for final GSTIN?

Answer: Provisional GSTIN (PID) would eventually be your final GSTIN. The number would remain the same. Yes, you can use this PID on invoice for making supply without waiting for final GSTIN.

Question 18: I am a SME selling printed books after printing and have a turnover of twenty-five lakhs rupees per annum. I print only Children's picture, drawing or colouring books which are exempt from GST. Do I need to register?

Answer: No. A person dealing with only exempted supplies is not liable to registration irrespective of his turnover. Section 23(1)(a) of the CGST Act, 2017 refers.

Question 19: If I register voluntarily though my turnover is less than ₹20 lakhs, am I required to pay tax on supplies made post registration?

Answer: Yes. If you obtain voluntary registration despite the turnover being below ₹20 lakhs, you would be treated as a normal taxable person and would need to pay tax on supplies even if they are below the threshold for registration. You will also be entitled to take input tax credit.

Question 20: How will taxpayer get the certificate of registration?

Answer: The taxpayer can himself download the certificate of registration online from the GST common portal (www.gst.gov.in)

Question 21: Can registration particulars once furnished be amended?

Answer: Yes, request for amendment has to be made online. All amendments in registration particulars, except some core fields, can be amended in the system without the intervention of any official by merely filing the details of the amendment. Also for some amendments, approval may be needed. Examples of fields which require approval are - legal name of business, address of the place of business and addition, deletion or retirement of partners or directors etc. responsible for day to day affairs of the business. Examples of fields which can be amended without any approval are - change of telephone number, email ID, bank account etc.

Question 22: In which State will a person be registered?

Answer: A person liable to be registered has to apply for registration in each State from where he makes or intends to make outward supplies under GST. Within each State, generally only one registration is required to be obtained.

Question 23: Are all manufacturers necessarily required to be registered under GST?

Answer: No, there is no provision requiring that a manufacturer irrespective of threshold or nature of supply to register himself under GST. For example, a manufacturer dealing only in exempted goods or where his turnover is only intra-State and below ₹20 lakhs, is not required to be registered.

Question 24: Who is liable to issue a ‘tax invoice’ and how many copies are required to be issued?

Answer: Every registered person (other than a registered person availing the benefit of composition or a registered person supplying exempted goods or services) supplying goods or services or both is required to issue ‘tax invoice’. Invoice should be issued in triplicate in case of supply of goods. The original copy is meant for buyer, duplicate for transporter and triplicate copy for record of the seller. A registered person under composition scheme or supplying exempted goods or services shall issue a bill of supply instead of a tax invoice

Question 25: What details are to be contained in a ‘tax invoice’?

Answer: The tax invoice shall contain details as specified in the rule in this regard. The key details specified in the rules are - name, address and GSTIN of the supplier and the recipient (if registered), a unique number of the invoice and the date of issue, description of goods, value of goods, rate of tax, amount of tax and signature.

Question 26: Is it necessary to issue invoices even if the value of transaction is very low?

Answer: A registered person may not issue a tax invoice if the value of the goods/services supplied is less than ₹200/-, subject to the condition that the recipient is not a registered person and the recipient does not ask for such invoice (if the recipient asks for the invoice then the same must be issued, irrespective of the value). In such cases, the registered person shall issue a consolidated invoice at the end of the day in respect of all such supplies.

Question 27: When should a tax invoice be issued for goods?

Answer: Tax invoice for goods shall be issued on or before the time of removal/delivery of goods. In case of continuous supply of goods, it shall be issued on or before the time of issue of statement of accounts/receipt of payment.

Question 28: In case of supply of exempt goods or when tax is paid under Composition Scheme, is the registered person required to issue a tax invoice? How a bill of supply is different from a tax invoice?

Answer: No. In such cases, the registered person shall issue a Bill of Supply and not a tax invoice. The bill of supply is different from a tax invoice both in name and details contained. While most of the details to be provided in a bill of supply are similar to tax invoice, the bill of supply does not contain the rate of tax and the amount of tax charged as the same cannot be collected.

Question 29: If goods are transported in semi-knocked down condition, when shall the complete invoice be issued?

Answer: When goods are transported in semi-knocked down condition, the complete invoice shall be issued before dispatch of the first consignment. Delivery challan shall be issued for subsequent consignments. Original copy of invoice shall be sent along with the last consignment.

Question 30: *Is there any scheme for payment of taxes under GST for small traders and manufacturers?*

Answer: Yes. Composition levy is an alternative method of levy of tax designed for small taxpayers whose turnover is up to ₹75 lakhs (₹50 lakhs for special category States, excluding J&K and Uttrakhand). It is a kind of turnover tax. The objective of the scheme is to provide a simplified tax payment regime for the small taxpayers. The scheme is optional and is mainly for small traders, manufacturers and restaurants.

Question 31: *What is the eligibility criterion for opting for composition levy? Which are the Special Category States in which the turnover limit for Composition Levy for CGST and SGST purpose shall be ₹50 lakhs?*

Answer: Composition scheme is a scheme for payment of GST available to small taxpayers whose aggregate turnover in the preceding financial year did not cross ₹75 Lakhs. In the case of 9 special category States, the limit of turnover is ₹50 Lakhs in the preceding financial year, namely - Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura and Himachal Pradesh. However, if you are a manufacturer of ice-cream, pan masala or tobacco or tobacco products or if you are a service provider other than a restaurant, you are not eligible for composition scheme. You can however make supply of exempt services including service by way of existing deposits, loans or advances in so far as the consideration is represented by way of interest or discount.

Question 32: *What is the form in which an intimation to pay tax under the composition scheme needs to be made by the taxable person?*

Answer: Composition scheme is optional and intimation that option has been availed should be made electronically in **FORM GST CMP-01** by the migrating taxable person. A person who has already obtained registration and opts for payment under composition levy subsequently needs to give intimation electronically in **FORM GST CMP-02**.

Question 33: *What is the rate of tax under Composition levy for a manufacturer?*

Answer: Composition rate for manufacturers is 2% (1% CGST and 1% SGST).

Question 34: *Are all manufacturers eligible for composition scheme?*

Answer: A manufacturer is eligible to avail composition scheme except manufacturers:

- (a) whose aggregate turnover in the preceding financial year crossed ₹75 lakhs;
- (b) who have purchased goods or services from unregistered suppliers unless they have paid GST on such goods or services on reverse charge basis;
- (c) who make any inter-State outward supplies of goods;
- (d) who make supply of goods through an electronic commerce operator;
- (e) who manufacture the following goods.

| Sl. No. | Tariff Head | Description |
|---------|-------------|--|
| 1 | 2105 00 00 | Ice cream and other edible ice, whether or not containing cocoa Ice cream and other edible ice, whether or not containing cocoa |
| 2 | 2106 90 20 | Pan masala |
| 3 | 24 | Tobacco and manufactured tobacco substitutes |

Question 35: When will a registered person have to pay tax?

Answer: A registered person will have to pay GST on monthly basis on or before 20th of the succeeding month and if he has opted for composition levy he will have to pay GST on a quarterly basis on or before the 18th day of the month after the end of the quarter.

Question 36: A person availing composition scheme during a financial year crosses the turnover of ₹75 Lakhs/₹50 Lakhs during the course of the year i.e. say, he crosses the turnover of ₹75 Lakhs/₹50 Lakhs in December? Will he be allowed to pay tax under composition scheme for the remainder of the year i.e. till 31st March?

Answer: No. The option to pay tax under composition scheme shall lapse from the day on which his aggregate turnover during the financial year exceeds ₹75 Lakhs/50 Lakhs. Once he crosses the threshold, he shall file an intimation for withdrawal from the scheme in **FORM GST CMP-04** within seven days of the occurrence of such event. He shall also furnish a statement in **FORM GST ITC-01** containing details of the stock of inputs and capital goods as per the rules in this regard. This would help him join the input tax credit chain and avail credit of tax that he has paid on his inputs/goods lying in stock on the day he crosses over.

Question 37: For the purpose of availing composition how will aggregate turnover be computed for the purpose of composition?

Answer: Aggregate turnover shall be computed on the basis of turnover on all India basis. It includes aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-State supplies of persons having the same Permanent Account Number but excludes GST and cess.

Question 38: Can a person who has opted to pay tax under the composition scheme avail Input Tax Credit on his inward supplies?

Answer: No, a taxable person opting to pay tax under the composition scheme is out of the credit chain. He cannot take input tax credit on the supplies received.

Question 39: How is a manufacturer under the composition scheme required to bill his supply? Can a registered person, who purchases goods from a composition manufacturer take input tax credit?

Answer: A manufacturer opting to pay tax under the composition scheme cannot issue a tax invoice to his buyer but would issue a Bill of Supply. He

cannot collect any tax supplies made by him on his Bill of Supply and is required to show only the price charged for the supply. Consequently, the registered person buying goods from a composition manufacturer cannot take input tax credit.

Question 40: How would a manufacturer under the composition scheme who receives inputs or input services from an unregistered person pay GST? What will be the tax rate if the purchase is from a person availing composition?

Answer: Till September, 2019 no tax is required to be paid by manufacturer under composition scheme who receives inputs services from unregistered person.

Question 41: In case a person has registration in multiple States, can he opt for payment of tax under composition levy only in one State and not in other States?

Answer: No. An intimation that composition scheme has been availed in one State shall be deemed to be an intimation in respect of all other places of business registered on the same Permanent Account Number in other States.

Question 42: What is the effective date of composition levy?

Answer: There can be three situations with respective effective dates as shown below:

| Situation | Effective date of composition levy |
|--|--|
| Persons who have been granted provisional registration and who opt for composition levy (Intimation is filed under Rule 3(1) in FORM GST CMP-01) | 1st July, 2017. |
| Persons opting for composition levy at the time of making application for new registration in the same registration application itself (The intimation under Rule 3(2) in FORM GST REG-01) | Effective date of registration; Intimation shall be considered only after the grant of registration and his option to pay tax under composition scheme shall be effective from the effective date of registration. |
| Persons opting for composition levy after obtaining registration (The intimation is filed under Rule 3(3) in FORM GST CMP-02). | The beginning of the next financial year. |

Question 43: What is the validity of composition levy?

Answer: The option exercised by a registered person to pay tax under the composition scheme shall remain valid so long as he satisfies all the conditions specified in the law. The option is not required to be renewed.

Question 44: *What are the other compliances which a provisionally registered person opting to pay tax under the composition levy need to make?*

Answer: Such person is required to furnish the details of stock, including the inward supply of goods received from unregistered persons, held by him on the 30th day of June, 2017 electronically, in **FORM GST CMP-03**, on the common portal, either directly or through a Facilitation Centre notified by the Commissioner, within a period of sixty days from the date on which the option for composition levy is exercised or within such further period as may be extended by the Commissioner in this behalf. Further, if on 1st July, 2017 such person holds in stock goods that have been received from outside the State or imported from outside the Country, he is not eligible to opt for composition scheme.

Question 45: *Can a person paying tax under composition levy, withdraw voluntarily from the scheme?*

Answer: Yes, the registered person who intends to withdraw from the composition scheme can file a duly signed or verified application in **FORM GST CMP-04**. In case he wants to claim input tax credit on the stock of inputs and inputs contained in semi-finished or finished goods held in stock by him on the date of withdrawal, he is required to furnish a statement in **FORM GST ITC-01** containing the details of such stock within a period of thirty days of withdrawal.

Question 46: *Will withdrawal intimation in any one place be applicable to all places of business?*

Answer: Yes. Any intimation or application for withdrawal in respect of any place of business in any State or Union territory, shall be deemed to be an intimation for withdrawal in respect of all other places of business registered on the same Permanent Account Number.

Question 47: *Can a person paying tax under composition scheme make exports or supply goods to SEZ?*

Answer: No, because exports and supplies to SEZ from Domestic Tariff Area are treated as inter-State supply. A person paying tax under composition scheme cannot make inter-State outward supply of goods.

Question 48: *Can a manufacturer under composition scheme do job-work for other manufacturers?*

Answer: Job-work is a supply of service and not eligible for composition scheme. Any manufacturer or processor who wishes to carry out job-work for others would not be eligible for composition scheme.

Question 49: *How can tax payments be made by a registered person under the composition scheme?*

Answer: A registered person under composition scheme would not have input tax credit and he would make all his tax payments by debit in the electronic cash ledger maintained at the common portal. The taxpayer can deposit cash anytime in the electronic cash ledger at his convenience. The payment in

electronic cash ledger can be made through all modes available like e-payment through net-banking, credit card and debit card, over the counter of banks, RTGS or NEFT.

Question 50: Does a registered person under the composition scheme pay his taxes every month?

Answer: No, registered person under the composition scheme will not pay taxes every month. He would file return and pay taxes on a quarterly basis i.e. for each quarter of the financial year. Due date for payment of tax for them would be on or before the 18th day after the end of such quarter.

Question 51: What are the accounts a manufacturer under the composition scheme needs to maintain?

Answer: Rules on Accounts and Records provide details of the accounts to be maintained. They are maintained under normal course of business by any small manufacturer. The details to be maintained in accounts *inter alia* consists of goods supplied, inward supplies attracting reverse charge, invoices, bills of supply, delivery challans, credit notes, debit notes, receipt vouchers, payment vouchers, refund vouchers etc.

Question 52: Does a manufacturer under the composition scheme need to maintain details of accounts of every supply received and made?

Answer: No, the requirement to maintain detailed accounts of stocks in respect of goods received and supplied, work in progress, lost, destroyed etc. does not apply to a manufacturer under the composition scheme. Such a person shall maintain a true and correct account of production or manufacture of goods, inward and outward supply of goods, stock of goods, tax payable and paid.

Question 53: Does a manufacturer under the composition scheme needs to maintain account of inputs tax credit?

Answer: A manufacturer under the composition scheme need not maintain account of input tax, input tax credit claimed etc. as he is neither allowed to avail of input tax credit nor can he issue an invoice showing tax using which buyer can avail input tax credit.

Question 54: Can a manufacturer under the composition scheme maintain his accounts manually? And can he issue his bill of supply manually?

Answer: Yes, a manufacturer under the composition scheme can maintain his accounts in registers serially numbered and also issue bill of supply manually following the conditions specified in rules in this regard.

Question 55: Whether a registered person under the composition scheme needs to learn HSN code of any input purchases and output supplies?

Answer: No, a registered person under the composition scheme would not need to specify HSN code of their products in bill of supply or return.

Question 56: What return a registered person under the composition scheme needs to file and at what frequency?

Answer: A registered person under the composition scheme of GST is required to furnish quarterly return called **GSTR-4** between the 11th day and 18th day of the month succeeding the quarter.

Question 57: What details are required to be furnished in the return to be filed by the registered person under the composition scheme?

Answer: GSTR-4 may be referred for details required to be filled in the return. It is a very simple return containing consolidated details of outward supplies, details of import of services or other supplies attracting reverse charge.

Question 58: What is frequency of furnishing details of outward supplies in GSTR-1 for small taxpayers who are not under composition scheme?

Answer: GSTR-1 is to be furnished quarterly for person with aggregate turnover of ₹1.5 crore per annum. All others have to furnish GSTR-1 on monthly basis.

Note: Reference to CGST Act, 2017 includes reference to SGST Act, 2017 and UTGST Act, 2017 also.

Frequently Asked Questions on TCS

Law Committee GST Council Dated 28-9-2018

| Sr. No. | Questions | Answers |
|---------|---|--|
| 1 | What is Electronic Commerce? | As per Section 2(44) of the CGST Act, 2017, electronic Commerce means the supply of goods or services or both, including digital products over digital or electronic network. |
| 2 | Who is an e-commerce operator? | As per Section 2(45) of the CGST Act, 2017, electronic Commerce operator means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce |
| 3 | What is Tax Collection at Source (TCS)? | As per Section 52 of the CGST Act, 2017 the e-commerce operator, not being an agent, is required to collect an amount calculated at the rate not exceeding one per cent., as notified by the Government on the recommendations of the Council, of the net value of taxable supplies made through it, where the consideration with respect to such supplies is to be collected by such operator. The amount so collected is called as Tax Collection at Source (TCS). |
| 4 | What is the rate of TCS notified by Government? | Rate of TCS is 0.5% under each Act (i.e. the CGST Act, 2017 and the respective SGST Act/UTGST Act respectively) |

| Sr. No. | Questions | Answers |
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| | | and the same is 1% under the IGST Act, 2017. Notifications No. 52/2018-Central Tax and 2/2018-Integrated Tax, both dated 20th September, 2018 have been issued in this regard. Similar notifications have been issued by the respective State Governments also. |
| 5 | Is it mandatory for e-commerce operator to obtain registration? | Yes. As per Section 24(x) of the CGST Act, 2017, every electronic commerce operator has to obtain compulsory registration irrespective of the value of supply made by him. |
| 6 | Yes. As per Section 24(x) of the CGST Act, 2017, every electronic commerce operator has to obtain compulsory registration irrespective of the value of supply made by him. | As per Section 24(ix) of the CGST Act, 2017, every person supplying goods through an e-commerce operator shall be mandatorily required to register irrespective of the value of supply made by him. However, a person supplying services, other than supplier of services under Section 9(5) of the CGST Act, 2017, through an E-commerce platform are exempted from obtaining compulsory registration provided their aggregate turnover does not exceed INR 20 lakhs (or INR 10 lakhs in case of specified special category States) in a financial year. Government has issued the Notification No. 65/2017-Central Tax, dated 15th November, 2017 in this regard |
| 7 | Whether e-Commerce operator is required to obtain registration in every State/UT in which suppliers listed on their e-commerce platform are located to undertake the necessary compliance as mandated under the law? | As per the extant law, registration for TCS would be required in each State/UT as the obligation for collecting TCS would be there for every intra-State or inter-State supply. In order to facilitate the obtaining of registration in each State/UT, the e-commerce operator may declare the Head Office as its place of business for obtaining registration in that State/UT where it does not have physical presence. |

| Sr. No. | Questions | Answers |
|---------|---|---|
| 8 | Foreign e-commerce operator do not have place of business in India since they operate from outside. But their supplier and customers are located in India. So, in this scenario will the TCS provision be applicable to such ecommerce operator and if yes, how will foreign e-commerce operator obtain registration? | Where registered supplier is supplying goods or services through a foreign e-commerce operator to a customer in India, such foreign ecommerce operator would be liable to collect TCS on such supply and would be required to obtain registration in each State/UT. If the foreign e-commerce operator does not have physical presence in a particular State/UT, he may appoint an agent on his behalf. |
| 9 | Is it necessary for e-Commerce operators who are already registered under GST and have GSTIN, to have separate registration for TCS as well? | E-Commerce operator has to obtain separate registration for TCS irrespective of the fact whether e-Commerce operator is already registered under GST as a supplier or otherwise and has GSTIN. |
| 10 | What is meant by “net value of taxable supplies”? | The “net value of taxable supplies” means the aggregate value of taxable supplies of goods or services or both, other than the services on which entire tax is payable by the e-commerce operator, made during any month by a registered supplier through such operator reduced by the aggregate value of taxable supplies returned to such supplier during the said month |
| 11 | Whether value of net taxable supplies to be calculated at gross level or at GSTIN level? | The value of net taxable supplies is calculated at GSTIN level. |
| 12 | Is every e-commerce operator required to collect tax on behalf of actual supplier? | Yes, every e-commerce operator is required to collect tax where the supplier is supplying goods or services through e-commerce operator and consideration with respect to the supply is to be collected by the said e-commerce operator. |
| 13 | At what time should the e-commerce operator collect TCS? | TCS is to be collected once supply has been made through the e-commerce operator and where the business model is that the consideration is to be collected by the ecommerce operator |

| Sr. No. | Questions | Answers |
|---------|---|--|
| | | irrespective of the actual collection of the consideration. For example, if the supply has taken place through the ecommerce operator on 30th October, 2018 but the consideration for the same has been collected in the month of November, 2018, then TCS for such supply has to be collected and reported in the statement for the month of October, 2018. |
| 14 | Whether TCS to be collected on exempt supplies? | No, TCS is not required to be collected on exempt supplies |
| 15 | Whether TCS to be collected on supplies on which the recipient is required to pay tax on reverse charge basis? | No, TCS is not required to be collected on supplies on which the recipient is required to pay tax on reverse charge basis. |
| 16 | Whether TCS is to be collected in respect of supplies made by the composition taxpayer? | As per Section 10(2)(d) of the CGST Act, 2017, a composition taxpayer cannot make supplies through e-commerce operator. Thus, question of collecting TCS in respect of supplies made by the composition taxpayer does not arise |
| 17 | Whether TCS is to be collected on import of goods or services or both? | TCS is not liable to be collected on any supplies on which the recipient is required to pay tax on reverse charge basis. As far as import of goods is concerned since same would fall within the domain of Customs Act, 1962, it would be outside the purview of TCS. Thus, TCS is not liable to be collected on import of goods or services. |
| 18 | Is there any exemption on Gold, owing to the fact that rate of GST is only 3% and TCS on it would erode the margin for the seller? | No such exemption from TCS has been granted. |
| 19 | Whether payment of TCS through Input Tax Credit of e-operator for depositing TCS as per Section 52(3) of the CGST Act, 2017 is allowed? | No, payment of TCS is not allowed through Input Tax Credit of e-Commerce operator. |

| Sr. No. | Questions | Answers |
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| 20 | It is very common that customers of ecommerce companies return goods. How these sales returns are going to be adjusted? | An e-commerce company is required to collect tax only on the net value of taxable supplies made through it. In other words, value of the supplies which are returned (supply return) may be adjusted from the aggregate value of taxable supplies made by each supplier (i.e. on GSTIN basis). In other words, if two suppliers "A" and "B" are making supplies through an e-commerce operator, the "net value of taxable supplies" would be calculated separately in respect of "A" and "B". If the value of returned supplies is more than supplies made on behalf of any of such supplier during any tax period, the same would be ignored in his case. |
| 21 | Under Section 52, e-commerce operator collects TCS at the net of returns. Sometimes sales return is more than sales and hence can negative amount be reported? | Negative amount cannot be declared. There will be no impact in next tax period also. In other words, if returns are more than the supplies made during any tax period, the same would be ignored in current as well as future tax period(s) |
| 22 | What is the time within which such TCS is to be remitted by the e-commerce operator to the Government account? | The amount collected by the operator is to be paid to appropriate government within 10 days after the end of the month in which the said amount was so collected. |
| 23 | How can actual suppliers claim credit of TCS | The amount of TCS deposited by the operator with the appropriate Government will be reflected in the electronic cash ledger of the actual registered supplier (on whose account such collection has been made) on the basis of the statement filed by the operator in FORM GSTR-8 in terms of Rule 67 of the CGST Rules, 2017. The said credit can be used at the time of discharge of tax liability by the actual supplier. |

| Sr. No. | Questions | Answers |
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| 24 | How is TCS to be credited in cash ledger? Whether the refund of such TCS credit lying in the ledger would be allowed at par with the refund provisions contained in Section 54(1) of the CGST Act, 2017? | TCS collected is to be deposited by the e-commerce operator separately under the respective tax head (i.e. Central Tax/State Tax/Union Territory Tax/Integrated Tax). Based on the statement (FORM GSTR-8) filed by the e-commerce operator, the same would be credited to the electronic cash ledger of the actual supplier in the respective tax head. If the supplier is not able to use the amount lying in the said cash ledger, the actual supplier may claim refund of the excess balance lying in his electronic cash ledger in accordance with the provisions contained in Section 54(1) of the CGST Act, 2017. |
| 25 | Is the e-commerce operator required to submit any statement? What are the details that are required to be submitted in the statement? | Yes, every operator is required to furnish a statement, electronically, containing the details of outward supplies of goods or services effected through it, including the supplies of goods or services returned through it, and the amount collected by it as TCS during a month within 10 days after the end of such month in FORM GSTR-8 . The operator is also required to file an annual statement by 31st day of December following the end of the financial year in which the tax was collected in FORM GSTR-9B . |
| 26 | Whether interest would be applicable on non-collection of TCS? | As per Section 52(6) of the CGST Act, 2017, interest is applicable on omission as well in case of incorrect particulars noticed. In such a case, interest is applicable since it is a case of omission. Further penalty under Section 122(vi) of the CGST Act, 2017 would also be leviable. |
| 27 | What will be the place of supply for e-commerce operator for recharge of talk time of the | As per Section 12(11) of the IGST Act, 2017, the address on record of the customer with the supplier of services is |

| Sr. No. | Questions | Answers |
|---------|---|--|
| | Telecom Operator/recharge of DTH/in relation to convenience fee charged from the customers on booking of air tickets, rail supplied through its online platform? | the place of supply. |
| 28 | Under multiple e-commerce model, Customer books a Hotel via ECO-1 who in turn is integrated with ECO-2 who has agreement with the hotelier. In this case, ECO-1 will not have any GST information of the hotelier. Under such circumstances, which e-commerce operator should be liable to collect TCS? | TCS is to be collected by that e-Commerce operator who is making payment to the supplier for the particular supply happening through it, which is in this case will be ECO-2. |
| 29 | Are there any additional powers available to tax officers under this Act? | As per Section 52(12) of the CGST Act, 2017, any authority not below the rank of Deputy Commissioner may serve a notice requiring the operator to furnish the details of their supplies of goods or services or both as well as stock of goods held by the suppliers within 15 working days of the date of service of such notice. |

FAQs on levy of GST on supply of services to the Co-operative society — Reg.

| S. N. | Questions | Answers |
|-------|---|---|
| 1 | The society collects the following charges from the members on quarterly basis as follows: 1. Property Tax-actual as per Municipal Corporation of Greater Mumbai (MCGM) 2. Water Tax - Municipal Corporation of Greater Mumbai (MCGM) 3. Non-Agricultural Tax Maharashtra State Government 4. Electricity charges 5. Sinking Fund-mandatory under the Bye-laws of the Co-operative Societies 6. Repairs & | 1. Services provided by the Central Government, State Government, Union territory or local authority to a person other than business entity, is exempted from GST. So, Property Tax, Water Tax, if collected by the RWA/Co-operative Society on behalf of the MCGM from individual flat owners, then GST is not leviable. 2. Similarly, GST is not leviable on Non Agricultural |

| S. N. | Questions | Answers |
|-------|--|--|
| | maintenance fund 7. Car parking Charges 8. Non Occupancy Charges 9. Simple interest for late payment. From the tax/charge as listed above, on which GST is not applicable. | Tax, Electricity Charges etc., which are collected under other statutes from individual flat owners. However, if these charges are collected by the Society for generation of electricity by Society's generator or to provide drinking water facility or any other service, then such charges collected by the society are liable to GST. 3. Sinking fund, repairs & maintenance fund, car parking charges, Non- occupancy charges or simple interest for late payment, attract GST, as these charges are collected by the RWA/Co-operative Society for supply of services meant for its members. |
| 2 | As per guidelines on maintenance charges upto ₹5000/- no GST is applicable. Maintenance charges means only maintenance or collection of all charges | This is applicable to only the reimbursements of charges or share of up to an amount of five thousand rupees per month per member for sourcing of goods or services from a third person for the common use of its members. Here, charges mean the individual contributions made by members of the society to avail services or goods by the society from a third party for common use. [*Entry 77(c) of Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017 refers] |
| 3 | Monthly maintenance (all above charges) are below ₹5000/-but yearly total collection exceeds ₹20 lakhs limit whether GST is applicable | Reimbursement of charges or share of contribution up to an amount of ₹5000/- per month per member for sourcing of goods or services from a third person for the common use is not liable to GST. However, if the Cooperative society/RWAs provide specific services of its own to its members |

| S. N. | Questions | Answers |
|-------|--|--|
| | | or to any third party (e.g. use of community hall for social function by a non-member) cumulatively exceeds the threshold limit as per GST, then GST is leviable on such supply of services. |
| 4 | At present we are following quarterly billing-whether we should change to monthly billing in view of the monthly return to be filed under GST Rules. | It is individual business decision |

*[Service by an unincorporated body or a non-profit entity registered under any law for the time being in force, to its own members by way of reimbursement of charges or share of contribution - (a) as a trade union; (b) for the provision of carrying out any activity which is exempt from the levy of Goods and Services Tax; or (c) up to an amount of five thousand rupees per month per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex.]

FAQ: TRANSPORT & LOGISTICS

Question 1: *I am a single truck owner-operator and I ply my truck mostly between States, carrying the goods booked for my truck by an agent; aggregate value of service which I provided exceeded twenty lakh rupees during last year. Am I supposed to take registration?*

Answer: You are not liable to registration, as services provided by way of transportation of goods by road are exempt. Notification Number 12/2017-Central Tax (Rate), dated 28th June, 2017 refers.

Question 2: *I own a single truck and I rent it to a major player, who provides GTA service; should I take a registration? Does my monthly rental/lease income attract GST?*

Answer: Registration is not required since services by way of giving on hire, a means of transportation of goods to a GTA are exempt from tax *vide* Entry No. 22 of Notification Number 12/2017-Central Tax (Rate), dated 28th June, 2017.

Question 3: *In my truck, I only carry fruits and vegetables, in relation to whose transportation service GST is exempt; should I take registration?*

Answer : Services by way of transportation of goods by road other than by a GTA or a courier agency are exempt from tax under Entry No. 18 of Notification No. 12/2017-Central Tax (Rate), dated the 28th June, 2017 and thus you are not liable for registration.

Question 4: *I am a truck supplier/broker. My job is to get orders for truck owners. I quote the rate for transportation to GTA on behalf of truck owners and I get a small amount as commission out of the truck hire fixed with the GTA. This brokerage is paid by the truck owners. As the services provided by way of transportation of goods by road are exempt from tax, am I liable to registration?*

Answer: You are liable to registration if the aggregate amount of commission received by you in a financial year exceeds ₹20 lakhs (₹10 lakhs in special category States except J & K).

Question 5: *As a transporter, am I required to maintain any records of my services of transportation?*

Answer: Yes, in terms of Section 35(2) of the CGST Act, 2017 you are required to maintain records of the consigner, consignee and other relevant details of the goods. Further, in terms of Rule 56 of the CGST Rules, 2017 you are required to maintain records of goods transported, delivered and goods stored in transit by you along with the GSTIN of the registered consigner and consignee for each of your branches.

Question 6: *Are intermediary and ancillary services, such as, loading/unloading, packing/unpacking, transhipment and temporary warehousing, provided in relation to transportation of goods by road to be treated as part of the GTA service, being a composite supply, or these services are to be treated as separate supplies.*

Answer: The GTA provides service to a person in relation to transportation of goods by road in a goods carriage, which is a composite service. The composite service may include various intermediary and ancillary services, such as, loading/unloading, packing/unpacking, transhipment and temporary warehousing, which are provided in the course of transport of goods by road. These services are not provided as independent services but as ancillary to the principal service, namely, transportation of goods by road. The invoice issued by the GTA for providing the said service includes the value of intermediary and ancillary services. In view of this, if any intermediary and ancillary service is provided in relation to transportation of goods by road, and charges, if any, for such services are included in the invoice issued by the GTA, such service would form part of the GTA service and would not be treated as a separate supply. In fact, any service provided along with the GTA service that is part of the composite service of GTA shall be taxed along with GTA service and not as separate supplies. However, if such incidental services are provided as separate services and charged separately, whether in the same invoice or separate invoices, they shall be treated as separate supplies.

Question 7: As per Notification Number 5/2017-Central Tax, dated 19th June, 2017, the persons who are only engaged in making supplies of taxable goods or services or both, the total tax on which is liable to be paid on reverse charge basis by the recipient of such goods or services or both under sub-section (3) of Section 9 of the CGST Act, 2017 are exempted from obtaining registration under the said Act. Please clarify whether a GTA providing service in relation to transportation of goods by road under Reverse Charge Mechanism (RCM) can avail of the benefit of this exemption.

Answer: Yes, a GTA providing service in relation to transportation of goods by road under RCM can avail of the benefit of this exemption.

Question 8: Can a GTA obtain registration for one vertical (Rail, Cargo, Renting, Warehousing etc.) for which tax needs to be paid while not obtaining registration for another vertical (GTA under RCM) on which there is no tax liability.

Answer: No, because the business entity is not engaged exclusively in the supply of services liable to tax under reverse charge mechanism.

Question 9: In transport industry, old vehicles, old tyres, scrap material etc., on which no Input Tax Credit (ITC) has been taken, are disposed of after completion of their useful life. As a truck owner disposing of these goods, am I required to pay GST considering that no ITC has been taken at the time of their initial purchases? Would levy of tax in such cases not amount to double taxation, as tax has already been paid at the time of initial purchases?

Answer: Under Section 7 of the CGST Act, 2017 supply includes all forms of supply of goods such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business. Sale or disposal of old vehicles, old tyres and scrap material for a consideration would therefore attract GST regardless of whether ITC has been availed or not.

Question 10: Please clarify whether input tax credit is available to the recipient of service, when the GST paid by him is at a concessional rate of 5% under RCM.

Answer: Yes, input tax credit is available in such cases.

Question 11: When a GTA hires a truck (with driver) from another GST registered entity for the purpose of providing goods transport service to a registered recipient, whether tax credit is available to the GTA on the GST paid by him to the owner of the truck registered under GST.

Answer: Services by way of giving on hire to a GTA, a means of transportation of goods are exempt from GST under Notification Number 12/2017-Central Tax (Rate), dated 28th June, 2017. When the tax is not payable, the question of taking any tax credit does not arise.

Question 12: In terms of Section 12(9) of the IGST Act, 2017 the place of supply of passenger transportation service to a person other than a registered person, shall be the place where the passenger embarks on the conveyance for a continuous journey. In Section 2(3) of the IGST Act, 2017, the term “continuous journey” has been defined to mean a journey for which a single or more than one ticket or invoice is issued at the same time, either by a single supplier of service or through an agent acting on behalf of more than one supplier of service, and which involves no stopover between any of the legs of the journey for which one or more separate tickets or invoices are issued. Do all stopovers cause a break in continuous journey? Does the definition of “continuous journey” include instances whereby the stopover is for any period of time?

Answer: The term “stopover” has been explained in Section 2(3) of the IGST Act, 2017 to mean a place where a passenger can disembark either to transfer to another conveyance or break his journey for a certain period in order to resume it at a later point of time. However, all stopovers do not cause a break in continuous journey. Thus a travel on Delhi-London-New York on a single ticket with a halt at London will be covered by the definition of continuous journey. However, the return journey of New York-London-Delhi will be treated as a separate journey and will be outside the scope of a continuous journey.

Question 13: How GST is to be charged on a multi-leg international journey, say Delhi-Dubai-Boston-Dubai-Delhi? Is GST chargeable for the entire journey and discharged at Delhi, or the GST is to be charged for Delhi-Dubai sector alone and discharged at Delhi, or GST is to be charged up to the farthest point of return, i.e. Delhi-Dubai-Boston at Delhi?

Answer: In this case if a single ticket or invoice has been issued for the Delhi-Dubai-Boston then it is a continuous journey even if there is a stopover at Dubai and the tax (CGST + SGST) would be charged at Delhi. The return journey of Boston-Dubai-Delhi would not be a continuous journey. The return journey not being a continuous journey and its place of supply being outside India, the said journey, would be liable to tax if the location of the supplier is in India.

Question 14: Is the electronic ticket receipt acceptable as a tax invoice for the purpose of GST? Is there any requirement for the Airlines to issue a proper tax invoice?

Answer: Yes, the electronic ticket in the global standard format (and without further modifications) is acceptable as a tax compliant invoice for GST purposes, regardless of the value of the transaction. Rule 54(4) of the CGST Rules, 2017 refers. However, for B2B supplies, a tax invoice may be provided to enable the registered business customer to claim input tax credits.

Question 15: Is there any requirement for electronic ticket receipts issued to be signed or digitally signed for GST purposes?

Answer: No. In terms of Rule 54(4) of the CGST Rules, 2017 in the case of passenger transportation service, a tax invoice shall include ticket in any form,

whether or not serially numbered, and whether or not containing the address of the recipient of service but containing other information as mentioned under Rule 46 of the Rules *ibid*. As the electronic tickets issued by the Airlines are in the global standard format, such electronic ticket receipts are not required to be signed or digitally signed.

Question 16: Whether the Airlines are required to issue invoice to the customers transaction-wise, (i.e. Airway Bill-wise, Ticket Journey-wise) or a consolidated invoice, capturing the details of all individual invoices for a particular entity, can be issued on a monthly or fortnightly basis?

Answer: A single invoice incorporating the details of all the supplies for a particular entity can be issued subject to provisions of Section 31 of the CGST Act, 2017. In such a case the ticket issued by the Airlines would not take the character of an invoice.

Question 17: Would GST be applicable on air travel undertaken on or after 1st July, 2017 on tickets issued prior to 1st July, 2017 on which Service Tax was collected and discharged.

Answer: As Service Tax has already been collected and discharged by the Airlines on tickets issued prior to 1st July, 2017, there shall be no GST on such tickets even though the travel date is on or after 1st July, 2017.

Question 18: Does the GST treatment on fees for ancillary services in relation to air transport follow that of the underlying air transport service?

Answer: Yes, ancillary services are part of the service of transporting a passenger by air and do not constitute a separate supply of service. In this respect, ancillary services include Page 5 of 5 services that are incidental to the transport of passengers by air (e.g., excess baggage charges, date change charges, un-accompanied minor fees, preferred seat charges, cancellation fees etc.). Consequently, ancillary services shall be treated within the same category of service as “transport of passengers by air” and shall attract the same rate of GST as applicable to the transport of passengers by air.

Question 19: Will Airlines be entitled to input tax credits under the GST transitional rules if the liability to pay service tax arises, due to resolution of litigation or disputes, after implementation of GST?

Answer: Yes, Section 142(6)(a) of the CGST Act, 2017 provides that every proceeding of appeal, review or reference relating to a claim for Cenvat credit initiated whether before, on or after the appointed day under the existing law shall be disposed of in accordance with the provisions of the existing law, and any amount of credit found to be admissible to the claimant shall be refunded to him in cash, notwithstanding anything to the contrary contained under the provisions of the existing law other than the provisions of Section 11B(2) of the Central Excise Act, 1944.

Note: Reference to CGST Act, 2017/CGST Rules, 2017 includes reference to SGST Act, 2017/SGST Rules, 2017 and UTGST Act, 2017/UTGST Rules, 2017 also.

Appendix 14

GST on Education Sector

GST on various programmes conducted by Indian Institutes of Management (IIMs) — Applicability of

Circular No. 82/01/2019-GST [F. No. 354/428/2018-TRU], dated 1-1-2019

Subject: Applicability of GST on various programmes conducted by the Indian Institutes of Managements (IIMs) — Regarding

I am directed to invite your attention to the Indian Institutes of Management Act, 2018 which came into force on 31st January, 2018. According to provisions of the IIM Act, all the IIMs listed in the schedule to the IIM Act are “institutions of national importance”. They are empowered to (i) grant degrees, diplomas, and other academic distinctions or titles, (ii) specify the criteria and process for admission to courses or programmes of study, and (iii) specify the academic content of programmes. Therefore, with effect from 31st January, 2018, all the IIMs are “educational institutions” as defined under notification No. 12/2017-Central Tax (Rate), dated 28-6-2017 as they provide education as a part of a curriculum for obtaining a qualification recognised by law for the time being in force.

2. At present, Indian Institutes of Managements are providing various long duration programs (one year or more) for which they award diploma/degree certificate duly recommended by Board of Governors as per the power vested in them under the IIM Act, 2017. Therefore, it is clarified that services provided by Indian Institutes of Managements to their students-in all such long duration programs (one year or more) are exempt from levy of GST. As per information received from IIM Ahmedabad, annexure 1 to this circular provides a sample list of programmes which are of long duration (one year or more), recognized by law and are exempt from GST.

3. For the period from 1st July, 2017 to 30th January, 2018, IIMs were not covered by the definition of educational institutions as given in notification No. 12/2017-Central Tax (Rate), dated 28-6-2017. Thus, they were not entitled to exemption under Sl. No. 66 of the said notification. However, there was specific exemption to following three programs of IIMs under Sl. No. 67 of notification No. 12/2017-Central Tax (Rate):—

- (i) two-year full time Post Graduate Programmes in Management for the Post Graduate Diploma in Management, to which admissions are made on the basis of Common Admission Test (CAT) conducted by the Indian Institute of Management,
- (ii) fellow programme in Management,
- (iii) five years integrated programme in Management.

Therefore, for the period from 1st July, 2017 to 30th January, 2018, GST exemption would be available only to three long duration programs specified above.

4. It is further, clarified that with effect from 31st January, 2018, all IIMs have become eligible for exemption benefit under Sl. No. 66 of notification No. 12/2017-Central Tax (Rate), dated 28-6-2017. As such, specific exemption granted to IIMs *vide* Sl. No. 67 has become redundant. The same has been deleted *vide* notification No. 28/2018-Central Tax (Rate), dated, 31st December, 2019 w.e.f. 1st January, 2019.

5. For the period from 31st January, 2018 to 31st December, 2018, two exemptions, i.e. under Sl. No. 66 and under Sl. No. 67 of notification No. 12/2017-Central Tax (Rate), dated 28-6-2017 are available to the IIMs. The legal position in such situation has been clarified by Hon'ble Supreme Court in many cases that if there are two or more exemption notifications available to an assessee, the assessee can claim the one that is more beneficial to him. Therefore, from 31st January, 2018 to 31st December, 2018, IIMs can avail exemption either under Sl. No. 66 or Sl. No. 67 of the said notification for the eligible programmes. In this regard following case laws may be referred—

- (i) *H.C.L. Limited v Collector of Customs* [2001 (130) E.L.T. 405 (S.C.)]
- (ii) *Collector of Central Excise, Baroda v Indian Petro Chemicals* [1997 (92) E.L.T. 13 (S.C.)]
- (iii) *Share Medical Care v Union of India* reported at 2007 (209) E.L.T. 321 (S.C.)
- (iv) *CCE v Maruthi Foam (P) Ltd.* [1996 (85) E.L.T. 157 (Tri.) as affirmed by Hon'ble Supreme Court *vide* 2004 (164) E.L.T. 394 (S.C.)]

6. Indian Institutes of Managements also provide various short duration/short term programs for which they award participation certificate to the executives/professionals as they are considered as “participants” of the said programmes. These participation certificates are not any qualification recognized by law. Such participants are also not considered as students of Indian Institutes of Management. Services provided by IIMs as an educational institution to such participants is not exempt from GST. Such short duration executive programs attract standard rate of GST @ 18% (CGST 9% + SGST 9%). As per information received from IIM Ahmedabad, annexure 2 to this circular provides a sample list of programmes which are short duration executive development programs, available for participants other than students and are not exempt from GST.

7. Following summary table may be referred to while determining eligibility of various programs conducted by Indian Institutes of Managements for exemption from GST.

| Sl. No. | Periods | Programmes offered by Indian Institutes of Management | Whether exempt from GST |
|---------|--------------------------------------|--|-------------------------|
| (1) | (2) | (3) | (4) |
| 1 | 1st July, 2017 to 30th January, 2018 | (i) two-year full time Post Graduate Programmes in Management for the Post Graduate Diploma in Management, to which admissions are made on the basis of Common Admission Test (CAT) conducted by the Indian Institute of Management, (ii) fellow programme in Management, (iii) five years integrated programme in Management. | Exempt from GST |
| | | (i) One-year Post Graduate Programs for Executives, (ii) Any programs other than those mentioned at Sl. No. 67 of notification No. 12/2017-Central Tax (Rate), dated 28-6-2017. (iii) All short duration executive development programs or need based specially designed programs (less than one year). | Not exempt from GST |
| 2 | 31st January, 2018 onwards | All long duration programs (one year or more) conferring degree/diploma as recommended by Board of Governors as per the power vested in them under the IIM Act, 2017 including one-year Post Graduate Programs for Executives. | Exempt from GST |
| | | All short duration executive development programs or need based specially designed programs (less than one year) which are not a qualification recognized by law. | Not exempt from GST |

8. This clarification applies, *mutatis mutandis*, to corresponding entries of respective IGST, UTGST, SGST exemption notifications. Difficulty if any, in the implementation of this circular may be brought to the notice of the Board.

* * *

Clarification on GST rate applicable on supply of food and beverage services by educational institution

Circular No. 85/04/2019-GST (F. No. 354/428/2018-TRU), dated 1-1-2019

Subject: Clarification on GST rate applicable on supply of food and beverage services by educational institution — Regarding.

Representations have been received seeking clarification as to the rate of GST applicable on supply of food and beverages services by educational institution to its students. It has been stated that the words “school, college” appearing in Explanation 1 to Entry 7(i) of Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017 give rise to doubt whether supply of food and drinks by an educational institution to its students is eligible for exemption under Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017 Sl. No. 66, which exempts services provided by an educational institution to its students, faculty and staff.

2. The matter has been examined. Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017, Sl. No. 7(i) prescribes GST rate of 5% on supply of food and beverages services. Explanation 1 to the said entry states that such supply can take place at canteen, mess, cafeteria of an institution such as school, college, hospitals etc. On the other hand, Notification No. 12/2017-Central Tax (Rate), Sl. No. 66(a) exempts services provided by an educational institution to its students, faculty and staff. There is no conflict between the two entries. Entries in Notification No. 11/2017-Central Tax (Rate) prescribing GST rates on service have to be read together with entries in exemption Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017. A supply which is specifically covered by any entry of Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017 is exempt from GST notwithstanding the fact that GST rate has been prescribed for the same under Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017.

2.1 Supply of all services by an educational institution to its students, faculty and staff is exempt under Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017, Sl. No. 66. Such services include supply of food and beverages by an educational institution to its students, faculty and staff. As stated in explanation 3(ii) to Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017 Chapter, Section, Heading, Group or Service Codes mentioned in column (2) of the table in Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017 are only indicative. A supply is eligible for exemption under an entry of the said notification where the description given in column (3) of the table leaves no room for any doubt. Accordingly, it is clarified that supply of food and beverages by an educational institution to its students, faculty and staff, where such supply is made by the educational institution itself, is exempt under Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017, *vide* Sl. No. 66 w.e.f. 01-07-2017 itself. However, such supply of food and beverages by any person other than the educational institutions based on a contractual arrangement with such institution is leviable to GST@ 5%.

3. In order to remove any doubts on the issue, Explanation 1 to Entry 7(i) of Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017 has been amended *vide* Notification No. 27/2018-Central Tax (Rate), dated 31-12-2018 to omit from it the words "school, college". Further, heading 9963 has been added in Column (2) against entry at Sl. No. 66 of Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017, *vide* Notification No. 28/2018-Central Tax (Rate), dated 31-12-2018.

4. Difficulty, if any, in implementation of this Circular may be brought to the notice of the Board.

Appendix 15

Demand and Recovery

Circular No.185/17/2022-GST dated 27-12-2022

Clarification with regard to applicability of provisions of section 75(2) of Central Goods and Services Tax Act, 2017 and its effect on limitation

Attention is invited to sub-section (2) of section 75 of Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”) which provides that in cases where the appellate authority or appellate tribunal or court concludes that the notice issued by proper officer under sub-section (1) of section 74 is not sustainable for reason that the charges of fraud or any willful-misstatement or suppression of facts to evade tax have not been established against the person to whom such notice was issued (hereinafter called as “noticee”), then the proper officer shall determine the tax payable by the noticee, deeming as if the notice was issued under sub-section (1) of section 73.

2. Doubts have been raised by the field formations seeking clarification regarding the time limit within which the proper officer is required to re-determine the amount of tax payable considering notice to be issued under sub-section (1) of section 73, specially in cases where time limit for issuance of order as per sub-section (10) of section 73 has already been over. Further, doubts have also been expressed regarding the methodology for computation of such amount payable by the noticee, deeming the notice to be issued under sub-section (1) of section 73.

3. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168(1) of the CGST Act, hereby clarifies the issues as under:

| S. No. | Issue | Clarification |
|--------|---|---|
| 1. | In some of the cases where the show cause notice has been issued by the proper officer to a noticee under sub-section (1) of section 74 of CGST Act for demand of tax not paid/short paid or erroneous refund or input tax credit wrongly availed or utilized, the appellate authority or | <ul style="list-style-type: none">Sub-section (3) of section 75 of CGST Act provides that an order, required to be issued in pursuance of the directions of the appellate authority or appellate tribunal or the court, has to be issued within two years from the date of communication of the said direction.Accordingly, in cases where any direction is issued by the appellate authority or appellate tribunal or the court to re-determine the amount of tax |

| S. No. | Issue | Clarification |
|--------|---|---|
| | <p>appellate tribunal or the court concludes that the said notice is not sustainable under sub-section (1) of section 74 of CGST Act for the reason that the charges of fraud or any willful-misstatement or suppression of facts to evade tax have not been established against the noticee and directs the proper officer to re-determine the amount of tax payable by the noticee, deeming the notice to have been issued under sub-section (1) of section 73 of CGST Act, in accordance with the provisions of sub-section (2) of section 75 of CGST Act. What would be the time period for re-determination of the tax, interest and penalty payable by the noticee in such cases?</p> | <p>payable by the noticee by deeming the notice to have been issued under sub-section (1) of section 73 of CGST Act in accordance with the provisions of sub-section (2) of section 75 of the said Act, the proper officer is required to issue the order of redetermination of tax, interest and penalty payable within the time limit as specified in under sub-section (3) of section 75 of the said Act, i.e. within a period of two years from the date of communication of the said direction by appellate authority or appellate tribunal or the court, as the case may be.</p> |
| 2. | <p>How the amount payable by the noticee, deeming the notice to have been issued under sub-section (1) of section 73, shall be recomputed/ re- determined by the proper officer as per provisions of sub-section (2) of section 75?</p> | <ul style="list-style-type: none"> • In cases where the amount of tax, interest and penalty payable by the noticee is required to be re-determined by the proper officer in terms of sub-section (2) of section 75 of CGST Act, the demand would have to be re-determined keeping in consideration the provisions of sub-section (2) of section 73, read with sub-section (10) of section 73 of CGST Act. • Sub-section (1) of section 73 of CGST Act provides for issuance of a show cause notice by the proper officer for tax not paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or |

| S. No. | Issue | Clarification |
|--------|-------|--|
| | | <p>utilized, in cases which do not involve fraud or wilful misstatement or suppression of facts to evade tax. Sub-section (2) of section 73 of CGST Act provides that such show cause notice shall be issued at least 3 months prior to the time limit specified in sub-section 10 of section 73 for issuance of order. As per sub-section (9) of section 73 of CGST Act, the proper officer is required to determine the tax, interest and penalty due from the noticee and issue an order. As per sub-section (10) of section 73 of CGST Act, an order under sub-section (9) of section 73 has to be issued by the proper officer within three years from the due date for furnishing of annual return for the financial year in respect of which tax has not been paid or short paid or input tax credit has been wrongly availed or utilized or from the date of erroneous refund.</p> <ul style="list-style-type: none"> • It transpires from a combined reading of these provisions that in cases which do not involve fraud or willful misstatement or suppression of facts to evade payment of tax, the show cause notice in terms of sub-section (1) of section 73 of CGST Act has to be issued within 2 years and 9 months from the due date of furnishing of annual return for the financial year to which such tax not paid or short paid or input tax credit wrongly availed or utilized relates, or within 2 years and 9 months from the date of erroneous refund. • Therefore, in cases where the proper officer has to re-determine the amount of tax, interest and penalty payable deeming the notice to have been issued under sub-section (1) of section 73 of CGST Act in terms of sub-section (2) |

| S. No. | Issue | Clarification |
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| | | <p>of section 75 of the said Act, the same can be re-determined for so much amount of tax short paid or not paid, or input tax credit wrongly availed or utilized or that of erroneous refund, in respect of which show cause notice was issued within the time limit as specified under sub-section (2) of section 73 read with sub-section (10) of section 73 of CGST Act. Thus, only the amount of tax short paid or not paid, or input tax credit wrongly availed or utilized, along with interest and penalty payable, in terms of section 73 of CGST Act relating to such financial years can be re-determined, where show cause notice was issued within 2 years and 9 months from the due date of furnishing of annual return for the respective financial year. Similarly, the amount of tax payable on account of erroneous refund along with interest and penalty payable can be re-determined only where show cause notice was issued within 2 years and 9 months from the date of erroneous refund.</p> <ul style="list-style-type: none"> • In case, where the show cause notice under sub-section (1) of section 74 was issued for tax short paid or tax not paid or wrongly availed or utilized input tax credit beyond a period of 2 years and 9 months from the due date of furnishing of the annual return for the financial year to which such demand relates to, and the appellate authority concludes that the notice is not sustainable under sub-section (1) of section 74 of CGST Act thereby deeming the notice to have been issued under sub-section (1) of section 73, the entire proceeding shall have to be dropped, being hit by the limitation of time as specified in |

| S. No. | Issue | Clarification |
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| | | <p>section 73. Similarly, where show cause notice under sub-section (1) of section 74 of CGST Act was issued for erroneous refund beyond a period of 2 years and 9 months from the date of erroneous refund, the entire proceeding shall have to be dropped.</p> <ul style="list-style-type: none"> • In cases, where the show cause in terms of sub-section (1) of section 74 of CGST Act was issued for tax short paid or not paid tax or wrongly availed or utilized input tax credit or on account of erroneous refund within 2 years and 9 months from the due date of furnishing of the annual return for the said financial year, to which such demand relates to, or from the date of erroneous refund, as the case may be, the entire amount of the said demand in the show cause notice would be covered under re-determined amount. • Where the show cause notice under sub-section (1) of section 74 was issued for multiple financial years, and where notice had been issued before the expiry of the time period as per sub-section (2) of section 73 for one financial year but after the expiry of the said due date for the other financial years, then the amount payable in terms of section 73 shall be re-determined only in respect of that financial year for which show cause notice was issued before the expiry of the time period as specified in sub-section (2) of section 73. |

* * *

Circular No.187/17/2022-GST dated 27-12-2022

Clarification regarding the treatment of statutory dues under GST law in respect of the taxpayers for whom the proceedings have been finalised under Insolvency and Bankruptcy Code, 2016

Attention is invited to Circular No.134/04/2020-GST dated 23rd March, 2020, wherein it was clarified that no coercive action can be taken against the

corporate debtor with respect to the dues of the period prior to the commencement of Corporate Insolvency Resolution Process (CIRP). Such dues will be treated as ‘operational debt’ and the claims may be filed by the proper officer before the NCLT in accordance with the provisions of the IBC.

2. Representations have been received from the trade as well as tax authorities, seeking clarification regarding the modalities for implementation of the order of the adjudicating authority under Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the “IBC”) with respect to demand for recovery against such corporate debtor under Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”) as well under the existing laws and the treatment of such statutory dues under CGST Act and existing laws, after finalization of the proceedings under IBC.

3. In order to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under section 168(1) of the CGST Act, hereby clarifies as follows.

4.1 Section 84 of CGST Act reads as follows:

“Section 84 - Continuation and validation of certain recovery proceedings.—Where any notice of demand in respect of any tax, penalty, interest or any other amount payable under this Act, (hereafter in this section referred to as "Government dues"), is served upon any taxable person or any other person and any appeal or revision application is filed or any other proceedings is initiated in respect of such Government dues, then—

.....

(b) where such Government dues are reduced in such appeal, revision or in other proceedings—

- (i) it shall not be necessary for the Commissioner to serve upon the taxable person a fresh notice of demand;**
- (ii) the Commissioner shall give **intimation** of such reduction to him and to the appropriate authority with whom recovery proceedings is pending;**
- (iii) any recovery proceedings initiated on the basis of the demand served upon him prior to the disposal of such appeal, revision or other proceedings may be continued in relation to the amount so reduced from the stage at which such proceedings stood immediately before such disposal.”**

4.2 As per Section 84 of CGST Act, if the government dues against any person under CGST Act are reduced as a result of any appeal, revision or other proceedings in respect of such government dues, then an intimation for such reduction of government dues has to be given by the Commissioner to such person and to the appropriate authority with whom the recovery proceedings are pending. Further, recovery proceedings can be continued in relation to such reduced amount of government dues.

4.3 The word ‘other proceedings’ is not defined in CGST Act. It is to be mentioned that the adjudicating authorities and appellate authorities under IBC

are quasi-judicial authorities constituted to deal with civil disputes pertaining to insolvency and bankruptcy. For instance, under IBC, NCLT serves as an adjudicating authority for insolvency proceedings which are initiated on application from any stakeholder of the entity like the firm, creditors, debtors, employees etc. and passes an order approving the resolution plan. As the proceedings conducted under IBC also adjudicate the government dues pending under the CGST Act or under existing laws against the corporate debtor, the same appear to be covered under the term ‘other proceedings’ in Section 84 of CGST Act.

5. Rule 161 of Central Goods and Services Tax Rules, 2017 prescribes **FORM GST DRC-25** for issuing intimation for such reduction of demand specified under section 84 of CGST Act. Accordingly, in cases where a confirmed demand for recovery has been issued by the tax authorities for which a summary has been issued in **FORM GST DRC-07/DRC 07A** against the corporate debtor, and where the proceedings have been **finalised** against the corporate debtor under IBC reducing the amount of statutory dues payable by the corporate debtor to the government under CGST Act or under existing laws, the jurisdictional Commissioner shall issue an intimation in **FORM GST DRC-25** reducing such demand, to the taxable person or any other person as well as the appropriate authority with whom recovery proceedings are pending.

Circular No.192/04/2023-GST dated 17-07-2023

Subject: Clarification on charging of interest under section 50(3) of the CGST Act, 2017, in case of wrong availment of IGST credit and reversal thereof.

References have been received from trade requesting for clarification regarding charging of interest under sub-section (3) of section 50 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the “CGST Act”) in the cases where IGST credit has been wrongly availed by a registered person. Clarification is being sought as to whether such wrongly availed IGST credit would be considered to have been utilized for the purpose of charging of interest under sub-section (3) of section 50 of CGST Act, read with rule 88B of Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the “CGST Rules”), in cases where though the available balance of IGST credit in the electronic credit ledger of the said registered person falls below the amount of such wrongly availed IGST credit, the total balance of input tax credit in the electronic credit ledger of the registered person under the heads of IGST, CGST and SGST taken together remains more than such wrongly availed IGST credit, at all times, till the time of reversal of the said wrongly availed IGST credit.

Issue has been examined and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the CGST Act, hereby clarifies the issues as under:

| S.No. | Issue | Clarification |
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| 1 | In the cases of wrong availment of IGST credit by a registered person and reversal thereof, for the calculation of interest under rule 88B of CGST Rules, whether the balance of input tax credit available in electronic credit ledger under the head of IGST only needs to be considered or total input tax credit available in electronic credit ledger, under the heads of IGST, CGST and SGST taken together, has to be considered | <p>Since the amount of input tax credit available in electronic credit ledger, under any of the heads of IGST, CGST or SGST, can be utilized for payment of liability of IGST, it is the total input tax credit available in electronic credit ledger, under the heads of IGST, CGST and SGST taken together, that has to be considered for calculation of interest under rule 88B of CGST Rules and for determining as to whether the balance in the electronic credit ledger has fallen below the amount of wrongly availed input tax credit of IGST, and to what extent the balance in electronic credit ledger has fallen below the said amount of wrongly availed credit.</p> <p>Thus, in the cases where IGST credit has been wrongly availed and subsequently reversed on a certain date, there will not be any interest liability under sub-section (3) of section 50 of CGST Act if, during the time period starting from such availment and up to such reversal, the balance of input tax credit (ITC) in the electronic credit ledger, under the heads of IGST, CGST and SGST taken together, has never fallen below the amount of such wrongly availed ITC, even if available balance of IGST credit in electronic credit ledger individually falls below the amount of such wrongly availed IGST credit. However, when the balance of ITC, under the heads of IGST, CGST and SGST of electronic credit ledger taken together, falls below such wrongly availed amount of IGST credit, then it will amount to the utilization of such wrongly availed IGST credit and the extent of utilization will be the extent to which the total balance in electronic credit ledger under heads of IGST, CGST and SGST taken together falls below such amount of wrongly availed</p> |

| <i>S.No.</i> | <i>Issue</i> | <i>Clarification</i> |
|--------------|---|---|
| | | IGST credit, and will attract interest as per sub-section (3) of section 50 of CGST Act, read with section 20 of Integrated Goods and Services Tax Act, 2017 and sub-rule (3) of rule 88B of CGST Rules. |
| 2 | Whether the credit of compensation cess available in electronic credit ledger shall be taken into account while considering the balance of electronic credit ledger for the purpose of calculation of interest under sub-rule (3) of rule 88B of CGST Rules in respect of wrongly availed and utilized IGST, CGST or SGST credit. | As per proviso to section 11 of Goods and Services Tax (Compensation to States) Act, 2017, input tax credit in respect of compensation cess on supply of goods and services leviable under section 8 of the said Act can be utilised only towards payment of compensation cess leviable on supply of goods and services. Thus, credit of compensation cess cannot be utilized for payment of any tax under CGST or SGST or IGST heads and/ or reversals of credit under the said heads. Accordingly, credit of compensation cess available in electronic credit ledger cannot be taken into account while considering the balance of electronic credit ledger for the purpose of calculation of interest under sub-rule (3) of rule 88B of CGST Rules in respect of wrongly availed and utilized IGST, CGST or SGST credit. |

Appendix 16

E-Invoicing

Circular No. 186/18/2022-GST dated 27-12-2022

Clarification on various issues pertaining to GST

Representations have been received from the field formations seeking clarification on certain issues with respect to –

- (i) taxability of No Claim Bonus offered by Insurance companies;
- (ii) applicability of e-invoicing with regard to an entity.

2. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168(1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”), hereby clarifies the issues as under:

| S. No. | Issue | Clarification |
|--|---|---|
| Taxability of No Claim Bonus offered by Insurance companies | | |
| 1. | Whether the deduction on account of No Claim Bonus allowed by the insurance company from the insurance premium payable by the insured, can be considered as consideration for the supply provided by the insured to the insurance company, for agreeing to the obligation to refrain from the act of lodging insurance claim during the previous year(s)? | As per practice prevailing in the insurance sector, the insurance companies deduct No Claim Bonus from the gross insurance premium amount, when no claim is made by the insured person during the previous insurance period(s). The customer/insured procures insurance policy to indemnify himself from any loss/injury as per the terms of the policy, and is not under any contractual obligation not to claim insurance claim during any period covered under the policy, in lieu of No Claim Bonus. It is, therefore, clarified that there is no supply provided by the insured to the insurance company in form of agreeing to the obligation to refrain from the act of lodging insurance claim during the previous year(s) and No Claim Bonus cannot be considered as a consideration for any supply provided by the insured to the insurance company. |
| 2. | Whether No Claim Bonus provided by the insurance company to the insured can be considered as an admissible discount for the purpose of determination of value of supply of insurance service provided | As per clause (a) of sub-section (3) of section 15 of the CGST Act, value of supply shall not include any discount which is given before or at the time of supply if such discount has been duly recorded in the invoice issued in respect of such supply. The insurance companies make the disclosure of the fact of availability of discount in form of No Claim Bonus, subject to certain conditions, to the insured in |

| S. No. | Issue | Clarification |
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| | by the insurance company to the insured? | <p>the insurance policy document itself and also provide the details of the no claim Bonus in the invoices also. The pre-disclosure of NCB amount in the policy documents and specific mention of the discount in form of No Claim Bonus in the invoice is in consonance with the conditions laid down for deduction of discount from the value of supply under clause (a) of sub-section (3) of section 15 of the CGST Act.</p> <p>It is, therefore, clarified that No Claim Bonus (NCB) is a permissible deduction under clause (a) of sub-section (3) of section 15 of the CGST Act for the purpose of calculation of value of supply of the insurance services provided by the insurance company to the insured. Accordingly, where the deduction on account of No claim bonus is provided in the invoice issued by the insurer to the insured, GST shall be leviable on actual insurance premium amount, payable by the policy holders to the insurer, after deduction of No Claim Bonus mentioned on the invoice.</p> |

Clarification on applicability of e-invoicing w.r.t an entity

| | | |
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| 3. | Whether the exemption from mandatory generation of e-invoices in terms of Notification No. 13/2020-Central Tax, dated 21st March, 2020, as amended, is available for the entity as whole, or whether the same is available only in respect of certain supplies made by the said entity? | <p>In terms of Notification No. 13/2020-Central Tax dated 21st March, 2020, as amended, certain entities/sectors have been exempted from mandatory generation of e-invoices as per sub-rule (4) of rule 48 of Central Goods and Services Tax Rules, 2017. It is hereby clarified that the said exemption from generation of e-invoices is for the entity as a whole and is not restricted by the nature of supply being made by the said entity.</p> <p>Illustration: A Banking Company providing banking services, may also be involved in making supply of some goods, including bullion. The said banking company is exempted from mandatory issuance of e-invoice in terms of Notification No. 13/2020-Central Tax, dated 21st March, 2020, as amended, for all supplies of goods and services and thus, will not be required to issue e-invoice with respect to any supply made by it.</p> |
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Circular No. 198/10/2023-GST dated 17.07.2023

Clarification on issue pertaining to e-invoice.

Representations have been received seeking clarification with respect to applicability of e-invoice under rule 48(4) of Central Goods and Services Tax Rules, 2017 (hereinafter referred to as “CGST Rules”) w.r.t supplies made by a registered person, whose turnover exceeds the prescribed threshold for generation of e-invoicing, to Government Departments or establishments/ Government agencies/ local authorities/ PSUs registered solely for the purpose of deduction of tax at source as per provisions of section 51 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”).

2. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the CGST Act, hereby clarifies the issue as under:

| S. No. | Issue | Clarification |
|-----------|---|---|
| 1 | Whether e-invoicing is applicable for supplies made by a registered person, whose turnover exceeds the prescribed threshold for generation of e-invoicing, to Government Departments or establishments/ Government agencies/local authorities/PSUs which are registered solely for the purpose of deduction of tax at source as per provisions of section 51 of the CGST Act? | Government Departments or establishments/Government agencies/ local authorities/ PSUs, which are required to deduct tax at source as per provisions of section 51 of the CGST/ SGST Act, are liable for compulsory registration in accordance with section 24(vi) of the CGST Act. Therefore, Government Departments or establishments/Government agencies/ local authorities/PSUs, registered solely for the purpose of deduction of tax at source as per provisions of section 51 of the CGST Act, are to be treated as registered persons under the GST law as per provisions of clause (94) of section 2 of CGST Act. Accordingly, the registered person, whose turnover exceeds the prescribed threshold for generation of e-invoicing, is required to issue e-invoices for the supplies made to such Government Departments or establishments/Government agencies/ local authorities/PSUs, etc. under rule 48(4) of CGST Rules. |

The CBIC issued Instructions vide *F. No. CBIC- 20006/15/2023-GST, dated October 18, 2023* regarding the action in respect of non-issuance of e-invoices by notified class of taxpayers who are mandatorily required to issue e-invoice as per legal provisions.

Attention is invited to various notifications issued for setting the annual aggregate turnover limit for mandatory implementation of e-invoicing under sub-rule (4) of Rule 48 of the Central Goods and Service Tax, Rules, 2017 (hereinafter referred to as "CGST Rules") in phased manner. Recently, sixth phase has been introduced, vide notification No. 10/2023-Central Tax dated 10-05-2023, wherein, with effect from 01st August, 2023 e-invoicing has been made mandatory for taxpayers having aggregate turnover of more than Rupees Five Crore in any financial year from 2017-18 onward. The intent behind e-invoicing is not only to automate tax relevant processes thereby reducing compliance burden on tax payers but also to ensure better management of taxes and significant reduction of tax evasion and siphoning or public funds by addressing various frauds like carousel fraud, no invoicing or invoicing with no goods supplied, fraudulent export ITC refunds, etc. Accordingly through the above notifications, steps have been initiated to introduce 'e-invoicing' for reporting of Business to Business (B2B) and export supply transactions, barring certain classes of registered persons which have been exempted from issuing e-invoices.

It is also brought to notice that with the insertion of Clause (s) in Rule 46 of the CGST Rules, the taxpayers [having Annual Aggregate Turn Over of more than the threshold notified under sub-rule (4) of Rule 48 of the CGST Rules but have been exempted from the issuance of e-invoices under relevant legal provisions] are required to declare on their invoices that they are not required to issue invoice in the manner specified in sub-rule (4) of Rule 48 of the CGST Rules. Further, the taxpayers, who have exceeded the prescribed threshold of aggregate turnover but are exempted from issuance of e-invoice, can file the declaration on the recently introduced functionality on the portal to make a self-declaration regarding category under which they are exempted from issuance of e-invoices.

However, analysis of key statistics (relating to e-invoice) released for the month of August, 2023 shows that there is a huge gap between the number of eligible taxpayers based on their turnover and the number of e-invoices shown generated against these taxpayers indicating less generation or non-generation of e-invoice on their part. This defeats the very intent behind the implementation of e-invoice. Thus, it is imperative that non-compliance of the above said provisions by the eligible tax payers needs to be examined by the field formations so as to ensure compliance on the part of the said taxpayers and if required, enforce penal provisions against them for continuous non-compliance on their part despite being nudged by the tax authorities.

In this regard, a list of such taxpayers who are mandatorily required to issue e-invoices through electronic invoicing under sub-rule (4) of Rule 48 of the CGST Rules but are not issuing the same will be shared by the GSTN.

Accordingly, the field formations are advised to take the following action on the list provided by GSTN:

- (i) The tax authorities may find the reasons for non-issuance of B2B and export invoices through e-invoicing by such taxpayers. If it is reported by the taxpayers that they have not exceeded the prescribed threshold limit under sub-rule (4) of Rule 48 of the CGST Rules or are exempted from issuance of e-invoice under relevant legal provisions/notifications, they may be advised to declare their exempted category on the functionality on the portal by using the functionality recently provided by GSTN. If the reasons are not in accordance with the provisions of the Rules and the relevant notifications, the taxpayers may be nudged and advised to immediately start issuing invoices through e-invoicing.
- (ii) The tax authorities may also inform the taxpayers (who have exceeded annual aggregate turnover and are mandatorily required to issue invoices through e-invoicing) about the provisions of sub-rule (5) of Rule 48 of CGST Rules providing that any invoice issued by such taxpayers, in the manner other than the manner prescribed under sub-rule (4) of Rule 48 of the CGST Rules, i.e. other than e-invoicing, shall not be treated as valid invoice. They may also be informed that they will be liable to penalty under Clause (c) of sub-section (3) of Section 122 of CGST Act, in case of their failure to issue invoices through e-invoicing system.
- (iii) In case of continuous non-compliance of the provisions of Rule 48(4) of CGST Rules by the taxpayers, who are otherwise required to issue invoices for B2B and export transactions through e-invoicing, appropriate penal action, as mentioned in sub-para (ii) above, may be initiated under the CGST Act and Rules made thereunder. To begin with, emphasis should be laid on the taxpayers who have exceeded aggregate turnover of more than Rupees Fifty Crore, as sufficient time has elapsed since e-invoicing has been made mandatory for these taxpayers from April, 2021.
- (iv) Any systemic issues, faced by such taxpayers for issuance of e-invoices, may be brought to the notice of GSTN/NIC for subsequent remedial action.

The Principal Chief Commissioner/Chief Commissioner of the CGST Zones are requested to closely monitor the status of implementation of e-invoicing provisions by the field officers, within their zones. The officers of the field formations may be suitably advised to implement the above mentioned provisions for ensuring strict adherence to mandatory e-invoicing by the eligible taxpayers.

THE END

Personal Notes

Personal Notes