



# Goods and Services Tax Council

IMPORTANT CHANGES IN GST LAW IN FY 2023-24 AND PROPOSED CHANGES IN THE  
INTERIM BUDGET 2024

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# **CHANGES IN INTERIM BUDGET 2024**

# **Changes relating to Input Service Distributor:**

## Finance Bill 2024

These changes are in light with the recommendations in 50th GST Council meeting held on 11.07.2023 which provides that ISD (Input Service Distributor) procedure as laid down in Section 20 of the CGST Act, 2017 may be made mandatory prospectively for distribution of ITC in respect of input services procured by Head Office (HO) from a third party but attributable to both HO and Branch Office (BO) or exclusively to one or more BOs. Further, The Council in its 52nd GST meeting held on 7th October, 2023 has recommended amendments in Section 2(61) and section 20 of CGST Act, 2017 as well amendment in rule 39 of CGST Rules, 2017 in respect of the same.

### **a) Amendment in the Definition of Input Service Distributor(ISD) (Section 2(61) of the CGST Act):**

The amended definition of ISD reads as - ‘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’.

The amendment proposed to include the ISD to distribute ITC in respect of services, the tax on which is liable to be paid under reverse charge mechanism u/s 9(3) and 9(4) of the CGST Act.

*‘2(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;’*

# Changes relating to Input Service Distributor:

[Finance Bill 2024](#)

## b) Amendment in the Manner of distribution of ITC by the ISD (Section 20 of the CGST Act):

- It is proposed to make registration as Input Service Distributor (ISD) mandatory in case of procurement of common input services and distribution of ITC thereof to distinct persons. Clause (61) of section 2 relating to the definition of ISD are proposed to be substituted for this purpose. Earlier through 50th Council Meet held on 11.07.2023, followed by a CBIC Circular No. 199/11/2023-GST dated 17-07-2023, it was clarified that the Head Office (HO) had an option to distribute ITC in respect of such common input services either by following ISD mechanism or cross charge and that the ISD route was not mandatory as per the current provisions of the CGST Act and Rules.
- A new manner of distribution along with the restrictions and conditions would be prescribed, to distribute the credit of central tax or integrated tax charged on invoices received by ISD.

**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.**

## **Insertion of new section 122A for levying penalty in case failure to register certain machines used in manufacture of goods as per special procedure notified u/s 148 of CGST Act (i.e. Tobacco, Pan-masala and similar items)**

- It is proposed to insert a new section 122A, relating to the penalty for failure to register certain machines used in manufacture of goods as per special procedure notified u/s 148 of the Act.
- According to the newly inserted section, **an additional penalty of Rs. 1 lakh per unregistered machine shall be imposed**. The other penalties specified under Chapter XV under the CGST Act would continue to apply. Also, there would also be a provision for confiscation of unregistered machines.
- Recently, Notification No. 4/2024-Central Tax, dated 05-01-2024 was issued to prescribe new special procedure to be followed by registered persons engaged in manufacturing notified goods. The effective date for the implementation of this notification is April 01, 2024.
- The Section 122A read as:

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.

(2) 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.

# CHANGES IN CGST/IGST ACT: FINANCE ACT 2023

## No.34/2023–Central Tax] Dated: 31st July, 2023 (w.e.f. 1.10.2023)

Persons making supplies of goods through an ECO who is required to collect tax at source under section 52 of the said Act and having an Aggregate turnover in the preceding financial year and in the current financial year not exceeding the amount of Aggregate turnover above which a supplier is liable to be registered in the State or Union territory in accordance with the provisions of sub-section (1) of section 22 of the said Act, as the category of persons **exempted from obtaining registration** under the said Act, subject to the following conditions, namely: —

- (i) such persons shall not make any inter-State supply of goods;
- (ii) such persons shall not make supply of goods through Electronic commerce operator in more than one State or Union territory;
- (iii) such persons shall be required to have a Permanent Account Number issued under the Income Tax Act, 1961 (43 of 1961);
- (iv) such persons shall, before making any supply of goods through Electronic commerce operator, declare on the Common portal their Permanent Account Number issued under the Income Tax Act, 1961 (43 of 1961), address of their Place of business and the State or Union territory in which such persons seek to make such supply, which shall be subjected to validation on the Common portal;
- (v) such persons have been granted an enrolment number on the Common portal on successful validation of the Permanent Account Number declared as per clause (iv);
- (vi) such persons shall not be granted more than one enrolment number in a State or Union territory;
- (vii) no supply of goods shall be made by such persons through Electronic commerce operator unless such persons have been granted an enrolment number on the Common portal; and
- (viii) where such persons are subsequently granted registration under section 25 of the said Act, the enrolment number shall cease to be valid from the effective date of registration.

## **Section 137 of the [FA, 2023](#) — Section 10 CGST Act, 2013**

**Composition levy extended to suppliers of goods under ecommerce model:**

**[[Notification No. 28/2023 – Central Tax dated 31.07.2023](#)]**

- Previously, registered individuals involved in supplying **goods** through an [\*\*E-commerce operator \(ECO\)\*\*](#) did not have access to the Composition Scheme's benefits. (**Supply of services still restricted**)
- Now, these **benefits will be extended to them**.
- However, certain restrictions will still apply to registered individuals engaged in **providing services through an E-commerce operator**.

The Central Board of Indirect Taxes and Customs (CBIC) has issued [\*\*Notification Nos. 36/2023 – Central Tax\*\*](#) on August 04, 2023. These notifications outline a **special procedure** that E-commerce operators must follow when dealing with the supply of goods by individuals who are tax-paying Composition Dealers under Section 10 of the Act.

The procedure in respect of supply of goods made through ECO by the persons paying tax under section 10 of the said Act (hereinafter referred to as the said person) 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 sub-section (1) of Section 52 of the CGST Act for the supplies of goods made by the said person through its platform.

## **Section 138 of the FA, 2023 — Second and third proviso to Section 16(2) of the CGST Act:**

### **Clarificatory amendment concerning payment to supplier within 180 days**

To align the language of law with the return filling system provided in the CGST Act, the updated provision stipulates that if a **recipient fails to settle the invoice amount, including taxes, to the supplier within 180 days from the date of issue of the invoice, the recipient must pay an amount equivalent to the ITC they have claimed, in addition to the interest outlined in Section 50 of the CGST Act.**

#### **Amended second and third proviso to Section 16(2) of the CGST Act:**

*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 <sup>9</sup>[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 made by him <sup>10</sup>[to the supplier] of the amount towards the value of supply of goods or services or both along with tax payable thereon.*

9. Substituted (w.e.f. 1st October, 2023 vide [Notification No. 28/2023-C.T.](#), dated 31st July, 2023) by s. 138 of The Finance Act 2023 (No. 8 of 2023) for "added to his output tax liability, along with interest thereon".

10. Inserted (w.e.f. 1st October, 2023 vide [Notification No. 28/2023-C.T.](#), dated 31st July, 2023) by s. 138 of The Finance Act 2023 (No. 8 of 2023).

**[[Notification No. 28/2023 – Central Tax dated 31.07.2023](#)]**

## **Section 139 of the FA, 2023 - Section 17(3) of the CGST Act:**

**[Notification No. 28/2023 – Central Tax dated 31.07.2023]**

### **Sale of warehoused goods before filing BOE includible in value of exempt supply for reversal of common ITC u/s 17(3) r.w. Rule 42/43**

The value of transactions as may be prescribed in respect of para 8(a) of Schedule III to the CGST Act i.e., “Supply of warehoused goods to any person before clearance for home consumption”, shall be includible in the value of exempt supply for the purpose of reversal of common input tax credit u/s 17(3) r. w. Rule 42/43.

**17(2)** 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.

**(3)** The value of exempt supply under sub-section (2) shall be such as may be prescribed, and shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.

**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,<sup>4</sup> [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.]

**Schedule III - 8. (a) Supply of warehoused goods to any person before clearance for home consumption**

### **Section 17(5)(fa) of the CGST Act: ITC blocked on CSR activities**

ITC shall not be available on goods/services received by taxable person, which are used or intended to be used for activities relating to fulfilment of obligations under Corporate Social Responsibility (“CSR”) activities. This is applicable prospectively.

**17(5)** Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely:-.....

**(fa)** goods or services or both received by a taxable 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 140 of the FA, 2023 — Section 23(2) of the CGST Act:**

### **Retrospective overriding effect of Section 23(2) on Sections 22 and 24 w.e.f. July 2017**

Retrospective amendment from 01.07.2017, to provide that the persons exempted from obtaining registration by virtue of a notification issued u/s 23(2) of the CGST Act need not be obtain registration notwithstanding anything contained u/s 22 (threshold limit cases) or 24 (mandatory cases).

It was observed that the over- riding effect of sub-section (2) of section 23 over sub-section (1) of section 22 and section 24 of CGST Act is required to ensure that a person specifically exempted from registration vide a notification issued under sub-section (2) of section 23 of CGST Act, subject to the conditions specified in the said notification, may not be subjected to the requirement of the provisions of sub- section (1) of section 22 and section 24 of CGST Act for taking registration, as the same may in effect nullify the effect of the said notification.

***Amendment to Section 23:** "(2) Notwithstanding anything to the contrary contained in sub-section (1) of section 22 or section 24, the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, specify the category of persons who may be exempted from obtaining registration under this Act."*

*[[Notification No. 28/2023 – Central Tax dated 31.07.2023](#)]*

## **Section 141 of FA, 2023 — Section 30(1) of the CGST Act:**

**[Notification No. 28/2023 – Central Tax dated 31.07.2023]**

### **Time limit on application for revocation of cancelled registration**

Time limit of 30 days prescribed u/s 30 has been omitted for moving an application for Revocation of Cancellation of GST Registration.

The time period has 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.

**Rule 23 (1)** A registered person, whose registration is cancelled by the proper officer on his own motion, may 1[subject to the provisions of rule 10B] submit an application for revocation of cancellation of registration, in **FORM GST REG-21**, to such proper officer, <sup>4</sup>~~[within a period of thirty days from the date of the service of the order of cancellation of registration or within such time period as extended by the Additional Commissioner or the Joint Commissioner or the Commissioner, as the case may be, in exercise of the powers provided under the proviso to sub-section (1) of section 30,]~~ [within a period of ninety days from the date of the service of the order of cancellation of registration] at the common portal, either directly or through a Facilitation Centre notified by the Commissioner:

**Provided that** <sup>4</sup>~~[Provided that such period may, on sufficient cause being shown, and for reasons to be recorded in writing, be extended by the Commissioner or an officer authorised by him in this behalf, not below the rank of Additional Commissioner or Joint Commissioner, as the case may be for a further period not exceeding one hundred and eighty days:]~~ no application for revocation shall be filed, if the registration has been cancelled for the failure of the registered person to furnish returns, unless such returns are furnished and any amount due as tax, in terms of such returns, has been paid along with any amount payable towards interest, penalty and late fee in respect of the said returns.

Provided also that all returns due for the period from the date of the order of cancellation of registration till the date of the order of revocation of cancellation of registration shall be furnished by the said person within a period of thirty days from the date of order of revocation of cancellation of registration.

**Provided** also that where the registration has been cancelled with retrospective effect, the registered person shall furnish all returns relating to period from the effective date of cancellation of registration till the date of order of revocation of cancellation of registration within a period of thirty days from the date of order of revocation of cancellation of registration.

**[Notification No. 38/2023- Central Tax dated August 04, 2023]**

## **Sections 142-145 of the FA, 2023 — Sections 37(5), 39(11), 44(1) & (2) and 52(15) of the CGST Act:**

### **Limitation of 3 years on filing of returns**

The registered person shall not be allowed to furnish the return in GSTR-1, GSTR-3B, GSTR-9, GSTR-9C and GSTR-8 after a period of 3 years from the due date of furnishing the relevant return.

*Amendment to Section 37:* "(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."

*Amendment to Section 39:* "(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."

*Amendment to Section 44:* "(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."

*Amendment to Section 52:* "(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."

## **Section 146 of the FA, 2023 — Section 54(6) of the CGST Act:**

**[Notification No. 28/2023 – Central Tax dated 31.07.2023]**

### **Refunds and Interest on delayed refunds**

- Sub-section (6) of Section 54 of the CGST/SGST Act, 2017, provided for **provisional refund** of ninety percent of the total amount claimed as refund on account of zero rated supplies of goods or services or both **excluding the amount of input tax credit provisionally accepted**.
- The concept of ‘provisionally accepted input tax credit’ was related to the GSTR-1-2-3 system of return filing which has never been implemented. However, in the absence of implementation of GSTR-1-2-3 system of return filing, it was clarified vide para 2.0 of Circular no 24/24/2017 –GST dated 21.12.2017 that provisionally accepted input tax credit would be sanctioned upon obtaining of an undertaking in relation to Sections 16(2)(c) and 42(2) of the CGST/SGST Act, 2017. Therefore, in practice, no deduction on account of provisionally accepted input tax credit is being made while granting provisional refund.
- Further, Section 41 of the CGST/SGST Act, 2017 that provided for availing of eligible input tax credit as self-assessed in the return on a provisional basis in terms of GSTR-1-2-3 system of return filing has been amended in Finance Act, 2022 w.e.f. 01.10.2022 by doing away with the provision of availment of input tax credit on a provisional basis.

This amendment removes 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.

***Amendment to Section 54:*** provision relating to availment of input tax credit on provisional basis has been done away with, the words “*excluding the amount of input tax credit provisionally accepted,*” *are omitted* in sub-section (6) of Section 54 of the CGST Act

## **Section 147 of the FA, 2023 — Section 56 of the CGST Act:**

**[[Notification No. 28/2023 – Central Tax dated 31.07.2023](#)]**

Interest on delayed refunds granted subject to certain conditions & restrictions and in the manner which will be prescribed.

Section 56 of the CGST Act has been amended so as to provide for an enabling provision to prescribe manner of computation of period of delay beyond 60 days from the date of receipt of application till date of refund, for calculation of interest on delayed refunds.

**Amendment to Section 56:** In section 56 of the Central Goods and Services Tax Act, for the words "from the date immediately after the expiry of sixty days from the date of receipt of application under the said sub-section till the date of refund of such tax", the words "for the period of delay beyond sixty days from the date of receipt of such application 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**" shall be substituted.

The amended Rule now read as: [[Notification No. 38/2023- Central Tax dated August 04, 2023](#)]

**Rule 94. Order sanctioning interest on delayed refunds.-**

(1) Where any interest is due and payable to the applicant under section 56, the proper officer shall make an order along with a <sup>1</sup>[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.

(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.

## **Section 148 of FA, 2023 — Section 62(2) of the CGST Act:**

**[Notification No. 28/2023 – Central Tax dated 31.07.2023]**

### **Assessment of unregistered persons**

- The registered person furnishes return under section 39 or section 45 after the period of 30 days of service of the assessment order issued under sub-section (1) of section 62.
  - Therefore, such assessment order and the liability created by such order are not withdrawn and remain valid.
  - such liabilities remain as recoverable arrears in the books of the tax authorities and are liable to be recovered.
  - The only option available with the registered person in such cases is to file appeal against the said assessment order under section 107 of CGST Act, after depositing the pre-deposit as per sub-section (6) of section 107.
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- ✓ Time period of 30 days specified under section 62(2) increased to 60 days.
  - ✓ A proviso inserted to section 62(2) - *"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 said 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."*
  - ✓ An amnesty scheme provided under section 148 of CGST Act for deemed withdrawal of assessment orders for the past cases where the concerned returns have been filed along with due interest and late fee, and irrespective of whether appeal has been filed or not against the said assessment order, or

**Section 155 of the FA, 2023 — Section 122(1B) of the CGST Act:**

**[Notification No. 28/2023 – Central Tax dated 31.07.2023]**

**Penalty for certain offences:**

A new Section 122(1B) of the CGST Act has been inserted so as to provide for penal provisions applicable to Electronic Commerce Operators in case of contravention of provisions relating to supplies of goods made through them by unregistered persons or composition taxpayers. The Section reads as under:

"(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.*".

## **Section 156 of the FA, 2023 — Section 132(1) of the CGST Act:**

**[Notification No. 28/2023 – Central Tax dated 31.07.2023]**

### **Decriminalization of certain offences**

Section 132(1) of the CGST Act has been amended so as:

- to decriminalize offences specified in **clause (g)** (obstruct or prevents any officer in the discharge – IPC Section 186), **clause (j)** ( tampers with or destroys any material evidence or documents – IPC Section 204) and **clause (k)** (fails to supply any information – IPC Section 176) of the said section
- to **increase the monetary threshold** for launching prosecution for the offences under the said Act from **1 crore rupees to crore rupees**, except for the offences related to issuance of invoices without supply of goods or services or both.

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.

## **Section 157 of the FA, 2023 — Section 138(1) of the CGST Act:**

**[Notification No. 28/2023 – Central Tax dated 31.07.2023]**

**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:

	<b>Earlier</b>	<b>Now</b>
Minimum	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	100% of the tax involved

[Notification No. 38/2023- Central Tax dated August 04, 2023] – Rule 162 amended

## **Section 158 of the FA, 2023 — Section 158A of the CGST Act:**

**[Notification No. 28/2023 – Central Tax dated 31.07.2023]**

### **Consent based sharing of information furnished by taxable person**

A new section 158A in the CGST Act has been inserted so as to provide for prescribing manner and conditions for sharing of the information furnished by the registered person in his return or in his application of registration or in his statement of outward supplies, or the details uploaded by him for generation of electronic invoice or E-way bill or any other details, as may be prescribed, on the common portal with such other systems, as may be notified.

New Rule 163 inserted:

**[Notification No. 38/2023- Central Tax dated August 04, 2023]**

#### *163. Consent based sharing of information.-*

- (1) *Where a registered person opts to share the information furnished in— (a) FORM GST REG-01 as amended from time to time; (b) return in FORM GSTR-3B for certain tax periods; (c) FORM GSTR-1 for certain tax periods, pertaining to invoices, debit notes and credit notes issued by him, as amended from time to time, with a system referred to in sub-section (1) of section 158A (hereinafter referred to as “requesting system”), the requesting system shall obtain the consent of the said registered person for sharing of such information and shall communicate the consent along with the details of the tax periods, where applicable, to the common portal.*
- (2) *The registered person shall give his consent for sharing of information under clause (c) of sub-rule (1) only after he has obtained the consent of all the recipients, to whom he has issued the invoice, credit notes and debit notes during the said tax periods, for sharing such information with the requesting system and where he provides his consent, the consent of such recipients shall be deemed to have been obtained.*
- (3) *The common portal shall communicate the information referred to in sub-rule (1) with the requesting system on receipt from the said system-
  - (a) the consent of the said registered person, and
  - (b) the details of the tax periods or the recipients, as the case may be, in respect of which the information is required.*

## **Section 159 of the FA, 2023 — Para 7, 8(a) and 8(b) in Schedule III of the CGST Act:**

**[Notification No. 28/2023 – Central Tax dated 31.07.2023]**

### **Retrospective applicability of Para 7, 8(a) and 8(c) of Schedule III**

Following entries in Schedule III (non-taxable supplies) deemed to have been inserted with effect from July 01, 2017 to put an end on ongoing litigations or prospective litigations in cases wherein no tax is paid by any taxpayer on following supplies:

- Supply of goods from a **place in outside the taxable territory to another place outside the taxable territory** without such goods entering India
- **high seas sales.**
- Supply of **warehoused goods to any person before clearance for home consumption.**

No refund of such tax paid shall be available in cases where any tax has already been paid in respect of such transactions/ activities during the period from July 01, 2017 to January 31, 2019.

## **Section 160 of the FA, 2023 — Section 2(16) of the IGST Act:**

**[Notification No. 28/2023 – Central Tax dated 31.07.2023]**

### **Scope of OIDAR services widened**

Section 2(16) of the IGST Act has been amended so as to revise the definition of "non-taxable online recipient" by removing the condition of receipt of online information and database access or retrieval services (OIDAR) for purposes other than commerce, industry or any other business or profession so as to provide for taxability of OIDAR service provided by any person located in non-taxable territory to an unregistered person receiving the said services and located in the taxable territory.

Further, it also seeks to clarify that the persons registered solely in terms of clause (vi) of Section 24 of CGST Act shall be treated as unregistered person for the purpose of the said section. *It now reads as:*

**2(16) "non-taxable online recipient" means any unregistered person receiving online information and database access or retrieval services located in taxable territory.**

***Explanation.—For the purposes of this clause, the expression "unregistered person" includes a person registered solely in terms of clause (vi) of section 24 of the Central Goods and Services Tax Act, 2017;***

Also, section 2 (17) has been amended to revise the definition of "online information and database access or retrieval services" to remove the condition of rendering of the said supply being essentially automated and involving minimal human intervention.

**[Notification No. 38/2023- Central Tax dated August 04, 2023]**

### **Inclusion of 'Non-taxable online recipient'**

A significant inclusion to Rule 64 is the term "non-taxable online recipient" as referred to in the Integrated Goods and Services Tax Act, 2017 ("the IGST Act"). This change expands the scope of Rule 64 to cover more categories of recipients, thereby promoting greater tax compliance.

## **Section 161 of the FA, 2023 — Section 12(8) of the IGST Act omitted:**

**[Notification No. 28/2023 – Central Tax dated 31.07.2023]**

### **Place of Supply in relation of Transportation of Goods**

Proviso to section 12(8) of the IGST Act has been omitted so as to specify the place of supply of services by way of transportation of goods to a registered person, shall be the location of recipient and else shall be location at which goods are handed over for their transportation, irrespective of destination of the goods, in cases where the supplier of services and recipient of services are located in India.

### **Section 162 of the FA, 2023 - Section 13(9) of the IGST Act omitted:**

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** is now covered under the default provision of Section 13(2) of IGST Act and 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 now qualify as exports, and Services from suppliers outside India qualify as import of service irrespective of the destination of goods

# GST Council Meetings/NCM held in 2023-24

49<sup>th</sup> GST Council Meeting held on 18.02.2023

50<sup>th</sup> GST Council Meeting held on 11.07.2023

51<sup>st</sup> GST Council Meeting held on 02.08.2023

52<sup>nd</sup> GST Council Meeting held on 07.10.2023

1<sup>st</sup> National Coordination Meeting held on 24.04.2023

2<sup>nd</sup> National Coordination Meeting held on 14.12.2023

Based on the recommendations of these meetings Notifications/Circular/Instructions have been issued in 2023-24

# Changes related to Rate

## To exempt services supplied by National Testing Agency (NTA) by way of conduct of entrance examinations for admission to educational institutions

[[Notification No. 01/2023-Central Tax \(Rate\)](#) dated 28 February 2023]

- Conduct of entrance examinations by educational institutions is exempt from GST. [Notification No. 12/2017-CT(R) dated 28.06.2017 S.No. 66 (aa)].
- Exemption available extended to educational institutions and Central and State educational boards for conduct of entrance examination to any authority, board or a body set up by the Central Government or State Government including National Testing Agency for conduct of entrance examination for admission to educational institutions.

## services supplied by Courts/Tribunals to be taxed under Reverse Charge Mechanism (RCM)

[[Notification No. 02/2023-Central Tax \(Rate\)](#) dated 28 February 2023]

- Services by Courts and Tribunals have been declared as neither a supply of goods nor a supply of service. [Schedule III, para 2 of CGST Act, 2017].
- Courts and Tribunals besides judicial functions, also perform certain commercial activities such as renting of their premises to telecommunication companies for installation of telecommunication towers, renting of chambers to lawyers etc.
- To extend the dispensation available to Central Government, State Governments, Parliament and State Legislatures with regard to payment of GST under reverse charge mechanism (RCM) to the Courts and Tribunals also in respect of taxable services supplied by them such as renting of premises to telecommunication companies for installation of towers, renting of chamber to lawyers etc.

## Rab

[[Notification No. 03/2023-Central Tax \(Rate\)](#) and [Notification No. 04/2023 – Central Tax \(Rate\)](#) dated 28 February 2023 and [Circular No. 191/03/2023-GST](#)]



- Treated on similar lines of jaggery stating that it is a liquid form of jaggery.
- GST rate on rab reduced to 5% if sold in pre-packaged and labelled form and nil, if sold in loose form w.e.f 1<sup>st</sup> March, 2023.
- clarified that the issue for the past periods regularized on as is basis.

## Pencil Sharpener

[[Notification No. 03/2023-Central Tax \(Rate\)](#) dated 28 February 2023]



- GST rates on supply of pencils pencils, pastels, drawing charcoal, Mathematical boxes, geometry boxes and colour boxes etc attract 12% and eraser attracts 5%. But a Pencil Sharpener attracted 18% GST.
- GST rate on Pencil Sharpeners (falling under CTH 8214) reduced from 18 % to 12%.

GTA opted to pay GST under Forward Charge Mechanism (FCM) deemed to be exercised for future Financial Years

[[Notification No. 05/2023-Central Tax \(Rate\)](#) dated 9 May 2023 and [Notification No. 05/2023-Central Tax \(Rate\)](#) dated 26 July 2023 ]

- GTAs who want to pay GST under FCM during any Financial Year are required to exercise the option to do so by filing an online declaration on Goods and Services Tax Network (GSTN) portal by 15<sup>th</sup> March of the preceding financial year.
- This requirement was notified on 13.07.2022 based on the recommendations of the 47th GST Council meeting. Accordingly, the deadline for exercising this option for Financial Year 2023-2024 was 15<sup>th</sup> March, 2023.
- Representations were received that some of the GTAs could not file declaration by 15<sup>th</sup> March, 2023 for various reasons including the presumption that the GTAs who had already opted for FCM are not required to file option every year.
- The following **two changes** were made with the approval of **GST Implementation Committee (GIC)** to resolved the issues in view of the urgency involved:
  - The last date for exercising the option to pay GST under FCM was extended from 15th March, 2023 to 31st May, 2023 and
  - GTAs who commence new business or cross registration threshold during any Financial Year, have been allowed to exercise the option for the year in which they commence business or cross registration threshold within 45 days from date of applying for GST registration or 1 month from date of obtaining registration whichever is later.
- The above changes were notified w.e.f **09.05.2023** thereby resolving this issue for the current Financial Year.
- As a trade friendly measure, GTAs will not be required to file declaration for paying GST under forward charge every year. If they have exercised this option for a particular financial year, they shall be deemed to have exercised it for the next and future financial years unless they file a declaration that they want to revert to reverse charge mechanism (RCM).
- It has also been decided that the last date of exercising the option by GTAs to pay GST under forward charge shall be 31<sup>st</sup> March of preceding Financial Year instead of 15<sup>th</sup> March. 1<sup>st</sup> January of preceding Financial Year shall be the start date for exercise of option.

## Fish Soluble Paste

[[Notification No. 09/2023-Central Tax \(Rate\)](#) dated 26 July 2023 and [Circular No. 200/12/2023-GST](#)]

- Retrospective GST exemption was given till 30.09.2019 to Fishmeal and unintended waste generated during the production of fish meal (falling under heading 2301), except for fish oil, on the recommendation of the 37th and 45th GST Council meetings respectively.
- Fish soluble paste is a by-product produced while producing fish meal and fish oil.
- Fishmeal attracts GST rate of 5% but fish soluble paste, generated as a waste by-product during the process of manufacture of fish meal, attracts 18% GST rate.
- **GST rate on fish soluble paste (CTH 2309) reduced from 18 % to 5%.**
- The issue for the past periods regularized on *as is basis*.



## uncooked/unfried extruded snack pellets

[[Notification No. 09/2023-Central Tax \(Rate\)](#) dated 26 July 2023 and [Circular No. 200/12/2023-GST](#)]

- On the recommendations of 48<sup>th</sup> GST Council, a clarification was issued that extruded products such as “fryums” are classifiable under 19059030 attracting GST rate of 18%.
- **GST rate on uncooked/unfried extruded snack pellets, by whatever name called, reduced to 5%.**
- The issue for the past periods may be regularized on *as is basis*.



## LD Slag

[\[Notification No. 09/2023-Central Tax \(Rate\) dated 26 July 2023\]](#)

- LD Slag is a recyclable waste produced during the separation of molten steel slag from impurities in steel-making furnaces (200kg LD slag generated per ton of crude steel).
- Only 25% of the total slag generated in India is being reused/recycled. It is used for road project, sintering and iron-making.
- It is posing an environmental problem as it is getting accumulated over the years and less land is available for disposal of such huge quantities.
- The Council in the 23<sup>rd</sup> meeting recommended reduction of GST rate on BF Slag/Fly Ash to 5% based on the reason that it is an environmentally harmful product and its re-usage needs to be promoted.
- GST rate reduced on LD slag from 18% to 5%.



## Supply of raw cotton by agriculturist to cooperatives

[\[Circular No. 200/12/2023-GST\]](#)



- Supply of raw cotton by an agriculturist to any registered person is taxable under reverse charge mechanism.
- Section 2(84) (i) of the CGST Act, 2017 defines ‘person’ as including “a co-operative society registered under any law relating to co-operative societies”. As per Section 7 (1) (aa) of the CGST Act “supply” includes “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.”
- 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.
- clarified that supply of raw cotton, including kala cotton, from agriculturists to cooperatives is a taxable supply and such supply to the cooperatives (being a registered person) attracts 5% GST under reverse charge mechanism.
- The issue for the past periods regularized on *as is basis*.

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

[Circular No. 201/13/2023-GST]

- Entry No. 6 of notification No. 13/2017 CTR dated 28.06.2017, provides that services supplied by a director of a company or a body corporate to the said company or the body corporate are subject to Reverse Charge Mechanism under the provisions of Section 9(3) of CGST Act.
- clarified by way of circular that **services supplied by a director of a company to the company in his private or personal capacity such as supplying services by way of renting of immovable property to the company or body corporate are not taxable under RCM.** Only those services supplied by a 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.

Whether supply of food or beverages in cinema hall is taxable as restaurant service

[Circular No. 201/13/2023-GST]

- As per Explanation at Para 4 (xxxii) to notification No. 11/2017-CTR dated 28.06.2017, “*Restaurant Service*’ means supply, by way of or as part of any service, of goods, being food or any other article for human consumption or any drink, 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.”
- clarified by way of a circular that the **food or beverages served in a cinema hall is taxable as restaurant service as long as: the food or beverages are supplied by way of or as part of a service and supplied independent of the cinema exhibition service.**
- Where the sale of cinema ticket and supply of eatables such as popcorn or cold drinks etc. are clubbed together, and such bundled supply satisfies the test of composite supply, the entire supply will attract GST at the rate applicable to service of exhibition of cinema, the principal supply.

To specify a positive list of services under Sr. No. 3 & 3A of notification No. 12/2017-Central Tax (Rate)

**[[Notification No. 13/2023-Central Tax \(Rate\)](#) dated 19 October 2023]**

- This issue has been discussed in the 45<sup>th</sup>, 47<sup>th</sup>, 48<sup>th</sup> and 50<sup>th</sup> GST Council meetings.
- After detailed deliberations, Council recommended that entries at Sl. No. 3 and 3A of notification No. 12/2017-CTR dated 28.06.2017 may be retained as they are with no change.
- Also, a new entry created to exempt following five services supplied to Governmental Authority:

Water Supply

Public health

Sanitation Conservancy

Solid waste management

Slum improvement and upgradation

## Changes in 9(5) – bus operators organised as companies

### [Notification No. 16/2023-Central Tax (Rate) dated 19 October 2023]

With effect from 1st January 2022, liability to pay GST on bus transportation services supplied through Electronic Commerce Operators (ECOs) has been placed on the ECO under section 9(5) of CGST Act, 2017. This trade facilitation measure was taken on the representation of industry association that most of the bus operators supplying service through ECO owned one or two buses and were not in a position to take registration and meet GST compliances.

To arrive at a balance between the need of small operators for ease of doing business and the need of large organized players to take ITC, **bus operators organised as companies excluded from the purview of section 9(5) of CGST Act, 2017. This would enable them to pay GST on their supplies using their ITC.**

In exercise of the powers conferred by sub-section (5) of section 9, the Central Government, amendments in the notification No.17/2017- Central Tax (Rate), dated the 28th June, 2017 –

In the said notification,

- (i) in clause (i), for the words "omnibus or any other Motor vehicle", the words "or any other Motor vehicle except omnibus" shall be substituted;
- (ii) after clause (i), the following clause shall be inserted, namely:-  
"(ia) services by way of transportation of passengers by an omnibus except where the person supplying such service through Electronic commerce operator is a company.";
- (iii) in the Explanation, after item (c), the following item shall be inserted, namely, -  
"(d) "Company" has the same meaning as assigned to it in clause (20) of section 2 of the Companies Act, 2013(18 of 2013).".

# Updated Notification 17/2017 CT (R), dt 28.06.2017

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## **Updated Notification**

- (i) services by way of transportation of passengers by a radio-taxi, motorcab, maxicab, motor cycle, 5[or any other Motor vehicle except omnibus;
  - (ia) services by way of transportation of passengers by an omnibus except where the person supplying such service through Electronic commerce operator is a company.**
- (ii) services by way of providing accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes, except where the person supplying such service through electronic commerce operator is liable for registration under clause (vi) of section 21 of the Union Territory Goods and Services Tax Act, 2017 read with sec 22(1)
- (iii) services by way of house-keeping, such as plumbing, carpentering etc, except where the person supplying such service through Electronic commerce operator is liable for registration u/s 22(1)
- (iv) supply of restaurant service other than the services supplied by restaurant, eating joints etc. located at specified premises.

## Food preparation of millet flour in powder form, containing at least 70% millets

[[Notification No. 17/2023-Central Tax \(Rate\)](#) and [Notification No. 18/2023-Central Tax \(Rate\)](#) dated 19 October 2023]

- When millets undergo multiple stages of preparation including washing, roasting, grinding, addition of additives and other substances such as pulses, further processing and packaging for use as food preparations, the final products are food preparations of flour.
- This heading covers a number of food preparations with a basis of flour, which derive their essential character from such materials whether or not these ingredients predominate by weight or volume.
- Since 2023 is being celebrated as Year of the Millets in 2023, to promote millet-based products, Council recommended the following rates:

0% - food preparation of millet flour, in powder form, containing at least 70% millets by weight (CTH 1901), sold in other than pre-packaged and labelled form.

12% - if sold in pre-packaged and labelled form.



[Notification No. 17/2023-Central Tax (Rate) dated 19 October 2023]

- ENA (Extra Neutral Alcohol), also known as rectified spirit or rectified alcohol, is a high distillate alcohol, free from impurities, typically containing 95% alcohol by volume.
- Varying practices across states with some distilleries discharging GST on ENA and not paying VAT while some distilleries are paying VAT on ENA and not paying GST. There are also some distilleries paying GST @ 18% on ENA cleared for manufacture of 'liquor for human consumption', but not paying any GST on Grain Neutral Spirits (GNS) when supplying to an alcohol bottling unit. In addition, there are multiple litigations pending in various judicial forums.
- Imperative to take a decision since litigation is a time-consuming process and certainty must be provided to the industry for ease of doing business.
- ENA for industrial use is being taxed at the rate of 18% under residual entry. However, a dedicated tariff line "2207 10 12 – Spirits for industrial use" has been created vide Gazette Notification dated 30<sup>th</sup> September 2023.

GST on Molasses reduced from 28% to 5%. This step will increase liquidity with mills and enable faster clearance of cane dues to sugarcane farmers. This will also lead to reduction in cost for manufacture of cattle feed as molasses is also an ingredient in its manufacture.

An entry for spirits for industrial use attracting 18% GST inserted.

## Imitation Zari

[\[Circular No. 205/17/2023-GST and Notification 20/2023- CT\(Rate\) dated 19 October 2023\]](#)



- GST rate reduced to 5% on all imitation zari thread or yarn known by any name in trade parlance vide Notification 09/2023-CT(Rate) dated 27<sup>th</sup> July, 2023 (inserted Sl. No. 218AA).
- The request for clarification has been received in respect of metal coated plastic film converted to metallised yarn (imitation zari) and twisted with nylon, cotton, polyester or any other yarn to make imitation zari thread. Doubts have been raised whether this item is covered under imitation zari thread or yarn notified at 5% or under the other metallised yarn category at 12%.
- As per HS Explanatory Notes, the heading 5605 covers –
  1. yarn of any textile material (including monofilament , strip and the like, and paper yarn) combined with metal thread or strip, whether obtained by a process of twisting, cabling or by gimping, whatever the proportion of the metal present.
  2. yarn of any textile material covered with metal by any other process including yarn covered with metal by electro-deposition.
- The heading also covers products consisting of a core of metal foil (generally of aluminium) or of a core of plastic film coated with metal dust, sandwiched by means of an adhesive between two layers of plastic film.

Clarified that imitation zari thread or yarn made from metallised polyester film/ plastic film falling under HS 5605 are covered by Sl. No. 218AA of Schedule I attracting 5% GST. The GST Council has also recommended that no refund will be permitted on polyester film (metallised)/plastic film on account of inversion of tax rate. Requisite changes have been made in Notification no. 5/2017-Central Tax (Rate) vide Notification No. 20/2023-Central Tax (Rate) dated 19.10.2023

Whether ‘same line of business’ in case of passenger transport service and renting of motor vehicles includes leasing of motor vehicles without operators

[Circular No.206/18/2023-GST]

- 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.
- 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”.
- 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

Whether GST is applicable on reimbursement of electricity charges received by real estate companies, malls, airport operators etc. from their lessees/occupants.

[Circular No.206/18/2023-GST]

- 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 apart of composite supply and shall be taxed accordingly. The principal supply is renting of immovable property and/or maintenance of premise and the supply of electricity is an ancillary supply. 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 would be applicable.
- 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 of 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.

job work for processing of “Barley” into “Malted Barley”



[\[Circular No.206/18/2023-GST\]](#)

- 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.
- 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.

Whether District Mineral Foundations Trusts (DMFTs) set up by the State Governments are Governmental Authorities

[\[Circular No.206/18/2023-GST\]](#)

- 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.
- 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.
- 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.

# **Policy Related Changes And Clarifications**

## Clarification on charging of interest under section 50(3) of the CGST Act, 2017, in cases of wrong availment of IGST credit and reversal thereof

[Circular No. 192/04/2023-GST]

- 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.**
- 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 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.
- 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**

# Clarification on TCS liability under Sec 52 of the CGST Act in case of multiple E-commerce Operators (ECOs) in one transaction

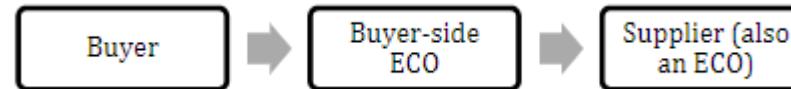
[Circular No. 194/06/2023-GST]

❖ Circular issued to clarify that:

- in a situation where multiple ECOs are involved in a single transaction through ECO platform, 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.



- where the Supplier-side ECO is himself the supplier of the said supply, the compliances under section 52 of CGST Act, including collection of TCS, is to be done **by the Buyer-side ECO**.



## Clarification on availability of ITC in respect of warranty replacement of parts and repair services during warranty period

### ❖ Circular issued to inter alia: [[Circular No. 195/07/2023-GST](#)]

- Clarified that where the **manufacturer 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 services, **no GST is chargeable on such replacement of parts and/ or repair service and also, no reversal of input tax credit is required to be made by the manufacturer.**
- 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.
- Clarified the **taxability and requirement of availment/ reversal of ITC** in situations where **distributor provides replacement of parts and/or repair services** to the customer, as part of warranty on behalf of the manufacturer.
  - (a) 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 - GST would be payable by the distributor on the said supply and the manufacturer would be entitled to avail the input tax credit of the same, no reversal of input tax credit by the distributor is required in respect of the same.
  - (b) 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 manufacturer. Further, no reversal of ITC.

# Clarification on taxability of shares held in a subsidiary company by the holding company

[Circular No. 196/08/2023-GST]

- ❖ Representations received seeking clarification as to whether the holding of shares in a subsidiary company by the parent company is to be treated as ‘supply of service’ under GST and is to be taxed accordingly or not.
- ❖ Some of the field formations relied on the **SAC code 997171**- “*services provided by holding companies, i.e. holding securities of (or other equity interests in) companies and enterprises for the purpose of owning a controlling interest*”, and are demanding GST on “share capital held in subsidiary company”.
- ❖ **Securities under GST Law are considered neither goods nor services** in terms of definition of goods under **section 2(52)** of CGST Act and in terms of definitions of services under **section 2(102)** of the said Act.
- ❖ Further, securities include ‘shares’ as per definition of securities under clause (h) of section 2 of Securities Contracts (Regulation) Act, 1956.
  
- ❖ Circular issued to clarify, specifying that **mere holding of securities of a subsidiary company by a holding company, whether located in India or abroad, cannot be treated as a supply of services and therefore, cannot be taxed under GST.**

# Clarification on refund related issues

[Circular No. 197/09/2023- GST]

## Clarification on Refund of accumulated input tax credit under Section 54(3) on the basis of ITC available as per FORM GSTR 2B

- ❖ References received on 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 consequent to change in provisions regarding ITC availment being restricted to that available as per **FORM GSTR 2B**.
- ❖ **Circular issued to clarify** that:
  - w.e.f. 01.01.2022, availment of refund of the accumulated ITC under section 54(3) for a tax period restricted to the ITC on inward supplies as reflected in **FORM GSTR-2B of the said tax period or of any previous tax period**.
  - refund claims, **which have already been disposed off** by the proper officer before issuance of this circular, **not to be reopened**.

# Clarification on refund related issues

[Circular No. 197/09/2023- GST]

## Requirement of the undertaking in FORM RFD-01 inserted vide para 7 of Circular No. 125/44/2019-GST dated 18.11.2019

- ❖ Para 7 of Circular No. 125/44/2019-GST dated 18.11.2019 and the undertaking in FORM RFD-01 requires amendment due to omission of Section 42, FORM GSTR-2 & GSTR-3 and amendment in Section 41.
- ❖ Circular issued to clarify that:
  - Para 7 of Circular No. 125/44/2019-GST dated 18.11.2019 & undertaking in FORM GST RFD-01 amended to delete the references to the omitted provisions;
  - Consequently, Annexure-A to Circular No. 125/44/2019-GST dated 18.11.2019 amended to the effect that:
    - “Undertaking in relation to sections 16(2)(c) and section 42(2)” wherever mentioned in Declaration/Statement/Undertaking/ Certificates to be filled online needs to be replaced by “Undertaking in relation to sections 16(2)(c)”.
    - “Copy of GSTR-2A of the relevant period” & “Self-certified copies of invoices entered in Annexure-A whose details are not found in GSTR-2A of the relevant period” wherever required as supporting documents needs to be removed/ deleted.

## Determination of value of adjusted total turnover in the formula under Rule 89(4)

- ❖ Clarification has been sought as to whether in view of insertion of Explanation in rule 89(4) of CGST Rules, for the purpose of calculation of “adjusted total turnover” in the formula under rule 89(4), the value of goods exported out of India has to be considered as per Explanation under rule 89(4). FoB or value of tax invoice whichever is lower.
- ❖ Circular issued to clarify that:
  - Consequent to Explanation having been inserted in rule 89(4) of CGST Rules vide Notification No. 14/2022- CT dated 05.07.2022, the value of export goods to be included while calculating “adjusted total turnover” in the formula under rule 89(4) will be determined as per the said explanation.

# Clarification on refund related issues

[Circular No. 197/09/2023- GST]

## Clarification on the scope and computation of the refund on account of inverted duty structure as provided in sub-section (3) of section 54 and in rule 89 (5) of the CGST Rules, 2017

- ❖ Divergent views were taken in field formations regarding treatment of **refund of accumulated ITC on account of inverted rated supply of goods** in cases where **subsidy is given by the Central Government or the State Governments**, resulting in lower taxable value of the outward supply of such goods.
- ❖ **Circular issued to clarify that:**
  - the term “**Net ITC**” covers the **ITC availed on all inputs in the relevant period**, irrespective of their rate of tax, as long as there are some inputs on which the rate of tax is higher than the rate of tax on outputs;
  - the **taxable value of the outwards supplies has no implication on the calculation of the refund** amount of accumulated input tax credit as per the formula provided under rule 89(5) of CGST Rules, 2017;
  - **ITC attributable to the subsidy cannot be removed** from the calculation of ‘**Net ITC**’, or a **notional amount cannot be added** while calculating the ‘**tax payable on inverted rated supply**’ in the said formula under rule 89(5).

# Clarification on refund related issues

[Circular No. 197/09/2023- GST]

## Admissibility of refund where an exporter applies for refund subsequent to compliance of the provisions of sub-rule (1) of rule 96A (LUT route –clearance for export without payment of tax)

- ❖ There were instances where **exporters voluntarily make 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 rule 96A of CGST Rules.
- ❖ Clarification were 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 refund of unutilized input tax credit on account of export and also refund of the integrated tax and interest so paid.
- ❖ **Circular issued to clarify that:**
  - substantive benefits of refund accruing on account of zero-rated supply cannot be denied due to delayed export or delayed receipt of payment for export, as the case may be;
  - **refund of IGST paid in compliance of the provisions of sub–rule (1) of rule 96A of CGST Rules may also be given, but no refund of interest paid can be given in such cases.**

**Clarification with respect to applicability of e-invoice w.r.t supplies made by a registered person to Government Departments, etc./ local authorities/ PSUs registered solely for the purpose of TDS**

[\[Circular No. 198/10/2023-GST\]](#)

- ❖ Representations received seeking clarification with respect to **applicability of e-invoicing** under rule 48(4) of CGST Rules w.r.t supplies made by a registered person, whose turnover exceeds the prescribed threshold for generation of e-invoicing, **to the 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.
- ❖ **Circular issued to clarify that:**
  - the registered person, whose turnover exceeds the prescribed threshold for generation of e-invoicing, are **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.**

# Issues pertaining to ISD mechanism and taxability of services provided by one distinct person to another distinct person

[Circular No. 199/11/2023-GST]

- ❖ Doubts raised as to whether it is mandatory for the headquarter office (HO) of an entity to follow the **Input Service Distributor (ISD) mechanism** for distribution of ITC in respect of **common input services, procured from a third party** which are also attributable to one or more branch offices (BOs), or can the HO also follow the **mechanism of raising invoice under section 31** to the BO without registering as ISD and the said BO thereafter claiming ITC in respect of such input services. .
- ❖ **(i) For common input services procured from third party:**
  - To clarify through a **circular** that:
    - ISD mechanism is **not mandatory** as per the present provision of GST law for passing ITC in respect of common input services procured by HO from a third party which are attributable to both HO and BO or exclusively to one or more BOs;
    - **Registration as ISD** mandatory if ITC is to be distributed through ISD mechanism;
  - Distribution of ITC to a BO through ISD mechanism or through issuance of invoice under section 31 **only if the said services are actually being supplied to the concerned BO.**
  - For future**, ISD mechanism to be made **mandatory prospectively by amendment in the law** for distribution of ITC in respect of input services procured by HO from a third party but attributable to both HO and BOs or exclusively to one or more BOs, **including in cases, where such input services are liable to tax on reverse charge basis.**
- (ii) For internally generated services:**
  - To clarify through a **circular** that in cases **where full input tax credit is available to the recipient**:
    - in view of **second proviso to rule 28 of CGST Rules**, the **value of such supply of services declared in the invoice by HO to BOs may be deemed as open market value**, irrespective of the fact whether cost of any particular component of such services, like employee cost etc., has not been included in the value of the services in the invoice, or not.
    - **if the invoice is not issued with respect to any internally generated services by the HO to the 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 the said proviso.
  - Law Committee to further deliberate the issue of taxability and valuation of such internally generated services in cases, **where full input tax credit is not available to the recipient in its 52<sup>nd</sup> Meeting which is yet to be implemented.**

## **Clarification on issues pertaining to Place of Supply**

[Circular No. 203/15/2023-GST](#)

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- i. **supply of service of transportation of goods, including through mail and courier:** Place of supply will be **determined by the default rule under section 13(2) of IGST Act** i.e. 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**.
  
- ii. **supply of services in respect of advertising sector:**
  - In 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, the place of supply of services provided by the vendor to the advertising company in such case shall be governed by **the provisions of section 12(3)(a) of IGST Act**.
  - In case where the advertising company wants to display its advertisement on hoardings/ bill boards at a specific location availing the services of a vendor and the responsibility of arranging the hoardings/ bill boards and display of advertisement on the said location lies with the vendor and during this entire time of display of the advertisement, the vendor is in possession of the hoarding/structure at the said location on which advertisement is displayed whereas the advertising company is not occupying the space or the structure, the place of supply shall be determined **in terms of Section 12(2) of IGST Act**.

# **Clarification on issues pertaining to Place of Supply**

[Circular No. 203/15/2023-GST](#)

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## **i. Place of supply in case of supply of the “co-location services”:**

- Co-location services are in the nature of “**Hosting and information technology (IT) infrastructure provisioning services**”, and the said services do not merely involve providing of a physical space, but also involve the supply of various components of ‘Hosting and information technology (IT) infrastructure provisioning services’ like network connectivity, backup facility, firewall services, and monitoring and surveillance service **for ensuring continuous operations of the servers and related hardware**, etc. Accordingly, the place of supply of the same shall be determined by **the default place of supply provision under sub-section (2) of Section 12 of the IGST Act** i.e. location of recipient of co-location service.
- 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-section (3) of Section 12 of the IGST Act** which is the location where the immovable property is located.

## **Clarification on issues pertaining to taxability of personal guarantee and corporate guarantee in GST**

[Circular - 204/16/2023-GST dated 27<sup>th</sup> October, 2023](#)

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**Q1 -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 not.**

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 sub-section (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 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.

Rule 28 of CGST Rules, 2017 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.

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.

However, there may 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.

## **Clarification on issues pertaining to taxability of personal guarantee and corporate guarantee in GST**

[Circular - 204/16/2023-GST dated 27<sup>th</sup> October, 2023](#)

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**Q2 -Whether the activity of providing corporate guarantee by a person on behalf of another related person, or by the holding 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.**

It is clarified that 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. 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 the newly inserted sub rule (2 ) of Rule 28 of CGST Rules.

## Clarification regarding eligibility of construction of roads, bridges for inverted duty structure refund

### Notification No. 15/2023 – CT(Rate) dated 19 October, 2023

- References have been received from field formations requesting for clarification regarding applicability of Notification number 15/2017-Central Tax (Rate), dated 28.06.2017 (which restricts refund of accumulated credit on account of inverted duty structure in respect of supplies covered under Entry 5(b) of Schedule II of CGST Act, 2017) in respect of refund on account of inverted duty structure in the case of supply of certain services like **construction of bridges and roads** etc.
- If the said services are construed as civil structure under Entry 5(b) of Schedule II of CGST Act, 2017, then refund will be not admissible but if they are construed as under works contract services under Entry 6(a) of Schedule II, then refund would be admissible.
  - Vide the Notification, in opening paragraph, for the words, brackets, letters and figures“ specified in sub-item (b) of item 5 of Schedule II of the Central Goods and Services Tax Act”, the words *“of construction of a complex, building or a part thereof, intended for sale to a buyer, wholly or partly, where the amount charged from the recipient of service includes the value of land or undivided share of land, as the case may be, 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”*, shall be substituted.
  - The amendment allows the no refund of unutilised input tax credit shall be allowed under sub-section (3) of section 54 of the said Central Goods and Services Tax Act in construction of only such civil structures including a complex or building, which are intended for sale to a buyer along with land or undivided share of land, are covered under Entry 5(b) of Schedule II of CGST Act, 2017 and not in supply of certain services like **construction of bridges and roads** etc.

# Capacity based taxation and Special Composition Scheme in certain Sectors in GST

Notification No. 04/2024 – CT dated 5 January 2024, Notification No. 27/2023 – CT dated 31 July, 2023 Notification No. 30/2023 – CT dated 31 July, 2023 and

- ❖ GST Council in its 42<sup>nd</sup> meeting recommended for constitution of a **Group of Ministers (GoM) for looking into the possibility of Capacity based taxation and Special Composition Scheme** in certain Sectors in GST.
- ❖ The GoM submitted its report with various recommendations which inter-alia included special registration mechanism for machines used in production of tobacco, pan masala and other similar items, special monthly returns to be filed by manufacturers of these items and prescribing heavy penalty for any unregistered machines found operating.
- ❖ These recommendations were accepted by GST Council in its 49<sup>th</sup> meeting and 50<sup>th</sup> meeting and accordingly, procedure for implementation of said recommendation needed to be devised.
  - **special procedure prescribed** in respect of **registration of machines** used in manufacturing of tobacco, pan masala and similar items and **special monthly returns** to be filed by manufacturers of these items.
  - Insertion of a **new section 122A** in CGST Act to provide for **penalty for non-declaration of machines** by such manufacturers, in addition to the penalty provisions specified in Section 122 of CGST Act. (yet to be notified)
  - Special registration of machines and filing of special monthly returns **to be done on the common portal** without any manual interface to prevent any undue harassment of the taxpayers.
  - Amendment to Section 16 of IGST Act made through section 123 of Finance Act 2021 (which provided for enabling provision for restricting IGST Refund route in respect of certain supplies or suppliers) may be **notified** with effect from 01.10.2023.
  - **Tobacco, pan masala & similar items as well as mentha oil** notified under the proposed section 16(4) of IGST Act as goods on whose supply IGST refund route shall not be available.

## Mechanism of dealing with differences in ITC between GSTR-3B and GSTR-2B (88 D/DRC- 01C)

### Notification No. 38/ 2023 - CT dated 4<sup>th</sup> August, 2023

- ❖ **GSTR-3B return** of a registered person for a tax period is being **auto-populated** on the portal from the details in his FORM GSTR-1 and FORM GSTR-2B for the said tax period. However, the registered person is allowed presently to **freely edit the same**.
- ❖ This may lead to **availment of input tax credit by the registered person in GSTR-3B return in excess of that made available in his FORM GSTR-2B**.
- ❖ There is a need to safeguard revenue by finding suitable manner of handling and controlling the difference in ITC availed in FORM GSTR-3B by the registered person and that available as per his FORM GSTR-2B.
- ❖ A mechanism to be based on **system based identification of the taxpayers** based on certain approved risk criteria, along with system-based intimation, and a procedure of auto-compliance on the part of the taxpayers to explain/ take remedial action in respect of such differences, **in a manner similar to** that provided for the difference between the liability reported in FORM GSTR-1 and FORM GSTR-3B vide **Rule 88C** of CGST Rules.
  - Insertion of new **rule 88D** in CGST Rules for **system based intimation** to the registered person about the **difference between the input tax credit availed as per FORM GSTR-3B and that available as per FORM GSTR-2B** and to direct payment of the differential amount or explain the difference.
  - Insertion of a **new clause (e) in sub-rule (6) of rule 59** of CGST Rules to enable blocking of FORM GSTR-1/ IFF for a subsequent tax period unless the taxpayer has reversed the amount specified in the intimation or has furnished a reply explaining the reasons for any amount remaining to be reversed.
  - Insertion of **FORM GST DRC-01C** in CGST Rules as required under sub-rule (1) of the proposed rule 88D.
  - To begin with, system based intimation under proposed rule 88D to the concerned registered person may be given in those cases where difference between the input tax credit availed in FORM GSTR-3B & that available as per FORM GSTR-2B is **more than 20% as well as more than Rs. 25 lakhs**.
- This would help in safeguarding the revenue by controlling the difference in ITC availed in FORM GSTR-3B and that available as per FORM GSTR-2B of the taxpayers, and will reduce ITC mismatches.

## **Procedure for Recovery of Tax and Interest in terms of Rule 88C(3)**

### **Notification No. 38/ 2023 - CT dated 4<sup>th</sup> August, 2023**

- ❖ As per recommendations of the GST Council in its 48th meeting, **rule 88C** was inserted in the CGST Rules **with effect from 26.12.2022 for system based intimation** to the registered person in cases of **difference in output tax liability in terms of FORM GSTR-1 and GORM GSTR-3B** of a registered person for any particular month above a specified threshold.
- ❖ The Council had also directed Law Committee to **formulate a procedure** in cases where the taxpayer deposits the differential tax liability only partly, with or without an explanation for such short payment, and for **further action for recovery of the unpaid amount in accordance with section 79**, for which no satisfactory explanation has been furnished.
  - insertion of a new **Rule 142B** in the CGST Rules and insertion of a new **FORM GST DRC-01D** to provide for **creation of liability in Electronic Liability Register** by the proper officer in respect of -
    - the amount intimated under rule 88C which is not paid by the registered person and for which no explanation has been furnished or the explanation furnished is not satisfactory; and
    - the amount of interest

**This would help in expeditious recovery of due tax liability and interest amount.**

## Amendment in CGST Rules, 2017 regarding registration

### Notification No. 38/ 2023 - CT dated 4<sup>th</sup> August, 2023

- ❖ Some unscrupulous elements are misusing the identity of other persons to obtain fake/ bogus registration under GST, with an intention to defraud 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.
- ❖ There is, therefore, a need for further strengthening and streamlining the registration process in GST to tackle the menace of fake registrations.
  - Amendment in **rule 10A** to provide that the details of bank account may be required to be furnished within **30 days** of grant of registration, or **before filing of statement of outwards supply under section 37 of CGST Act in FORM GSTR-1/ IFF, which ever is earlier.**
  - Amendment to **sub-rule (2A) of rule 21A** to provide for **system based suspension** of the registration in respect of such registered persons who either do not furnish details of valid bank account under rule 10A of CGST Rules within the time period prescribed in the said rule.
    - ✓ Insertion of **3rd proviso in sub-rule (4) of rule 21A** to provide for **automatic revocation of suspension** upon compliance with provisions of rule 10A.
  - Amendment to **sub-rule (6) of rule 59** to provide that in cases where a registered person has not furnished details of a valid bank account under rule 10A or where the said bank account is not validated, the said registered person may not be allowed to furnish the details of outward supplies in FORM GSTR-1 or using IFF.
  - Amendment in **rule 9(1)** and **rule 25** to **do away with the requirement of presence of the applicant** for physical verification of business premises and to provide for physical verification in rule 25 in high risk cases even where Aadhaar has been authenticated.

# Amendment in CGST Rules

[Notification No. 38/ 2023 - CT dated 4<sup>th</sup> August, 2023](#)

## Omission of clause (c) of Explanation (1) to Rule 43

- ❖ Services by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India was an exempt supply till 30.09.2022, which was not further extended after 30.09.2022. As a result, **the said service has become taxable after 30.09.2022.**
- ❖ **Clause (c) of Explanation (1) to Rule 43** of CGST Rules provides that aggregate value of exempt supplies for the purpose of reversal of common input tax credit under rule 42 or rule 43 shall exclude value of supply of services by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India.
- ❖ **Since, the above service is not an exempt supply w.e.f. 01.10.2022, reversal of ITC in respect of supply of the said services is not required w.e.f. 01.10.2022.** Therefore, clause (c) of Explanation (1) to Rule 43 of CGST Rules becomes **redundant** and may be omitted.
- ❖ **clause (c) of Explanation (1) at the end of Rule 43 of CGST Rules omitted.**

## Amendment in proviso to rule 46(f) of CGST Rules 2017

- ❖ Rule 46 of CGST Rules amended vide **Notification No. 26/2022 –Central Tax dated 26.12.2022** by adding a **proviso to clause (f)** of the said rule to provide that:
  - where any taxable services is supplied by or through an ECO or by a supplier of OIDAR services to an unregistered recipient, irrespective of the value of such supply, a tax invoice issued by the registered person shall **contain the name, address, PIN code and the name of the State of the recipient** and the said address shall be deemed to be the address on record of the recipient for purpose of place of supply.
- ❖ This led to concern by some tax administrations that where full address of the recipient is not available, the supplier may declare the place of supply as his own location leading to loss of revenue for the consumption states.
- ❖ Concerns raised by some taxpayers in difficulty in providing full address of the recipients on the tax invoices.
- ❖ Accordingly, request made **to not insist for full address details of the recipient and only the name of State of the recipient** may be sufficient to be provided in the tax invoice.
- ❖ **proviso to rule 46(f) of CGST Rules amended** to provide that **only name of the State of the recipient may be sufficient** to be provided on the tax invoice for deeming as address on record, and that name, address and PIN code of the recipient may not be required to be declared on the tax invoice.

# Amendment in CGST Rules

Notification No. 38/ 2023 - CT dated 4<sup>th</sup> August, 2023

## Amendment in rule 64 and FORM GSTR-5A of CGST Rules 2017

- ❖ Rule 64 of CGST Rules provides for filing of a monthly return in **FORM GSTR-5A** by a registered person providing OIDAR services from a place outside India to a person in India other than a registered person.
- ❖ **FORM GSTR-5A did not capture** details of supplies made by the OIDAR service provider to **registered persons** in India.
- ❖ There may be cases where such person **registered persons in India may not be paying applicable tax on RCM basis** on such supplies received from OIDAR service provider.
- ❖ Accordingly, there may be a need to include details of supplies made by the OIDAR service provider located outside India to **registered persons in India** in **FORM GSTR-5A** to keep track of such supplies.
- ❖ Amendment in **rule 64** and in **FORM GSTR-5A** so as to also **include details of supplies made by the OIDAR service provider located outside India to registered persons in India**.

## Amendment in Rule 89(1):

- ❖ 3rd proviso to sub-rule (1) of rule 89 of CGST Rules provided that refund of any amount by casual taxable person or by a non-resident taxable person shall be claimed in the **last return** required to be furnished by him.
- ❖ However, **Form GSTR- 3B** does not provide any option of claiming such refund, thus creating an anomaly regarding manner of claiming refund by casual taxable person or a non-resident taxable person.
- ❖ **3<sup>rd</sup> proviso to sub-rule (1) of rule 89 of CGST Rules amended** so that casual taxable person or a non-resident taxable person can claim refund of advance tax amount in the nature of excess balance in electronic cash ledger, **after the last return required to be furnished by him has been so furnished**.

# Amendment in CGST Rules

Notification No. 38/ 2023 - CT dated 4<sup>th</sup> August, 2023

## Amendment in rule 108 and rule 109

- ❖ In terms of sub-rule (1) of rule 108 and sub-rule (1) of rule 109 of CGST Rules, doubts are being raised as to **whether an appeal under section 107 can be filed either electronically or manually at the liberty of the Appellant**, or the appeal needs to be filed electronically only, if not otherwise notified by the Commissioner.
- ❖ There is a need to provide a clarity in the matter and also to provide for manual filing of appeal in some specific circumstances.
- ❖ **Amendment in rule 108(1) and rule 109(1) of CGST Rules by inserting a proviso** in both of the said rules providing for **filing of appeal manually under certain specified circumstances**.

## Notice in FORM GSTR-3A for non-filing of Annual Return in FORM GSTR-9 or FORM GSTR-9A:

- ❖ Section 46 of the CGST Act, read with Rule 68 of CGST Rules, require 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 or Section 52 of CGST Act requiring him to furnish such return within fifteen days.
- ❖ While **FORM GSTR-3A** has provision to issue notice to return defaulters as well as defaulters of final return, there is no provision in it to issue notice to defaulters of Annual returns.
- ❖ **amendment in FORM GSTR-3A** for issuance of notice to the registered taxpayers for their failure to furnish Annual Return in **FORM GSTR-9 or FORM GSTR-9A**.

## **Rules amendment consequent to submission of report of Group of Ministers (GoM) on implementation of E-way bill requirement for movement of Gold/ Precious stones under chapter 71**

### **Notification No. 38/ 2023 - CT dated 4<sup>th</sup> August, 2023**

- ❖ The **Group of Ministers (GoM) on e-way bill for gold and precious stones** had submitted its report containing various recommendations in respect of e-way bill requirement for intra-state movement of gold and precious stones, which were accepted by the GST Council in **its 47<sup>th</sup> meeting**.
- ❖ A separate **rule 138F inserted in CGST Rules, 2017, as well as in SGST Rules, 2017 of the States** who want to mandate the requirement of generation of e-way bills for intra-State movement of gold and precious stones under Chapter 71, for implementing the said recommendations of GoM.
- **It will enable the States to implement the requirement of e-way bill for intra-State movement of gold and precious stones, thus reducing evasion in respect of the said commodities.**

## **Amendment in CGST Rules and GST/PCT Form(s)**

Notified by Notification No. 52/2023 – CT dated 26.10.2023

### **(i) Incorporation of ‘One Person Company’ in FORM GST REG 01 i.e. Application for Registration**

- While applying for Registration, an applicant is required to select one of the categories mentioned in ‘Constitution of Business’ from dropdown in Part B of FORM GST REG-01 i.e. Application for Registration.
- In the existing system, it is mandatory for applicant to update minimum two Partners/Promoters, if he selects any of the categories of “Constitution of Business”. In case where an applicant tries to proceed with less than two Promoters and Partners, an error message is being displayed on the portal and he is not able to submit the application for registration.
- The option of choosing ‘One Person Company’ is not available among different categories of ‘Constitution of Business’ in notified FORM REG-01 and hence there is a need to make this option available in the FORM and on GST portal as well.
- **Incorporated ‘One Person Company’ as a Constitution of Business in Part-B of FORM GST REG-01** the applicant to fill only the details of the single member or owner and to submit the application successfully on system.

## Amendment in CGST Rules and GST/PCT Form(s)

Notified by Notification No. 52/2023 – CT dated 26.10.2023

- **Application for Enrolment as Goods and Services Tax Practitioner-Amendment in Form GST PCT-01**
- Rule 83(1) of the CGST Rules, 2017 stipulates certain conditions for enrolment as Goods and Services Tax practitioner some of which are not available in the notified FORM GST PCT-01 and on the portal.
- Hence, necessary changes mentioned below made on the portal as well as in Part-B of Form GST PCT-01 in line with the rules.
  - Certificate of Practice (COP) not required for CA/ICWA/CS as per the rules.
  - Option related to Graduate or Post Graduate in Law and Higher Auditing is not available in notified form and existing implementation
  - Option related to any other examination notified by Government is also not there.
  - Deleting the option of “Advocate” as it is not aligned with the existing rules.
- **S. No. 4 of Part-B of Form amended GST PCT-01 in line with rule 83(1) of the CGST Rules.**

- (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]<sup>1</sup>

- (1) Chartered Accountant  
(2) Company Secretary  
(3) Cost and Management Accountant  
(4) Graduate or Postgraduate or its equivalent degree in Law  
(5) Graduate or Postgraduate or its equivalent degree in Commerce  
(6) Graduate or Postgraduate or its equivalent degree in Banking including Higher Auditing  
(7) Graduate or Postgraduate or its equivalent degree in Business Administration  
(8) Graduate or Postgraduate or its equivalent degree in Business Management  
(9) Degree examination of any Foreign University recognized by any Indian 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

## **Amendment in CGST Rules and GST/PCT Form(s)**

Notified by Notification No. 52/2023 – CT dated 26.10.2023

### **Application for cancellation of TCS and TDS registration- Enhancement in Form GST REG-08 format for having options for cancellation of registration against the request made by the TDS and TCS registered persons**

- Notification no. 26/2022-CT dated 26.12.2022 amended rule 12(3) of the CGST Rules to provide for facility to TDS and TCS registered person for cancellation of their registration on their request.
- The tax officers were issuing Order of cancellation of Registration as Tax Deductor at Source or Tax Collector at Source in FORM GST REG-08 for suo-moto cancellation of registration alone as there was no separate format for issuing order of cancellation of registration for those persons against self-cancellation application.
- Hence, there was a need to amend FORM GST REG-08 **to specifically provide for cancellation of registration against the request made by the TDS and TCS registered persons** and also to rephrase and re-align the reasons for cancellation in FORM GST REG-08 on the lines of those notified in respect of FORM GST REG-19 vide CGST (5th Amendment) Rules, 2022 for better clarity.
- **substituted FORM GST REG-08** to provide for cancellation of registration against the request made by the TDS and TCS registered persons and to rephrase and re-align the reasons for cancellation in FORM GST REG-08 on the lines of those notified in respect of FORM GST REG-19.

**FORM GST REG-08***[See rule 12(3)]*

Reference No

Date:

**To**

Name:

Address:

Application Reference No. (ARN) (Reply)

Date:

**Order of Cancellation of Registration as Tax Deductor at source or Tax Collector at source****Before Amendment**

This has reference to the show-cause notice issued vide Reference Number ..... dated ..... for cancellation of registration under the Act.

- Whereas no reply to show cause notice has been filed; or
- Whereas on the day fixed for hearing you did not appear; or
- Whereas your reply to the notice to show cause and submissions made at the time of hearing have been examined. The undersigned is of the opinion that your registration is liable to be cancelled for the following reason(s).

1.

2.

The effective date of cancellation of registration is <<DD/MM/YYYY>>.

You are directed to pay the amounts mentioned below on or before ---- (*date*) failing which the amount will be recovered in accordance with the provisions of the Act and rules made there under. (This order is also available on your dashboard).

Head	Integrated tax	Central tax	State tax	UT Tax	Cess
Tax					
Interest					
Penalty					
Others					
Total					

*Signature**Name**Designation**Jurisdiction*

## After Amendment

**FORM GST REG-08**  
*{See rule12(3)}*

Reference No

Date:

To

Name:

Address:

Application Reference No.(ARN)

Date:

**Order of Cancellation of Registration as Tax Deductor at source or Tax Collector at source**

This is in reference to the request raised vide letter/mail dated ..... for cancellation of registration under the Act due to the following reason, namely:-

i.

ii.

The undersigned is of opinion that the effective date of cancellation of registration is <<DD/MM/YYYY>>.

2. You are required to furnish pending returns immediately.

3. Kindly refer to the supportive document(s) attached for case specific details.

4. It may be noted that the cancellation of registration shall not affect the liability 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.

**OR**

**Order of Cancellation of Registration as Tax Deductor at source or Tax Collector at source**

This has reference to the show-cause notice issued dated.....

- Whereas no reply to the show cause notice has been submitted,

and whereas, the undersigned based on record available with this office is of the opinion that your registration is liable to be cancelled for the following reason(s) : or

- Whereas reply to the show cause notice has been submitted vide letter dated \_\_\_\_\_,

and whereas, the undersigned on examination of your reply to show cause notice and based on record available with this office is of the opinion that your registration is liable to be cancelled for the following reason(s) :- or

- Whereas no reply to the show cause notice has been submitted and on day fixed for personal hearing, you did not appear in person or through authorised representative,

and whereas, the undersigned based on record available with this office is of the opinion that your registration is liable to be cancelled for following reason(s) : or

- Whereas no reply to the show cause notice has been submitted, but you or authorised representative attended the personal hearing and made a written or verbal submission,

and whereas, the undersigned on examination of your written or verbal submission made during personal hearing and based on record available with this office is of the opinion that your registration is liable to be cancelled for the following reason(s) : or

- Whereas reply to the show cause notice has been submitted vide letter dated \_\_\_\_\_. But, you or authorised representative did not attend the personal hearing on scheduled or extended date. and whereas, the undersigned on examination of your reply to show cause notice and based on record available with this office is of the opinion that your registration is liable to be cancelled for the following reason(s) : or

- Whereas reply to the show cause notice has been submitted vide letter dated \_\_\_\_\_ and you or authorised representative attended the personal hearing, made a written/oral submission during personal hearing. And whereas, the undersigned has examined your reply to show cause notice as well as submissions made at the time of personal hearing and is of the opinion that your registration is liable to be cancelled for the following reason(s) :

i.

ii.

The effective date of cancellation of registration is <<DD/MM/YYYY>>.

2. Kindly refer to the supportive document(s) attached for case specific details.

3. You are required to furnish pending returns immediately.

4. It may be noted that the cancellation of registration shall not affect the liability 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.

Place:

Date:

Signature

## **Amendment in CGST Rules and GST/PCT Form(s)**

Notified by Notification No. 52/2023 – CT dated 26.10.2023

### **Amendment in rule 142 (3) of the CGST Rules with respect to FORM GST DRC-05**

- FORM GST DRC-05 used the word intimation to denote the format in which the proper officer intimates the taxpayer regarding the conclusion of proceedings ( section 73/74/129 proceedings) initiated against him. However, rule 142 (3) of the CGST Rules states that “...and the proper officer shall issue an **order** in FORM GST DRC-05 concluding the proceedings in respect of the said notice.” i.e. the word used in rule 142(3) is 'order' and not 'intimation'. This created an anomaly as the intention behind FORM GST DRC-05 was to intimate the taxpayer about the proceedings and not to issue an order which is appealable.
- Rule 142 (3) amended so that words “intimation” shall be used instead of “order” with respect to FORM GST DRC-05.

## Automatic restoration of provisionally attached property

- Section 83(2) of CGST Act, 2017 mentions that the provisional attachment shall **cease to have effect after the expiry of a period of one year from the date of the order** i.e. provisional attachment order in the form of FORM GST DRC-22, there is no mention of need for issuance of any order to release/ restore the provisionally attached property after expiry of this time period of one year.
- At the same time, **Rule 159(2)** of CGST Rules, 2017 mentions that the **provisional attachment of a property shall be removed only on the written instructions from the Commissioner to that effect.**
- It has been brought to notice that there is a confusion among the concerned revenue authorities, transport authorities, bankers and other such authorities as to whether the said encumbrance placed on the said movable or immovable property **automatically expires after a period of one year from the date of FORM GST DRC – 22**, or the said authorities have to **wait for a written instructions from the Commissioner** to that effect.
- Notified by Notification No. 52/2023 – CT dated 26.10.2023
  - an **amendment in sub-rule (2) of Rule 159** of CGST Rules, 2017, to insert the words “*or on expiry of a period of one year from the date of issuance of order in FORM GST DRC-22, whichever is earlier,*” after the words “to that effect”, to clearly provide that **order issued under FORM GST DRC-22 shall cease to have effect after expiry of period of one year from the date of issuance.**
  - an **amendment in FORM GST DRC-22** inserting the words “*This order shall cease to have effect, on the date of issuance of order in FORM GST DRC-23 by the Commissioner, or on the expiry of a period of one year from the date of issuance of this order, whichever is earlier.*”

# Amnesty Scheme for Appeal [Notification 53/2023-CT dated 02.11.2023]

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In exercise of the powers conferred by section 148 of CGST Act, the Central Government, on the recommendations of the Council, hereby notifies Taxable persons who

- could not file an appeal against the order passed by the Proper officer on or before the 31st day of March, 2023 under section 73 or 74 of the said Act (hereinafter referred to as the said order), within the time period specified in sub-section (1) of section 107 read with sub-section (4) of section 107 of the said Act, and
- the Taxable persons 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 section 107, as the class of persons (hereinafter referred to as the said person) who shall follow the following special procedure for filing appeals in such cases:

The said person shall file an appeal against the said order in FORM GST APL-01 in accordance with subsection (1) of Section 107 of the said Act, on or before 31st day of January 2024:

Provided that an appeal against the said order filed in accordance with the provisions of section 107 of the said Act, and pending before the Appellate Authority before the issuance of this notification, shall be deemed to have been filed in accordance with this notification, if it fulfills the condition specified at para 3 below.

No appeal shall be filed under this notification, unless the appellant has 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 twelve and a half per cent. of the remaining amount of tax in dispute arising from the said order, subject to a maximum of twenty-five crore rupees, in relation to which the appeal has been filed, out of which at least twenty percent should have been paid by debiting from the Electronic cash ledger.

## Amnesty Scheme for Appeal

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No refund shall be granted on account of this notification till the disposal of the appeal, in respect of any amount paid by the appellant, either on their own or on the directions of any authority (or) court, in excess of the amount specified in para 3 of this notification before the issuance of this notification, for filing an appeal under sub-section (1) of Section 107 of the said Act.

No appeal under this notification shall be admissible in respect of a demand not involving tax.

6. The provisions of Chapter XIII of the Central Goods and Service Tax Rules, 2017 (12 of 2017), shall mutatis mutandis, apply to an appeal filed under this notification.

[Amendments in CGST Act 2017, IGST Act 2017 & CGST Rules and amendment/ issuance of notifications for online gaming/ casinos, etc.](#)

**Major Amendments in CGST Act/ IGST Act**

**Amendment in Entry 6 of Schedule III of CGST Act to clarify taxability of actionable claims in casinos, horse racing and online gaming and insertion of related definitions in sectoin 2:**

**Entry 6, Schedule III CGST Act**

<b>Rationale for amendment</b>	
Schedule III of CGST Act contains activities or transactions which shall be treated neither as a supply of goods nor a supply of services. Entry 6 of the said Schedule is “Actionable claims, other than lottery, betting and gambling”. There is a need to provide clarity in Entry 6 so as to specifically provide that “specified actionable claims” (which include actionable claims involved in or by way of casinos, horse racing and online money gaming) are not covered under the said entry.	6. Actionable claims, other than <del>lottery, betting and gambling</del> specified actionable claims.

## Insertion of related definitions in section 2

# Section 2(80A) CGST Act



Rationale for amendment	
The term “online gaming” needs to be defined in the CGST Act.	<b>Section 2</b> <b>(80A)</b> "online gaming" means offering of a game on the internet or an electronic network and includes online money gaming.

# Section 2(80B) CGST Act

Rationale for amendment	
The term “online money gaming” needs to be defined in the CGST Act.	<b>Section 2</b> <b>(80B)</b> "online money gaming " means online gaming in which players pay or deposit money or money's worth, including virtual digital assets, in the expectation of winning money or money's worth, including virtual digital assets, in any event including game, scheme, competition or any other activity or process, whether or not its outcome or performance is based on skill, chance or both and whether the same is permissible or otherwise under any law for the time being in force.

# Section 2(102A) CGST Act

Rationale for amendment	
The term “specified actionable claims” need to be defined in the CGST Act.	(102A) “specified actionable claim” means actionable claim involved in or by way of <ul style="list-style-type: none"><li>(i) betting; or</li><li>(ii) casinos; or</li><li>(iii) gambling; or</li><li>(iv) horse racing; or</li><li>(v) lottery; or</li><li>(vi) online money gaming.</li></ul>



# Section 2(105) CGST Act

Rationale for amendment	
The definition of “supplier” in the CGST Act needs amendment so as to provide for a deeming provision to treat a person as supplier in respect of a supply of specified actionable claims. .	<p><b>Section 2</b></p> <p>(105) “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 or both supplied;</p> <p>Provided that a person who organises or arranges, directly or indirectly, supply of specified actionable claims, including a person who owns, operates or manages digital or electronic platform for such supply, shall be deemed to be a supplier of such actionable claims, whether such actionable claims are supplied by him or through him and whether consideration in money or money’s worth, including virtual digital assets, for supply of such actionable claims is paid or conveyed to him or through him or placed at his disposal in any manner, and all the provisions of this Act shall apply to such supplier of specified actionable claims as if he is the supplier liable to pay the tax in relation to the supply of such actionable claims.</p>

# Section 2(117A) CGST Act

Rationale for amendment	Suggested formulation
The term “virtual digital asset” needs to be defined in the CGST Act.	<p><b>Section 2(117A)</b> “virtual digital asset” shall have the same meaning as assigned to it in section 2(47A) of Income Tax Act, 1961 (43 of 1961).</p>

# Section 2(17) CGST Act

Rationale for amendment	
Clause (17) of section 2 defines online information database access or retrieval services. The said definition includes online gaming. However, amendment is required in the said definition of online information database access or retrieval services so as to exclude “online money gaming” from the said definition.	(17) “online information database access or retrieval services”....  (vii) online gaming, <b>excluding online money gaming</b> ;

# Section 24 CGST Act

Rationale for amendment	
Section 24 provides for compulsory registration in certain cases. It is proposed that a person supplying online money gaming from a place outside India to a person in India may be required to get mandatorily registered under GST. Accordingly, amendment is proposed in section 24 to cover person supplying online money gaming from a place outside India to a person in India under compulsory registration.	<p><b>24. Compulsory registration in certain cases.</b>— Notwithstanding anything contained in sub-section (1) of section 22, the following categories of persons shall be required to be registered under this Act,— ....</p> <p>(xii) every person supplying online money gaming from a place outside India to a person in India; ....</p>



## **Major Amendments in CGST Act/ IGST Act**

Providing for **taxability of cross-border supplies of online money gaming** by a supplier located outside India to a person in India

# **Section 14A IGST Act**

<b>Rationale for amendment</b>	
<p>There is a need for special provisions to be inserted in the Act for supply of online money gaming by a person located outside the taxable territory to a person in India. Such provisions may provide for:</p> <p>(i) liability on the said supplier for paying integrated tax on such supply.</p> <p>(ii) Single registration under the Simplified Registration Scheme referred to in section 14 of this Act for the said supplier.</p> <p>(iii) blocking of access by the public to any information generated, transmitted, received or hosted in any computer resource used for supply of online money gaming by such supplier, in case of failure to comply with the above provisions.</p>	<p><b>14A. Special provision for online money gaming supplied by a person located outside the taxable territory.</b></p> <p>(1) A supplier of online money gaming as defined in clause (80B) of section 2 of the CGST Act, 2017 not located in the taxable territory, shall in respect of the supply of online money gaming by him to a person in the taxable territory, be liable to pay integrated tax on such supply.</p> <p>(2) For the purposes of complying with provisions of sub section (1), the supplier of online money gaming shall take a single registration under the Simplified Registration Scheme referred to in section 14 of this Act:</p> <p>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:</p> <p>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 shall 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.</p> <p>(3) In case of failure to comply with provisions of sub section (1) and/or sub section (2) above by the supplier of the online money gaming or a person appointed by such supplier or both, notwithstanding anything contained in section 69A of the Information Technology Act, 2000 (21 of 2000), any information generated, transmitted, received or hosted in any computer resource used for supply of online money gaming by such supplier shall be liable to be blocked for access by the public in such manner as specified in the said Act.</p>

# **Amendments in CGST Act 2017, IGST Act 2017 & CGST Rules and amendment/ issuance of notifications for online gaming/ casinos, etc.**

**Notification No. 45/2023 – CT dated 05.09.2023, Notification No. 48/2023 – CT, Notification No. 49/2023 – CT, Notification No. 51/2023 – CT dated 29.09.2023**

## **Value of supply of actionable claims in case of casino**

**Rule 31C.** 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-

- (i) for purchase of the tokens, chips, coins or tickets, by whatever name called, for use in casino; or
- (ii) for 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.

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.

## **Issue of treatment of refund/ return of money to the players:**

- **Insertion of proviso after proposed rule 31B:**

**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.

- **Insertion of proviso after proposed rule 31C:**

**Provided** that any amount returned or refunded by the casino to the payer 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.

Besides, there are some other amendments proposed in CGST Rules to provide for other consequential changes.

# Advisory for Pilot Project of Biometric-Based Aadhaar Authentication

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## **Advisory for Pilot Project of Biometric-Based Aadhaar Authentication and Document Verification for GST Registration Applicants of Gujarat, Puducherry and Andhra Pradesh**

Following key points during the registration process:

1. Rule 8 of the CGST Rules, 2017 has been amended to provide that an applicant can be identified on the Common portal, based on data analysis and risk parameters for Biometric-based Aadhaar Authentication and taking photograph of the applicant along with the verification of the original copy of the documents uploaded with the application.
2. The above-said functionality has been developed by GSTN. It was launched in Puducherry on 30th August 2023 and will be rolled out in Gujarat on 7th November 2023.
3. The said functionality now also provides for the document verification and appointment booking process. After the submission of the application in Form GST REG-01, the applicant will receive either of the following links in the e-mail,
  - (a) A Link for OTP-based Aadhaar Authentication OR
  - (b) A link for booking an appointment with a message to visit a GST Suvidha Kendra (GSK) along with the details of the GSK and jurisdiction, for Biometric-based Aadhaar Authentication and document verification (the intimation e-mail)
4. If the applicant receives the link for OTP-based Aadhaar Authentication as mentioned in point 3(a), she/he can proceed with the application as per the existing process.
5. However, if the applicant receives the link as mentioned in point 3(b), she/he will be required to book the appointment to visit the designated GSK, using the link provided in the e-mail. Once the applicant gets the confirmation of appointment through e-mail (the appointment confirmation e-mail), she/he will be able to visit the designated GSK as per the chosen schedule.

# Advisory for Pilot Project of Biometric-Based Aadhaar Authentication

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6. At the time of the visit of GSK, the applicant is required to carry the following details.

- (a) a copy (hard/soft) of the appointment confirmation e-mail
- (b) the details of jurisdiction as mentioned in the intimation e-mail
- (c) Aadhaar Number
- (d) the original documents that were uploaded with the application, as communicated by the intimation e-mail.

7. The biometric authentication and document verification will be done at the GSK, for all the required individuals as per the GST application Form REG-01.

8. The applicant is required to choose an appointment for the biometric verification during the maximum permissible period for the application as indicated in the intimation e-mail. In such cases, ARNs will be generated once the Biometric-based Aadhaar Authentication process and document verification are completed.

9. The feature of booking an appointment to visit a designated GSK is currently available for the applicants of the Gujarat State and it will be extended to the other notified States/UTs shortly.

**Earlier, Notification 27/2022 dated 26.12.2022 was issued to conduct the pilot in Gujarat and Puducherry regarding risk-based biometric-based Aadhar authentication. Further, vide Notification No. 54/2023 dated 17.11.2023, the State of Andhra Pradesh also added to join this pilot after the system's readiness is tested in the State of Gujarat and U.T. of Puducherry.**

# Difference in ITC available in GSTR-2B & ITC claimed in the GSTR-R3B

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**Dated 14.11.2023**

1. It is informed that GSTN has developed a functionality to generate automated intimation in Form GST DRC-01C which enables the taxpayer to explain the difference in Input tax credit available in GSTR-2B statement & ITC claimed in GSTR-3B return online as directed by the GST Council. This feature is now live on the GST portal.
2. This functionality compares the ITC declared in GSTR-3B/3BQ with the ITC available in GSTR-2B/2BQ for each return period. If the claimed ITC in GSTR 3B exceeds the available ITC in GSTR-2B by a pre-defined limit or the percentage difference exceeds the configurable threshold, taxpayer will receive an intimation in the form of DRC-01C.
3. Upon receiving an intimation, the taxpayer must file a response using Form DRC-01C Part B. The taxpayer has the option to either provide details of the payment made to settle the difference using Form DRC-03, or provide an explanation for the difference, or even choose a combination of both options.
4. In case, no response is filed by the impacted taxpayers in Form DRC-01C Part B, such taxpayers will not be able to file their subsequent period GSTR-1/IFF.

# ITC Reversal on Account of Rule 37A- Amount not paid by supplier to govt

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**Dated 14.11.2023**

1. Vide Rule 37A of CGST Rules, 2017 the taxpayers have to reverse the ITC availed on such invoice or debit note, the details of which have been furnished by their supplier in their GSTR-1/IFF but the return in GSTR-3B for the said period has not been furnished by their supplier till the 30th day of September following the end of FY in which the ITC in respect of such invoice or debit note had been availed.
2. The said amount of ITC is required to be reversed by such taxpayers, while furnishing a return in FORM GSTR-3B on or before the 30th day of November following the end of such financial year, as part of this legal obligation.
3. To facilitate the taxpayers, such amount of ITC required to be reversed on account of Rule 37A for the FY 2022-23 has been computed from system and has been communicated to the concerned recipient. The email communication to this effect has been sent on the registered email id of the taxpayer.
4. The taxpayers are advised to take note of it and to ensure that such ITC, if availed by them, is reversed as per rule 37A before 30.11.2023 in Table 4(B)(2) of GSTR-3B while filing the concerned GSTR-3B.

# **GSTAT**

# Purpose of GoM ON GSTAT

## As per Provisions of CGST Act,2017

Each bench of the Tribunal is composed of one Judicial Member, one Technical Member (Centre) and one Technical Member (State)

Hon'ble High Court of Madras in its order dated 20.09.2019 in WP 21147 of 2018 – Revenue Bar Association Vs. Union of India

The number of expert members cannot exceed the number of judicial members on the bench and struck down the relevant provisions of the law.

## Hon'ble Supreme Court of India

Laid down various principles with respect to appointment to Tribunals, conditions of service etc. in various other judgements. including order of Supreme Court in CA 3067 of 2004, CA No. 8588 of 2019

## Group of Ministers(GoM)

Draft amendments were placed before the GST Council in its 47th Meeting in Chandigarh and the matter referred to a Group of Ministers.

GoM was mandated to recommend necessary amendments required in the GST Laws to ensure that the legal provisions:

- a) Maintain the right federal balance;
- b) Are in line with the overall objective of uniform taxation within the country; and
- c) Are in line with the principles outlined in various judgements of Courts in relation to various aspects of Tribunal and are legally sustainable.

## Section 110: Qualification of Members (Finance Act 2023)

President	<b>Judge of the Supreme Court or Chief Justice of High Court</b>
Judicial Member	Judge of a High Court or District Judge or an Additional District Judge (With 10 years experience)
Technical Member (Centre)	Min. 25 years of Group A Service + Member of IRS (C&CE) or AIS with three-year experience in GST or existing law
Technical Member (State)	Officer of the State Government or AIS + not below the rank of Additional Commissioner of Value Added Tax or the State goods and services tax or such rank, not lower than that of the First Appellate Authority



25 Years of Group A Services 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, which may be reduced by the State Government on recommendation of the Council.

*first preference shall be given to officers who have worked in the State Government of the State to which the jurisdiction of the Bench extends.*

# Composition of the Search-cum-Selection Committee

**Chairperson**

**Chief Justice of India or a Judge of Supreme Court Nominated by Him**

**Member**

One Secretary of Central Government nominated by the Cabinet Secretary

**Member**

Chief Secretary of a State to be nominated by the Council

**One Member**

- (A) in case of appointment of a President of a Tribunal, shall be the outgoing President of the Tribunal; or
- (B) in case of appointment of a Member of a Tribunal, shall be the sitting President of the Tribunal; or
- (C) 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

## Member Secretary

Secretary of the Department of Revenue in the Ministry of Finance of the Central Government

- The Chairperson shall have the casting vote and the Member Secretary shall not have a vote.

## Composition of the **Search-cum-Selection Committee for Technical Member (State) of a State Bench**

**Chairperson**

the Chief Justice of the **High Court in whose jurisdiction the State Bench is located**

**Member**

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

**Member**

Chief Secretary of the State in which the State Bench is located

**Member**

one Additional Chief Secretary or Principal Secretary or Secretary of the State in which the State Bench is located, as may be nominated by such State Government, not in-charge of the Department responsible for administration of State tax

**Member Secretary**

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

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## THE CENTRAL GOODS AND SERVICES TAX (SECOND AMENDMENT) ACT, 2023 DATED 28.12.2023

Alignment of provisions of the CGST Act, 2017 with the provisions of the Tribunal Reforms Act, 2021 in respect of Appointment of President and Member of the proposed GST Appellate Tribunals: The Council in its 52<sup>nd</sup> Meeting has recommended amendments in section 110 of the CGST Act, 2017 to provide that:

- i) an advocate for **ten years with substantial experience** in litigation under indirect tax laws in the Appellate Tribunal, Central Excise and Service Tax Tribunal, State VAT Tribunals, by whatever name called, High Court or Supreme Court to be eligible for the appointment as judicial member;
- ii) the minimum age for eligibility for appointment as President and Member to be 50 years;
- iii) President and Members shall have tenure up to a maximum age of 70 years and 67 years respectively.

# **Amnesty Schemes/Relaxations**

## Special procedure for revocation of cancellation of registration (w.e.f. 31 March 2023)

[Notification No. 03/2023-Central Tax dated 31 March 2023]

- Special procedure prescribed for registered persons whose registration has been cancelled for non-furnishing of returns under clauses (b) or (c) of Section 29(2) of the Central Goods and Services Tax Act, 2017 ('CGST Act, 2017') on or before 31<sup>st</sup> December, 2022 and who failed to apply for revocation of cancellation of such registration within 30 days from the date of cancellation by the proper officer.
- To avail the benefit under the above notification,
  - ✓ Registered person to apply for revocation of cancellation of such registration up to 30 June 2023,
  - ✓ Returns due up to effective date of cancellation of registration should have been furnished,
  - ✓ Payment of tax due, along with interest, penalty and late fee should have been paid,
  - ✓ No further extension of time period available for filing the said application,
- The aforesaid benefit extends to the following persons:
  - ✓ Persons who failed to apply for revocation of cancellation of registration within time specified in Section 30 and
  - ✓ A person whose appeal against the order of cancellation of registration or order rejecting application for revocation of cancellation of registration has been rejected on ground of failure to adhere to time limit specified under Section 30(1).

## Conditional waiver of late fee on failure to furnish GSTR-4

- Late fee payable under Section 47 for failure to furnish GSTR-4 has been waived to the extent that the same is in excess of INR 250 and shall stand fully waived where the total amount of central tax payable in the said return is nil, for the registered persons who fail to furnish the return in Form GSTR-4
  - ✓ for the quarters from July, 2017 to March 2019 or
  - ✓ for the FY from 2019-20 to 2021-22 by the due date but furnish the said return between the period from 1 April 2023 to 30 June 2023.
- Notification 73/2017-Central Tax has been amended by [Notification No. 02/2023-Central Tax dated 31 March 2023](#) (w.e.f. 31 March 2023) to insert proviso 7 to the same.

## Special Procedure for non-filers of returns (w.e.f. 31 March 2023)

### [[Notification No. 06/2023-Central Tax dated 31 March 2023](#)]

- The Central Government notified that the registered persons who failed to furnish a valid return within a period of 30 days from service of assessment order issued on or before 28<sup>th</sup> February 2023 under Section 62(1), as the classes of registered persons, in respect of whom said assessment order shall be deemed to have been withdrawn if:
  - ✓ registered persons furnished the said return on or before the 30 June 2023, 2. return is accompanied by payment of interest under Section 50(1) and late fee payable under Section 47,
  - ✓ The same shall be available irrespective of whether or not an appeal had been filed against such assessment order under Section 107 of the CGST Act or whether or not the appeal, if any, filed against the said assessment order has been decided.

## Amnesty Scheme for failure to furnish Annual Return (w.e.f. 31 March 2023)

[Notification No. 07/2023-Central Tax dated 31 March 2023]

- The Central Government waived the amount of late fee referred to in Section 47 in respect of GSTR-9 for the FY 2022-23 onwards, which is in excess of amount as specified in Column (2) of the Table below, for the classes of registered persons mentioned in the corresponding entry in Column (1) of the Table below, who fail to furnish the return by the due date:

<b>Class of registered persons (1)</b>	<b>Amount (2)</b>
Registered persons having an aggregate turnover of up to INR 5 crore in the relevant FY	INR 25 per day, subject to a maximum of an amount calculated at 0.02 per cent. of turnover in the State or Union territory
Registered persons having an aggregate turnover of more than INR 5 crore and up to INR 20 crore in the relevant FY	INR 50 per day, subject to a maximum of an amount calculated at 0.02 per cent. of turnover in the State or Union territory

It was further provided that the registered persons who failed to furnish GSTR-9 for any of the FY 2017-18, 2018-19, 2019-20, 2020-21 or 2021-22, but furnished the said return between the period from 1<sup>st</sup> April 2023 to 30<sup>th</sup> June 2023, the total amount of late fee payable in respect of the said return, shall stand waived which is in excess of INR 10,000.

## Extension of time limit to issue order under Section 73(10) (w.e.f. 31 March 2023)

### [Notification No. 08/2023-Central Tax dated 31 March 2023]

- The Central Government extended the time limit under Section 73(10) of the CGST Act, 2017 for issuance of order for recovery of tax not paid or short paid or of input tax credit wrongly availed or utilized under 73(9) relating to the period as specified below:

FY	Extended Upto
2017-18	31 December 2023
2018-19	31 March 2024
2019-20	30 June 2024

## Conditional waiver of late fee on failure to furnish GSTR-10 (w.e.f. 31 March 2023)

### [Notification No. 09/2023-Central Tax dated 31 March 2023]

waives the amount of late fee referred in Section 47, which is in excess of INR 500 for the registered persons who fail to furnish the final return in Form GSTR-10 by the due date but furnish the said return between 1 April 2023 to 30 June 2023.

## Amnesty Provided in July

- **Notification No. 22/2023 - Central Tax dated 17.07.2023 issued to extend amnesty for GSTR-4 non-filers**

The Central Government vide the said Notification extended the amnesty scheme for GSTR-4 non-filers till 31.08.2023.

- **Notification No. 23/2023 - Central Tax dated 17.07.2023 issued to extend time limit for application for revocation of cancellation of registration**

The Central Government vide the said Notification extended the application period for revocation of cancellation of registration till 31.08.2023.

- **Notification No. 24/2023 - Central Tax dated 17.07.2023 issued to extend amnesty scheme for deemed withdrawal of assessment orders issued under Section 62**

The Central Government vide the said Notification extended the amnesty scheme for deemed withdrawal of assessment orders issued under Section 62 till 31.08.2023.

- **Notification No. 25/2023 - Central Tax dated 17.07.2023 issued to extend amnesty for GSTR-9 non-filers**

The Central Government vide the said Notification extended the amnesty scheme for GSTR-9 non-filers till 31.08.2023.

- **Notification No. 26/2023 - Central Tax dated 17.07.2023 issued to extend amnesty for GSTR-10 non-filers**

The Central Government vide the said Notification extended the amnesty scheme for GSTR-10 non-filers till 31.08.2023.

15 Q&A

From 1 to 1.15 PM

## Q1 - Whether ISD Mechanism is Mandatory prior to Finance Act 2024

- a) Yes It was mandatory
- b) It was not applicable
- c) It was optional

C

Q2 – What is the new Penalty amount prescribed for failure to register certain machine of goods like Pan Masala

- a) One Lacs
- b) 10000 or 100% of Tax
- c) No penalty

a

Q3 – When the machine used for manufacturing of tobacco, is not liable for confiscation if the penalty is paid within

- a) 3 days
- b) 7 days
- c) 45 days
- d) 10 days

a

Q4 Can composite dealer make the supply of goods and Services through ECO

- a) He can make the supply of goods or service and both through ECO
- b) He can make the supply of goods but not the service through ECO
- c) He can make the supply of services but not the goods through ECO
- d) He cannot make the supply of goods and services thru ECO

b

Q5 Can unregistered person make the supply of goods through ECO below threshold limit -

- a) Yes possible but only Intra State supply
- b) No not possible

a

Q6. Can unregistered person make the supply of services through ECO below the threshold limit

- a) Yes possible but only Intra State supply
- b) Yes possible both inter and Intra State supply
- c) No not possible

b

Q8. What is the new entry of block category of ITC in the section 17(5)

Clause (fa) to section 17(5) – Corporate Social Responsibility

Q9. What is the current time limit for revocation of cancellation of registration

90+180 = 270 days

Q10. GST Return cannot be furnished after the expiry of

- a) 5 years from the due date of return
- b) 3 Years from the due date of return
- c) 2 years from the due date of return
- d) 60 month from the due date of annual return of a FY

b

Q11. Whether the additional late fees and late fees are same. Please tell the situations when the additional late fees is being levied

Yes it different. In case of Assessment of non filling of return – return filled after 60 days before 120 days then need to pay Rs 100 per days as additional late fees

Q12 If Court give the renting of property to Telecommunication Company (Registered in the GST) then who will pay the tax

- a. Exempted in the GST
- b. Court will pay the tax under Forward Charge
- c. It is covered in Schedule III and out of GST
- d. Recipient will pay the Tax under RCM

Q13 Can the GTA opted Forward Charge, pay 5% and 12% both in same FY

- a. Yes
- b. No

a. Yes. Restriction is either forward or RCM. But if opted FCM then he can opt any rate i.e. 5% or 12%. In case of 5% he has to reverse the ITC Common ITC as per section 17(2) read with rule 42/43

Q14 Supply of Cotton to Co operative Society is covered under RCM or FCM

- a. Forward Charge
- b. Reverse charge
- c. No Supply as per schedule III

b

Q15 Commercial property of Director has been given on rent as Rs 2 lacs per month to the company then tax will be paid

- a. By the director under Forward Charge
- b. By the Company under Reverse charge
- c. No Supply as per schedule III

**THANK YOU**