

Prof. Dippak



AMENDMENT BOOKLET

CA-FINAL May, 2023 Attempt

- Coverage of All Relevant Amendments
- Logic / reasoning of amendment
- Simpler Analysis with Interlinking
- Charts & Diagrams



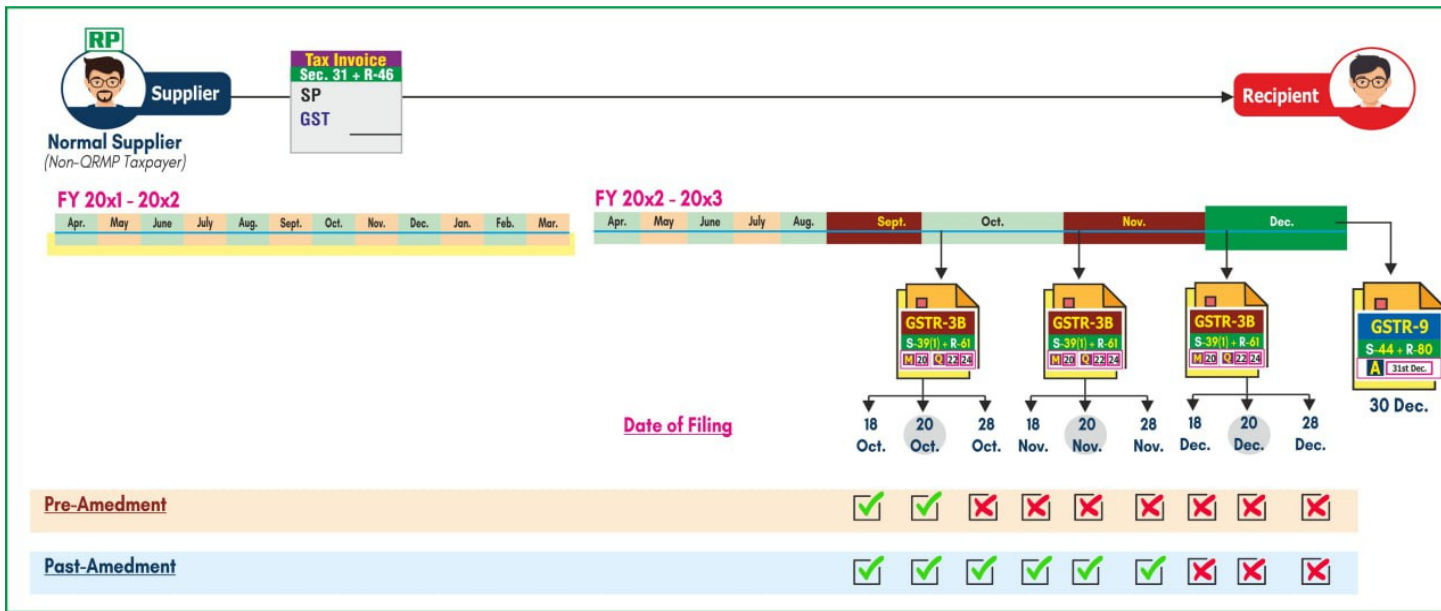
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CA-Final May 2023**Amendments [IDT (GST + Customs + FTP)]****GST**

Changes as to time limitation (w.e.f. 1st Oct, 2022)



	Governing provisions	Time limitation as to	Old Time Limitation	New Time Limitation
1.	Sec 16 (4)	Availment of ITC [Availment of Invoice and Debit Note based ITC]	Earlier of following two: <div style="border: 1px solid gray; padding: 5px; margin-bottom: 5px;"> <u>due date of furnishing</u> of the return under section 39 for the month of September following the end of the FY to which such invoice or debit note pertains </div> or <div style="border: 1px solid gray; padding: 5px;"> <u>furnishing of the relevant annual return.</u> </div>	Earlier of following two: <div style="border: 1px solid gray; padding: 5px; margin-bottom: 5px;"> 30th Nov following the end of the FY to which such invoice or debit note pertains </div> or <div style="border: 1px solid gray; padding: 5px;"> <u>furnishing of the relevant annual return.</u> </div>
2.	Sec 34 (2)	Reporting of Credit Note in the Return [Reporting of CN in the return claiming adjustment in output tax liability]	Earlier of following two: <div style="border: 1px solid gray; padding: 5px; margin-bottom: 5px;"> September following the end of the FY in which such supply was made </div> or <div style="border: 1px solid gray; padding: 5px;"> <u>Date of furnishing of the relevant annual return.</u> </div>	Earlier of following two: <div style="border: 1px solid gray; padding: 5px; margin-bottom: 5px;"> 30th Nov following the end of the FY in which such supply was made </div> or <div style="border: 1px solid gray; padding: 5px;"> <u>Date of furnishing of the relevant annual return.</u> </div>

3.	<u>Sec 37 (3)</u> Rectification of any omission/incorrect particulars in GSTR-1 (Statement of OS)	Earlier of following two: <table border="1"> <tr> <td>furnishing</td> <td>of the return under section 39 for the month of September following the end of the FY</td> </tr> <tr> <td colspan="2" style="text-align: center;"><i>or</i></td> </tr> <tr> <td>Furnishing</td> <td>of the relevant annual return.</td> </tr> </table>	furnishing	of the return under section 39 for the month of September following the end of the FY	<i>or</i>		Furnishing	of the relevant annual return.	Earlier of following two: <table border="1"> <tr> <td></td> <td>30th Nov following the end of the FY</td> </tr> <tr> <td colspan="2" style="text-align: center;"><i>or</i></td> </tr> <tr> <td>furnishing</td> <td>of the relevant annual return.</td> </tr> </table>		30 th Nov following the end of the FY	<i>or</i>		furnishing	of the relevant annual return.
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4.	<u>Sec 39 (9)</u> Rectification of any omission/incorrect particulars in RETURN [GSTR-3B/ others]	Earlier of following two: <table border="1"> <tr> <td>due date of furnishing</td> <td>of the return under section 39 the month of September or second quarter following the end of the FY</td> </tr> <tr> <td colspan="2" style="text-align: center;"><i>or</i></td> </tr> <tr> <td>actual date of furnishing</td> <td>of the relevant annual return.</td> </tr> </table>	due date of furnishing	of the return under section 39 the month of September or second quarter following the end of the FY	<i>or</i>		actual date of furnishing	of the relevant annual return.	Earlier of following two: <table border="1"> <tr> <td></td> <td>30th Nov following the end of the FY</td> </tr> <tr> <td colspan="2" style="text-align: center;"><i>or</i></td> </tr> <tr> <td>the actual date of furnishing</td> <td>of the relevant annual return.</td> </tr> </table>		30 th Nov following the end of the FY	<i>or</i>		the actual date of furnishing	of the relevant annual return.
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5.	<u>Sec 52 (6)</u> Rectification of any omission/incorrect particulars in GSTR-8 (Statement of Tax Collector)	Earlier of following two: <table border="1"> <tr> <td>due date of furnishing</td> <td>of statement for the month of September following the end of the FY</td> </tr> <tr> <td colspan="2" style="text-align: center;"><i>or</i></td> </tr> <tr> <td>actual date of furnishing</td> <td>of the relevant annual statement.</td> </tr> </table>	due date of furnishing	of statement for the month of September following the end of the FY	<i>or</i>		actual date of furnishing	of the relevant annual statement.	Earlier of following two: <table border="1"> <tr> <td></td> <td>30th Nov following the end of the FY</td> </tr> <tr> <td colspan="2" style="text-align: center;"><i>or</i></td> </tr> <tr> <td>actual date of furnishing</td> <td>of the relevant annual statement.</td> </tr> </table>		30 th Nov following the end of the FY	<i>or</i>		actual date of furnishing	of the relevant annual statement.
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Note: [GST Press Release - dated 4th Oct, 2022]

1. **The above extended timelines are applicable in respect of compliances for FY 2021-22 & onwards.**

2. **Extended timeline - Reference of 30th Nov - Return/Statement furnished upto 30th Nov (i.e. belated return/ statement) - it doesn't mean Return/Statement of Nov Month**

Doubt: Doubts have been raised **whether the timelines for the compliances stand extended to the date of filing/ furnishing of the return/ statement for the month of November 2022 or the said compliances can be carried out in a return or the statement filed/ furnished upto 30th November 2022.**

Clarification: The said compliances in respect of a FY can be carried out in **the relevant return or the statement filed/ furnished upto 30th November of the next FY, or the date of furnishing annual return for the said FY, whichever is earlier.**

Supply [CBIC Clarification]

Legal Text of Act/Rules/Circulars

1. **CBIC has clarified 'GST applicability on liquidated damages, compensation and penalty arising out of breach of contract or other provisions of law'** [CBIC Circular 178/10/2022-GST (Dated: 3rd August, 2022)]

CBIC Circular 178/10/2022-GST [Dated: 3rd August, 2022.]

Subject: GST applicability on liquidated damages, compensation and penalty arising out of breach of contract or other provisions of law - reg.

Schedule II- para 5 (e)

"Agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act"

All the three activities must be under an "agreement" or a "contract" (whether express or implied) to fall within the ambit of the said entry. In other words, one of the parties to such agreement/contract (the first party) must be under a contractual obligation to either (a) refrain from an act, or (b) to tolerate an act or a situation or (c) to do an act. **Further some "consideration" must flow in return from the other party to this contract/agreement (the second party) to the first party for such (a) refraining or (b) tolerating or (c) doing.**

- o Such contractual arrangement must be an independent arrangement in its own right. Such arrangement or agreement can take the form of an independent stand-alone contract or may form part of another contract.

Illustrative activities:

- **Agreeing to the obligation to refrain from an act-**
 - Example of activities that would be covered by this part of the expression would include **non-compete agreements**, where one party agrees not to compete with the other party in a product, service or geographical area against a consideration paid by the other party.
 - Another example of such activities would be **a builder refraining from constructing more than a certain number of floors, even though permitted to do so by the municipal authorities, against a compensation paid by the neighbouring housing project**, which wants to protect its sunlight, or an industrial unit refraining from manufacturing activity during certain hours against an agreed compensation paid by a neighbouring school, which wants to avoid noise during those hours.
- **Agreeing to the obligation to tolerate an act or a situation-**
 - This would include activities such **a shopkeeper allowing a hawker to operate from the common pavement in front of his shop against a monthly payment by the hawker, or an RWA tolerating the use of loud speakers for early morning prayers by a school located in the colony subject to the school paying an agreed sum to the RWA as compensation.**
- **Agreeing to the obligation to do an act-**
 - This would include the case **where an industrial unit agrees to install equipment for zero emission/discharge at the behest of the RWA of a neighbouring residential complex against a consideration paid by such RWA, even though the emission/discharge from the industrial unit was within permissible limits and there was no legal obligation upon the individual unit to do so.**

1. **Liquidated Damages (paid for breach of contract) - Not Taxable**

Breach or non-performance of contract by one party results in loss and damages to the other party. Therefore, the law provides in Section 73 of the Contract Act, 1972 that when a contract has been broken, the party which suffers by such breach is entitled to receive from the other party compensation for any loss or damage caused to him by such breach. The compensation is not by way of consideration for any other independent activity; it is just an event in the course of performance of that contract.

It is common for the parties entering into a contract, to specify in the contract itself, the compensation that would be payable in the event of the breach of the contract. **Such compensation specified in a written contract for breach of non-performance of the contract or parties of the contract is referred to as LIQUIDATED DAMAGES.** Black's Law Dictionary defines 'Liquidated Damages' as *cash compensation agreed to by a signed, written contract for breach of contract, payable to the aggrieved party.*

Section 74 of the Contract Act, 1972 provides that when a contract is broken, if a sum has been named or a penalty stipulated in the contract as the amount or penalty to be paid in case of breach, the aggrieved party shall be entitled to receive reasonable compensation not exceeding the amount so named or the penalty so stipulated.

- It is argued that performance is the essence of a contract. **Liquidated damages cannot be said to be a consideration received for tolerating the breach or non-performance of contract. They are rather payments for not tolerating the breach of contract.** Payment of liquidated damages is stipulated in a contract to ensure performance and to deter non-

	<p>performance, unsatisfactory performance or delayed performance. Liquidated damages are a measure of loss and damage that the parties agree would arise due to breach of contract. They do not act as a remedy for the breach of contract. They do not restate the aggrieved person. It is further argued that a contract is entered into for execution and not for its breach. The liquidated damages or penalty are not the desired outcome of the contract. By accepting the liquidated damages, the party aggrieved by breach of contract cannot be said to have permitted or tolerated the deviation or non-fulfilment of the promise by the other party.</p> <ul style="list-style-type: none"> In this background a reasonable view that can be taken with regard to taxability of liquidated damages is that where the amount paid as 'liquidated damages' is an amount paid only to compensate for injury, loss or damage suffered by the aggrieved party due to breach of the contract and there is no agreement, express or implied, by the aggrieved party receiving the liquidated damages, to refrain from or tolerate an act or to do anything for the party paying the liquidated damages, in such cases liquidated damages are mere a flow of money from the party who causes breach of the contract to the party who suffers loss or damage due to such breach. Such payments do not constitute consideration for a supply and are not taxable.¹
2.	<p>Compensation for cancellation of coal blocks - Not Taxable</p> <p>In the year 2014, coal block/mine allocations were cancelled by the Hon'ble Supreme Court vide order dated 24.09.2014. Subsequently, Coal Mines (Special Provisions) Act, 2015 was enacted to provide for allocation of coal mines and vesting of rights, title and interest in and over the land and mines infrastructure together with mining leases to successful bidders and allottees. <u>In accordance with section 16 of the said Act, prior (old) allottee of mines were given compensation in the year 2016 towards the transfer of their rights/ titles in the land, mine infrastructure, geological reports, consents, approvals etc. to the new entity (successful bidder) as per the directions of Hon'ble Supreme Court.</u></p> <p><u>There was no agreement between the prior allottees of coal blocks and the Government that the previous allottees shall agree to or tolerate cancellation of the coal blocks allocated to them if the Government pays compensation to them.</u> No such promise or offer was made by the prior allottees to the Government. The allottees had no option but to accept the cancellation. The compensation was given to them for such cancellation, not under a contract between the allottees and the Government, but under the provisions of the statute and in pursuance of the Supreme Court Order. Therefore, it would be incorrect to say that the prior allottees of the coal blocks supplied a service to the Government by way of agreeing to tolerate the cancellation of the allocations made to them by the Government or that the compensation paid by the Government for such cancellation in pursuance to the order of the Supreme Court was a consideration for such service. Therefore, the compensation paid for cancellation of coal blocks pursuant to the order of the Supreme Court in the above case was not taxable.</p>
3.	<p>Penalty imposed for violation of laws - Not Taxable</p> <p>Penalty imposed for violation of laws (such as traffic violations, or for violation of pollution norms or other laws) are also not consideration for any supply received and are not taxable. Same is the case with fines, penalties imposed by the mining Department of a CG/SG or a local authority on discovering mining of excess mineral beyond the permissible limit or of mining activities in violation of the mining permit. Such penalties imposed for violation of laws cannot be regarded as consideration charged by Government or a Local Authority for tolerating violation of laws. Laws are not framed for tolerating their violation. They stipulate penalty not for tolerating violation but for not tolerating, penalizing and deterring such violations. There is no agreement between the Government and the violator specifying that violation would be allowed or permitted against payment of fine or penalty. There cannot be such an agreement as violation of law is never a lawful object or consideration.</p> <p>[The Service Tax Education Guide issued in 2012 on advent of negative list regime of services explained that fines and penalties paid for violation of provisions of law are not considerations as no service is received in lieu of payment of such fines and penalties. It was also clarified vide Circular No. 192/02/2016-Service Tax, dated 13.04.2016 that fines and penalty chargeable by Government or a local authority imposed for violation of a statute, bye-laws, rules or regulations are not leviable to Service Tax. <u>The same holds true for GST also.</u>]</p>
4.	<p>Cheque dishonor fine/ penalty - Not Taxable</p> <p>No supplier wants a cheque given to him to be dishonoured. It entails extra administrative cost to him and disruption of his routine activities and cash flow. The promise made by any supplier of goods or services is to make supply against payment within an agreed time (including the agreed permissible time with late payment) through a valid instrument. <u>There is never an implied or express offer or willingness on part of the supplier that he would tolerate deposit of an invalid, fake or unworthy instrument of payment against consideration in the form of cheque dishonour fine or penalty.</u> The fine or penalty that the supplier or a banker imposes, for dishonour of a cheque, is a penalty imposed not for tolerating the act or situation but a fine, or penalty imposed for not tolerating, penalizing and thereby deterring and discouraging such an act or situation. Therefore, cheque dishonor fine or penalty is not a consideration for any service and not taxable.</p>

¹ **Liquidated damages received by Govt - GST Exemption granted will no longer be required NOW:**

In case of supplies to Government, non-performance of contract by the supplier of service for which consideration in the form of fines or liquidated damages is payable has been exempted from GST by virtue of NN 12/2017-CT (Rate) r/w NN 9/2017-IT (Rate). Post CBIC clarification, this exemption will no longer be required.

5.	NOTICE PAY RECOVERY:: Forfeiture of salary or payment of bond amount in the event of the employee leaving the employment before the minimum agreed period - Not Taxable
	<p>An employer carries out an elaborate selection process and incurs expenditure in recruiting an employee, invests in his training and makes him a part of the organization, privy to its processes and business secrets in the expectation that the recruited employee would work for the organization for a certain minimum period. Premature leaving of the employment results in disruption of work and an undesirable situation. The provisions for forfeiture of salary or recovery of bond amount in the event of the employee leaving the employment before the minimum agreed period are incorporated in the employment contract to discourage non-serious candidates from taking up employment. The said amounts are recovered by the employer not as a consideration for tolerating the act of such premature quitting of employment but as penalties for dissuading the non-serious employees from taking up employment and to discourage and deter such a situation. Further, the employee does not get anything in return from the employer against payment of such amounts. Therefore, such amounts recovered by the employer are not taxable as consideration for the service of agreeing to tolerate an act or a situation.</p>
6.	Compensation for not collecting toll charges - Taxable
	<p>In the wake of demonetization, NHAI directed the concessionaires (toll operators) to allow free access of toll roads to the users from 8.11.2016 to 1.12.2016 for which the loss of toll charge was paid as compensation by NHAI as per the instructions of Ministry of Road Transportation and Highways. The toll reimbursements were calculated based on the average monthly collection of toll. A question arose whether the compensation paid to the concessionaire by project authorities (NHAI) in lieu of suspension of toll collection during the demonetization period (from 8.11.2016 to 1.12.2016) was taxable as a service by way of agreeing to refrain from collection of toll from users.</p> <p>It has been clarified vide Circular No. 212/2/2019-ST dated 21.05.2019 that the service that is provided by toll operators is that of access to a road or bridge, toll charges being merely a consideration for that service. During the period from 8.11.2016 to 1.12.2016, the service of access to a road or bridge continued to be provided without collection of toll from users. Consideration came from the project authority. The fact that for this period, for the same service, consideration came from a person other than the actual user of service does not mean that the service has changed.</p>
7.	Fixed Capacity charges for Power - Exempt (as electricity is exempt from GST)
	<p>The price charged for electricity by the power generating companies from the State Electricity Boards (SEBs)/DISCOMS or by SEBs/DISCOMS from individual customers has two components, namely, a minimum fixed charge (or capacity charge) and variable per unit charge. The minimum fixed charges have to be paid by the SEBs/DISCOMS/individual customers irrespective of the quantity of electricity scheduled or purchased by them during a month. They take care of the fixed cost of generating/ supplying electricity. The variable charges are charged per unit of electricity purchased and increase or decrease every month depending on the quantity of electricity consumed. .</p> <p>The fact that the minimum fixed charges remain the same whether electricity is consumed or not or it is scheduled/consumed below the contracted or available capacity or a minimum threshold, does not mean that minimum fixed charge or part of it is a charge for tolerating the act of not scheduling or consuming the minimum the contracted or available capacity or a minimum threshold.</p> <p>Both the components of the price, the minimum fixed charges/capacity charges and the variable/energy charges are charged for sale of electricity and are thus not taxable as electricity is exempt from GST. Power purchase agreements may have provisions that the power producer shall not supply electricity to a third party without approval of buyer. Such agreements which ensure assured supply of power to State Electricity Boards/DISCOMS are ancillary arrangements; the contract is essentially for supply of electricity.</p>
8.	Late payment surcharge or fee collected by any service provider for late payment of bills
	<p>The facility of accepting late payments with interest or late payment fee, fine or penalty is a facility granted by supplier naturally bundled with the main supply. It is not uncommon or unnatural for customers to sometimes miss the last date of payment of electricity, water, telecommunication services etc. Almost all service providers across the world provide the facility of accepting late payments with late fine or penalty. Even if this service is described as a service of tolerating the act of late payment, it is an ancillary supply naturally bundled and supplied in conjunction with the principal supply, and therefore should be assessed as the principal supply. Since it is ancillary to and naturally bundled with the principal supply such as of electricity, water, telecommunication, cooking gas, insurance etc. it should be assessed at the same rate as the principal supply.</p>
9.	Cancellation charges
	<p>A supply contracted for, such as booking of hotel accommodation, an entertainment event or a journey, may be cancelled by a customer or may not proceed as intended due to his failure to show up for availing the same at the designated place and time.</p> <p>The supplier may allow cancellation of supply by the customer within a certain specified time period on payment of cancellation fee as per commercial terms of the contract.</p> <p>In case the customer does not show up for availing the service, the supplier may retain or forfeit part of the consideration or security deposit or earnest money paid by the customer for the intended supply.</p>

It is a common business practice for suppliers of services such as hotel accommodation, tour and travel, transportation etc. to provide the facility of cancellation of the intended supplies within a certain time period on payment of cancellation fee. Cancellation fee can be considered as the charges for the costs involved in making arrangements for the intended supply and the costs involved in cancellation of the supply, such as in cancellation of reserved tickets by the Indian Railways.

GST Treatment of Cancellation charges

Services such as transportation travel and tour constitute a bundle of services. The transportation service, for instance, starts with booking of the ticket for travel and lasts at least till exit of the passenger from the destination terminal. All services such as making available an online portal or convenient booking counters with basic facilities at the transportation terminal or in the city, to reserve the seats and issue tickets for reserved seats much in advance of the travel, giving preferred seats with or without extra cost, lounge and waiting room facilities at airports, railway stations and bus terminals, provision of basic necessities such as soap and other toiletries in the wash rooms, clean drinking water in the waiting area etc. form part and parcel of the transportation service; they constitute the various elements of passenger transportation service, a composite supply.. **The facilitation service of allowing cancellation against payment of cancellation charges is also a natural part of this bundle.** It is invariably supplied by all suppliers of passenger transportation service as naturally bundled and in conjunction with the principal supply of transportation in the ordinary course of business.

- **Therefore, facilitation supply of allowing cancellation of an intended supply against payment of cancellation fee or retention or forfeiture of a part or whole of the consideration or security deposit in such cases should be assessed as the principal supply.**

For example,

Railway Ticket Booked	Ticket Cancelled. [50% cancellation charges would apply on cancellation of tickets]
(Fully AC) for Rs 1500/- + 5% GST	Amount of Cancellation = 50% of ticket charges + 5% GST = 50% of 1500 + 5% GST = Rs 787.5/-
(Second Sleeper, Non AC) for Rs 800/- (GST Exempt).	Amount of Cancellation = 50% of Ticket Charges [GST would not apply on this] = 50% of Rs 800 = Rs 400/-

Treatment of non-refundable tickets

Accordingly, **the amount forfeited in the case of non-refundable ticket for air travel or security deposit or earnest money forfeited** in case of the customer failing to avail the travel, tour operator or hotel accommodation service or such other intended supplies **should be assessed at the same rate as applicable to the service contract**, say air transport or tour operator service, or other such services.

2. **CBIC has clarified that 'Perquisites provided by Employer to Employee under employment contract shall not be treated as 'supply'.** [CBIC Circular 172/04/2022-GST (Dated: 6th July, 2022)]

CBIC Circular 172/04/2022-GST [Dated: 6th July, 2022.]

Subject: Clarification on various issue pertaining to GST- reg.

<u>Issues</u>	<u>Clarification</u>
Perquisites provided by employer to the employees as per contractual agreement	
1 Whether various perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are liable for GST?	<p><u>Schedule III to the CGST Act</u> provides that "services by employee to the employer in the course of or in relation to his employment" will not be considered as supply of goods or services and <u>hence GST is not applicable on services rendered by employee to employer provided they are in the course of or in relation to employment.</u></p> <ul style="list-style-type: none"> • Any perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are <u>in lieu of the services provided by employee to the employer in relation to his employment.</u> It follows therefrom that perquisites provided by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST.

Payment of Tax.**Legal Text of Act/Rules/Circulars**

1. **Sec 49 + R- 85:: E-liability ledger of Person :: Rule 85 amended to delete reference of liability arising from Sec 42 and 43 [vide N/19/2022-CT (w.e.f 1st Oct, 2022)]**

Rule 85 : Electronic Liability ledger

- (1) **E-Liability Ledger [ELL]: To be maintained for each person liable to pay GST dues over common portal [Form GST PMT-01]**

The electronic liability ledger specified under section 49(7) shall be maintained in **FORM GST PMT-01**

for each person liable to pay tax, interest, penalty, late fee or any other amount on the common portal

and all amounts payable by him shall be debited (+) to the said register.

- (2) **ELL: Different types of liabilities booked into the ELL**

The electronic liability register of the person shall be debited (+) by-

(a)	the amount payable towards tax, interest, late fee or any other amount payable	as per the return furnished by the said person;	(= Self-assessed tax liability furnished in Return by RP)
(b)	the amount of tax, interest, penalty or any other amount payable	as determined* by a PO in pursuance of any proceedings under the Act or as ascertained by the said person; or	(= Liability created by PO) (= Liability created by RP - not through return but through GST DRC-03))
(c)	the amount of tax and interest payable	as a result of mismatch under section 42 or section 43 or section 50; or	(= Presently redundant as Sec 42/43 not enforced till date)
(d)	any amount of INTEREST that may accrue from time to time.		(= Interest Liability created by portal)

2. **Sec 49(1) + R- 87(3):: Modes through which deposit can be made into e-cash Ledger:: Rule 87 (3) -(ia) & (ib) inserted AND Rule 87 (5) amended [N/N 14/2022- CT (dated 5th July, 2022) - w.e.f. 5th July, 2022]**

3. **Sec 49(10) + R- 87 (14):: Transfer of deposit lying in ECL of one GSTIN can now be made to another GSTIN (but of same PAN) - in prescribed manner and subject to prescribed condition:: Sec 49(10) amended and Rule 87 (14) inserted [Sec 49 amended by FA, 2022 + Rule 87 (14) inserted vide N/N 14/2022- CT (dated 5th July, 2022) - w.e.f. 5th July, 2022]**

Section 49 : Payment of Tax, Interest, Penalty And Other Amounts.

- (1) **E-cash Ledger (Money Deposited into it for subsequent utilization for payment of Tax Dues or Other Dues)**

- (3) **Use of E-Cash Ledger: Payment of TAX DUES as well as OTHER DUES**

Transfer to / from ECL (CGST)

- (10) **Transfer from ECL (CGST) to ECL (Any GST) = Deemed REFUND MADE from ECL (CGST)**

A RP may,
on the common portal,

transfer

any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under this Act,
[i.e. Any Amount in ECL (CGST Act)]

to the electronic cash ledger for integrated tax, central tax, State tax, Union territory tax or cess,
[i.e. to Any Amount in ECL (Any GST Act)]

in such form and manner and subject to such conditions and restrictions as may be prescribed. [Rule 87 (13); e-transfer over portal using Form GST PMT-09]

and

such transfer

shall be deemed to be

a REFUND from the electronic cash ledger under this Act [ECL (CGST)]

(10) Transfer from ECL (CGST) to ECL (Any GST) = Deemed REFUND MADE from ECL (CGST)

A RP may,
on the common portal,

transfer

any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under this Act,
[i.e. Any Amount in ECL (CGST Act)]

to the electronic cash ledger for, -

(a) integrated tax, central tax, State tax, Union territory tax or cess,
[i.e. to Any Amount in ECL (Any GST Act)]

or

(b) Integrated tax or central tax of a distinct person as specified in section 25 (4) or, as the case may be, section 25 (5),
[i.e. to Any Amount in ECL (IGST or CGST)]

in such form and manner and subject to such conditions and restrictions as may be prescribed. [Rule 87 (13)+ (14) : e-transfer over portal using Form GST PMT-09]

and

such transfer

shall be deemed to be

a REFUND from the electronic cash ledger under this Act [ECL (CGST)]

Exception: Transfer to DDP not permissible if transferor has unpaid tax liability in its ELL

Provided that

no such transfer under clause (b) shall be allowed

if the said RP has any unpaid tax liability in this e-liability ledger.

(11) Transfer from ECL (Any GST) to ECL (CGST) = Deemed DEPOSITS MADE into ECL (CGST)

Rule 87 : E-cash ledger

(1) **E-Cash Ledger [ECL]: To be maintained for each person liable to pay GST dues over common portal** [Form GST PMT-05]

(2) **Manner of Deposits into ECL: e-challan (GST PMT-06) to be generated over portal**

Validity period of Challan = 15 days (i.e. once created, it shall be used for making deposits within 15 days – else will become invalid)

(3) **ECL: Permitted modes of making deposits into ECL**

The deposit under rule 87(2) shall be made through any of the following modes, **namely** ^(*Exhaustive List) :-

(a)	Internet Banking	through authorized banks;
(ia)	Unified Payment Interface (UPI)	from any bank;
(ib)	Immediate Payment Services (IMPS)	from any bank;
(b)	Credit card or Debit card	through authorized banks;
(c)	National Electronic Fund Transfer (NEFT) or Real Time Gross Settlement (RTGS)	from any bank; or
(d)	Over the Counter payment (OTC payment)	through authorized banks for deposits up to ₹ 10,000 per challan per tax period, by cash, cheque or demand draft;

[*in this case, MANDATE FORM shall be generated along with GST Challan - Both shall be submitted to the bank - R- 87(5)]

[*in this case, MANDATE FORM shall be generated along with GST Challan - Both shall be submitted to the bank - R- 87(5)]

[*Portal is not implementing this restriction - but if in Audit violation is found, then penalty may be imposed]

(5) **Payment through NEFT/ RTGS / IMPS: [MANDATE FORM + Challan] be generated over common portal**

[Mandate Form will have a validity period of 15 days from date of generation of Challan]

Where the payment is made by way of NEFT or RTGS or IMPS mode from any bank,	the mandate form shall be generated along with the challan on the common portal and the same shall be submitted to the bank from where the payment is to be made:
--	--

Provided that

the mandate form shall be valid for a period of 15 days [15 D] from the date of generation of challan.
--

(13) **Transfer from ECL (CGST) to ECL (Any GST) : – e-transfer over portal using Form GST PMT-09**

A RP may, on the common portal,

transfer	to
any amount of tax, interest, penalty, fee or any other amount	the electronic cash ledger for integrated tax, central tax, State tax or UT tax or Cess
available in the electronic cash ledger under the Act [i.e. Any Amount in ECL (CGST Act)]	in FORM GST PMT-09 . [i.e. to Any Amount in ECL (Any GST Act)]

(14) **Transfer from ECL (CGST) to ECL (CGST/ IGST of DDE) :** – e-transfer over portal using Form GST PMT-09

A RP may, on the common portal,

transfer

any amount of
tax,
interest, penalty,
fee or
any other amount

available in the electronic cash ledger under the Act

[i.e. Any Amount in ECL (CGST Act)]

to

the electronic cash ledger for

central tax, or
integrated tax,

of a distinct person as specified in Sec 25 (4) or (5),

in **FORM GST PMT-09.**

Exception: Transfer not permissible if transferor has unpaid tax liability in its ELL

Provided that

no such transfer shall be allowed

if **the said RP has any unpaid tax liability in his e-liability ledger.**

4. **Sec 49(4) + R- 86-A:: Utilization of E-Credit Ledger:: Sec 49(4) amended to make utilization of e-credit ledger subject to prescribed restrictions (and thus, providing statutory support to already operational R-86-A) [Amended by FA 2022 (enacted on 30th March, 2022) – (made effective from 1st Oct, 2022- vide N/N 18/2022-CT)]**
5. **Sec 49 (12) + R- 86-B:: Utilization of E-Credit Ledger:: Sec 49(12) inserted empowering CG to specify/prescribe 'maximum proportion of tax liability which can be discharged through e-credit ledger' (and thus, providing statutory support to already operational R-86-B) [Amended by FA 2022 (enacted on 30th March, 2022) – (made effective from 1st Oct, 2022- vide N/N 18/2022-CT)]**

Section 49 : Payment of Tax, Interest, Penalty And Other Amounts.

(2) **E-credit Ledger** (ITC self-assessed in GST Return is to be credited into ECrL)

(4) **Use of E-Credit Ledger: Only for Payment of TAX DUES** [and that too only FCM liability = Output tax liability]

The amount available in the **electronic credit ledger [ECrL (CGST)]**

may be used

for **making any payment**

towards OUTPUT TAX under this Act or **under the IGST Act** [Output Tax (Sec 2(82) = FCM Liability (CGST or IGST)]

in such manner and

(Manner laid down in Section itself so not prescribed in rules

subject to such conditions and restrictions and

(Refer **Rule 86-A**)

within such time

(Noting prescribed for the time being)- so, no time limitation

as may be prescribed.

Restriction on utilization of ECrL (CGST) – so that RP is required to pay certain % of Output liability in CASH

- (12) **Restriction as use of ITC (as available in the ECrL of RP) towards discharge of Output Tax Liability**
 [Restriction so as to require at least specified % cash payment of Output tax liability of the RP/month]

Notwithstanding anything contained in this Act,
the Government may, on the recommendations of the Council, subject to such conditions and restrictions,

specify **such maximum proportion of**
output tax liability under this Act or under the IGST Act, 2017
 [(Output tax- FCM liability = CGST / IGST Liability on Outward Supplies)]

which may be discharged through the electronic credit ledger
by a RP or a class of RPs,
as may be prescribed.

6. CBIC has clarified the purposes for which ECL // ECrL can be utilized. [CBIC Circular 172/04/2022-GST (Dated: 6th July, 2022)]

CBIC Circular 172/04/2022-GST [Dated: 6th July, 2022.]

Subject: Clarification on various issue pertaining to GST- reg.

	Issues	Clarification
Utilization of the amounts available in the E.Cr.L. and the E.C.L. for payment of tax and other liabilities		
6	Whether the amount available in the <u>E.Cr.L.</u> can be used for making payment of any tax under the GST Laws?	It is clarified that any payment towards OUTPUT TAX , whether self-assessed in the return or payable as a consequence of any proceeding instituted under the provisions of GST Laws , can be made by utilization of the amount available in the <u>E.Cr.L.</u> of a RP. However, output tax does not include tax payable under RCM. <u>Sec 2(82) of the CGST Act</u> Output Tax in relation to a taxable person means the tax chargeable on taxable supply of goods or services or both but excludes tax payable on reverse charge mechanism.
7	Whether the amount available in the <u>E.Cr.L.</u> can be used for making payment of any liability other than tax under the GST Laws?	As per <u>Sec 49 (4) of the CGST Act</u> , the <u>E.Cr.L.</u> can be used for making payment of output tax only under the CGST Act or the IGST Act. It cannot be used for making payment of any interest, penalty, fees or any other amount payable under the said acts. Similarly, E.Cr.L. cannot be used for payment of erroneous refund sanctioned to the taxpayer, where such refund was sanctioned in cash.
8	Whether the amount available in the <u>E.C.L.</u> can be used for <u>making payment of any liability</u> under the GST Laws?	As per <u>Sec 49 (3) of the CGST Act</u> , the amount available in the <u>E.C.L.</u> may be used for making any payment towards tax, interest, penalty, fees or any other amount payable under the provisions of the GST Laws.

7. Sec 50 + R- 88-B: Interest liability:: Sec 50(3) substituted to provide for interest liability only on 'wrongful availment and utilization of ITC' and Rule 88-B inserted in CGST Rules to provide for mode of calculation of interest [Sec 50(3) substituted by FA, 2022 (retrospectively w.e.f. 01.07.2017) + Rule 88-B inserted vide N/N 14/2022- CT (dated 5th July, 2022) - (RETROSPECTIVELY w.e.f. 01.07.2017)]

Section 50 : Interest on Delayed Payment of tax.**(1) Failure to pay tax (full/ part): Interest @18% p.a.****EXCEPTION:** Belated tax payment (taking place with belated filing of return): Interest to be levied only on NET CASH LIABILITY paid through E-Cash Ledger**(2) Computation of Interest: [In manner prescribed u/R-88B]***The interest under sub-section (1)**shall be calculated, in such manner as may be prescribed, from the day succeeding the day on which such tax was due to be paid.***[Rule 88-B : Manner of calculating interest]****(3) 2 Special Cases : Interest @24% p.a.****A TP who makes**... ~~an undue or excess claim of ITC u/Sec 42 (10)~~ or... ~~undue or excess reduction in output tax liability u/Sec 43 (10);~~**shall pay interest****on***on such undue or excess claim or on such undue or excess reduction, as the case may be;***at such rate,***not exceeding 24% p.a., as may be notified by the Government on the recommendations of the Council.*

Notified Rate

~~24% p.a.~~ [N/N 13/2017-CT + N/N 6/2017-IT]**Author:**

Sec 50(3) provides for increased rate of interest (24% p.a.) in following 2 cases:

- * ~~Sec 42 (10) – Wrongful reclaim of ITC which was reversed due to mis-match~~
- * ~~Sec 43 (10) – Wrongful reclaim of reduction in output tax liability (OTL) which was reversed due to mis-match~~

Sec 50(3) is not operational as it has to be read with sections 42 and 43 of CGST Act, 2017:**(3) Interest on 'ITC wrongly availed AND utilized' : Interest @24% p.a.****Where the ITC has been wrongly availed and utilised,****the RP shall pay interest****on***such ITC wrongly availed and utilised,***at such rate***not exceeding 24% p.a. as may be notified by the Government, on the recommendations of the Council,*

Notified Rate

18% p.a.

[N/N 13/2017-CT + N/N 6/2017-IT]³**and***the interest shall be calculated, in such manner as may be prescribed.***[Rule 88-B : Manner of calculating interest]**³ NOTIFIED Rate of Interest also reduced from 24% to 18% **w.r.e.f 01.07.2017**. – Notifications amended

Rule 88-B : Manner of calculating INTEREST on delayed payment of tax*Interest liability as per Sec 50(1)***(1) Belated payment of Self-Assessed liability of a tax period (by belated submission of the return)**

In case, where the supplies made during a tax period are declared in the return for the said period and the said return is furnished after the due date in accordance with the provisions of section 39, **except** *where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period,*

the interest on tax payable in respect of such supplies shall be calculated

<i>on</i>	<i>that portion of the tax that is paid by debiting the electronic cash ledger.</i>
<i>for</i>	<i>the period of delay in filing the said return beyond the due date,</i>
<i>at such rate</i>	<i>as may be notified under section 50 (1).</i>

[i.e. 18% p.a.]

(2) Other cases

In all other cases, where interest is payable in accordance with section 50 (1),

the interest shall be calculated

<i>on</i>	<i>the amount of the tax which remains unpaid,</i>
<i>for the period</i>	<i>Starting from the date on which such tax was due to be paid till the date such tax is paid</i>
<i>at such rate</i>	<i>as may be notified under section 50 (1).</i>

[i.e. 18% p.a.]

*Interest liability as per Sec 50(3)***(3) Other cases**

In case, where interest is payable on the amount of ITC wrongly availed and utilised in accordance with section 50 (3),

the interest shall be calculated

<i>on</i>	<i>the amount of ITC wrongly availed and utilised.</i>
<i>for the period</i>	<i>Starting from the date of utilisation of such wrongly availed input tax credit</i> [refer Explanation below] <i>till the date of reversal of such credit or payment of tax in respect of such amount,</i>
<i>at such rate</i>	<i>as may be notified under section 50 (3).</i>

[i.e. 18% p.a.]

EXPLANATION. -For the purposes of this sub-rule, -

- (1) **ITC wrongly availed shall be construed to have been utilised,** *when the balance in the electronic credit ledger falls below the amount of ITC wrongly availed,* and *the extent of such utilisation of ITC shall be the amount by which the balance in the electronic credit ledger falls below the amount of ITC wrongly availed.*

(2) the date of utilisation of such ITC shall be taken to be, -

<p>(a) the date, on which the return is due to be furnished under section 39 or the actual date of filing of the said return, whichever is earlier,</p>	<p>if the balance in the electronic credit ledger falls below the amount ITC wrongly availed, on account of payment of tax through the said return;</p>
or	
<p>(b) the date of debit in the electronic credit ledger</p>	<p>when the balance in the electronic credit ledger falls below the amount of ITC wrongly availed, in all other cases.</p>

8. **Rule 86: E-credit Ledger:** Rule 86(4B) inserted providing to the effect that taxpayer can repay the certain erroneous refund of ITC sanctioned to him (alongwith applicable interest and penalty) and make request to jurisdictional PO for re-credit of erroneous refund into the e-credit ledger by passing order in Form GST PMT-03A [N/N 14/2022- CT (dated 5th July, 2022) - effective from 5th July, 2022]

Rule 86 : Electronic Credit Ledger

- (1) E-Credit Ledger [ECrL]: To be maintained for each RP over common portal [Form GST PMT-02]
- (2) ECrL: Debit when liability is discharged using ITC
- (3) Person applying for Refund from ECrL (i.e. ITC refund): Amount claimed as refund shall be reduced from ECrL at time of submission of refund claim/application
- (4) FINAL Rejection of ECrL refund Claim (either no further appeal is possible or applicant is undertaking not to file further appeal): Amount debited earlier shall be re-credited to ECrL by PO by an order in Form GST PMT-03
- (4A) Refund claim of Tax wrongly paid/ excess paid (paid by utilization of ITC) --- if refund is sanctioned, then sanctioned refund shall be re-credited to ECrL by PO by making order in Form GST PMT-03

Where a RP has claimed refund

<p>of any amount paid as tax wrongly paid or paid in excess</p>	<p>for which debit has been made from the electronic credit ledger,</p>	<p>the said amount, if found admissible,</p>	<p>shall be re-credited [+] to the electronic credit ledger by an order made in FORM GST PMT-03.</p>
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(4B) **Erroneous Refund in certain cases::** RP voluntarily depositing back such refund (with applicable interest & penalty) in CASH ::- PO shall make ORDER for credit of equivalent AMOUNT OF REFUND into e-credit ledger of such person

Where a RP deposits the amount of ERRONEOUS REFUND sanctioned to him, -

(a) under section 54(3) of the Act, [i.e. ITC refund]

or

(b) under rule 96(3), in contravention of rule 96 (10),

[i.e. Refund of IGST Paid on export of Goods (where exporter should not have claimed such refund due to restriction placed in R-96(10))]

along with interest and penalty, wherever applicable, through FORM GST DRC-03, by debiting the electronic cash ledger, on his own or on being pointed out,

an amount equivalent to the amount of erroneous refund deposited by the RP shall be re-credited to the electronic credit ledger

by the proper officer

by an ORDER made in FORM GST PMT-03 A.

CBIC Circular 174/06/2022-GST [Dated: 6th July, 2022.]

Subject: Prescribing manner of re-credit in e-credit ledger using FORM GST PMT-03A - regarding

Categories of refunds where re-credit can be done using FORM GST PMT-03 A:

	Categories of refund as specified in R-86(4B)	Instances of refunds covered
(a)	Erroneous refund u/Sec 54(3)	<ol style="list-style-type: none"> Refund of unutilised ITC on account of 'Zero-rated Supply made under Bond/LuT' <ol style="list-style-type: none"> Export of goods/services without payment of tax. Supply of goods/services to SEZ developer/Unit without payment of tax. Refund of unutilised ITC due to inverted tax structure.
(b)	Erroneous refund u/Rule 96(3), in contravention of Rule 96(10)	<ol style="list-style-type: none"> Refund of IGST obtained in contravention of Rule 96(10).

Procedure for re-credit of amount in e-credit ledger:

- The taxpayer shall **deposit the amount of erroneous refund** along with **applicable interest and penalty**, wherever applicable, through FORM GST DRC-03 by debit of amount from e-cash ledger. **While making the payment through FORM GST DRC-03, the taxpayer shall clearly mention the reason for making payment in the text box as *the deposit of erroneous refund of unutilised ITC, or the deposit of erroneous refund of IGST obtained in contravention of Rule 96 (10) of the CGST Rules.***
- Till the time an automated functionality for handling such cases is developed on the portal, the taxpayer shall make **A WRITTEN REQUEST****, in format enclosed as Annexure-A, **to jurisdictional proper officer to re-credit** the amount equivalent to the amount of refund thus paid back through FORM GST DRC-03, **to e-credit ledger**.
- On being satisfied with the submission of the taxpayer, the PO he shall re-credit an amount in e-credit ledger**, equivalent to the amount of erroneous refund so deposited by the registered person, **by passing an order in FORM GST PMT-03A**, preferably within a period of 30 days from the date of receipt of request for re-credit.

Tax Collector

Legal Text of Act/Rules/Circulars

1. **Sec 47(1):: Late Fees (due to belated submission of return/statement): Reference to Sec 52 incorporated** so as to explicitly provides for levy of late fees on belated submission of STATEMENT by ECO. [Also, reference to 'Statement of Outward Supplies (required u/Sec 38' omitted being redundant.]. [Amended by FA, 2022 - made effective from Notified Date= 1st Oct, 2022. (vide N/N 18/2022-CT)]

Section 47 : Levy of Late Fee.

- (1) **Late submission of [STATEMENT - sec 37] // RETURNS (Sec 39, 45): Late Fee @100/ day (Max total ₹ 5,000)**

Any RP who fails to furnish

the details of outward or inward supplies

required under section 37 or section 38

or

returns

required under section 39 (Regular Return)

or

section 45 (Final Return)

or section 52⁶

by the due date

shall pay a late fee of ₹ 100/- for every day during which such failure continues

subject to a maximum amount of

₹ 5,000/

- (2) **Late submission of Annual return: Late Fee @100/ day (max total ₹ 0.25% of his TO in that state / UT)**

Any RP who fails to furnish

return required under section 44 (Annual Return)

by the due date

shall pay a late fee of ₹ 100/- for every day during which such failure continues

subject to a maximum of

an amount calculated at 0.25% of his turnover in the State or Union territory.

⁶ Addition by FA, 2022 (enacted on 30th March, 2022) - made effective from Notified Date= 1st Oct, 2022. (vide N/N 18/2022-CT)

Pre-amendment,

Sec 52 - No provisions of Late Fee **Sec 47 - N.A.** [But **CBIC** has clarified that late fee shall be payable]

Post FA, 2022

Sec 47(1) amended to cover belated submission of return by ECO. Amendment seeks to clear beyond doubt that late fee shall be payable even by ECO who furnishes his statement belatedly.

Author : **Sec 52** also provides for submission of 'ANNUAL Statement u/Sec 52 (5)' (though that provision is not implemented presently'- as requisite form of Annual Statement has not been rectified). Ideally, late fees for belated submission of such annual statement shall be governed by **Sec 47(2)** which provides for levy of late fees for belated submission of 'ANNUAL RETURN'. But the amendment of **Sec 47(1)** seems to cover both 'Monthly Statement' as well as 'Annual Statement'.

2. **Sec 52 (6):: Time limitation for Rectification of mistakes in GSTR-8 (Statement of TCS) of a tax period has been extended.** [Amended by FA, 2022 - made effective from Notified Date= 1st Oct, 2022. (vide N/N 18/2022-CT)]

Section 52 : Levy of Late Fee.

(6) Mistakes (errors or omissions) in the Statement: Rectification in SUBSEQUENT STATEMENT and subject to time limitation	
<p><i>if any ECO after furnishing a STATEMENT under sub-section (4) GSTR-8 discovers any omission or incorrect particulars therein, <u>other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities,</u></i></p> <p>Time limitation for making rectification: Provided that</p> <p>no such rectification of any omission or incorrect particulars shall be allowed</p>	<p>he shall rectify such omission or incorrect particulars in the STATEMENT to be furnished for the month in which such omission or incorrect particulars are noticed subject to payment of interest, as specified u/Sec 50(1) under this Act:</p> <p><i>after</i></p> <p><u>the due date of furnishing of the statement for the month of September 30th November following the end of financial year.</u></p> <p style="text-align: center;"><i>or</i></p> <p><u>the actual date of furnishing of the relevant annual statement,</u></p> <p style="text-align: center;"><i>whichever is earlier.</i></p>

3. **Sec 52: Matching of Tax Collector (ECO - GSTR-8) with the corresponding Suppliers (GSTR-1): R-79 Omitted** [N/N 19/2022-CT (w.e.f. 1st Oct, 2022)]

[Matching of Tax Collector (ECO - GSTR-8) with the corresponding Suppliers (GSTR-1)]

- **Matching of GSTR-8 (ECO) with GSTR-1 (Supplier): Sec 52(8)** r/w Rule 78
- **In case discrepancy is found, then communication shall be made to both ECO and Supplier: Sec 52(9)** r/w Rule 79
- **Discrepancy not rectified by the supplier shall be added to the OTL of the supplier: Sec 52(10)** r/w Rule 79

Rule 78 : Matching of details furnished by the ECO with the details furnished by the supplier

Details in GSTR-8 of ECO- matched with details in GSTR-1 of corresponding suppliers

The following details

relating to the supplies made through an e-Commerce operator, as declared in **FORM GSTR-8,**

shall be **matched with**

the corresponding details declared by the supplier in **FORM GSTR-1,**

- (a) **State of PoS;** and
(b) **net taxable value:**

Extension of due date of GSTR-1: Date of matching also stands extended automatically

Provided that

where the time limit for furnishing **FORM GSTR-1** under section 37 has been **extended**,

the date of matching of the above mentioned details shall be extended accordingly.

Commissioner empowered to extend Matching Date (if so recommended by GST Council)

Provided further that

the Commissioner may, *On the recommendations of the Council, by order,* extend the date of matching to such date as may be specified therein.

Rule 79 : Communication and rectification of discrepancy in details furnished by ECO and the supplier

omitted vide N/N 19/2022-CT (w.e.f 1st Oct, 2022)

(1)	Any discrepancy in the details furnished by the operator and those declared by the supplier	shall be made available ... to the supplier electronically in FORM GST MIS-3 and ... to the ECO electronically in FORM GST MIS-4 on the common portal on or before the last date of the month in which the matching has been carried out.
(2)	A supplier to whom any discrepancy is made available under <u>rule 79(1)</u>	may make suitable rectifications in the <u>statement of outward supplies (GSTR-1)</u> to be furnished for the month in which the discrepancy is made available.
(3)	An operator to whom any discrepancy is made available under <u>rule 79(1)</u>	may make suitable rectifications in the <u>statement (GSTR-8)</u> to be furnished for the month in which the discrepancy is made available.
(4)	Where the discrepancy is not rectified under <u>rule 79(2) or (3),</u>	an amount to the extent of discrepancy shall be added to the OTL of the supplier in his return in FORM GSTR-3 for the month succeeding the month in which the details of discrepancy are made available and such addition to the OTL and interest payable thereon shall be made available to the supplier electronically on the common portal in FORM GST MIS-3.

Hence, no question will be asked as to 'MATCHING PROVISIONS' in the EXAMS.

Registration

Legal Text of Act/Rules/Circulars

- Sec 23(2) r/w N/N 10/2019-CT (Enhanced Threshold of Rs 40 Lakhs for Supplier engaged in supply of Goods exclusively): N/N 10/2019-CT has been amended to exclude all kinds of FLY ASH AGGREGATE (whether having 90% or more of fly ash content or less) to the effect supplier of such goods shall not be entitled to enhanced threshold of 40 Lakh [N/N 15/2022-CT (dated 13th July, 2022) – effective from 18th July, 2022]**

Exemption from Reg. to Person otherwise liable for registration u/Sec 22

Supply of Goods

N/N 10/2019-CT **Exclusive Supplier of Goods (except certain goods) liable for registration u/Sec 22: Registration threshold increased to 40 Lakhs if such supplier is not located in [the States of Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Puducherry, Sikkim, Telangana, Tripura, Uttarakhand]**

N/N 10/2019 - CT [Sec 23(2) of CGST Act, 2017]

In exercise of the powers conferred by Sec 23(2) of the CGST Act (hereafter referred to as the "said Act"), the CG, on the recommendations of the Council, hereby specifies the following category of persons, as the category of persons exempt from obtaining registration under the said Act, namely,-

Any person, who is engaged in exclusive supply of goods and whose ATO in the financial year does not exceed ₹ 40 Lakh,

except, -

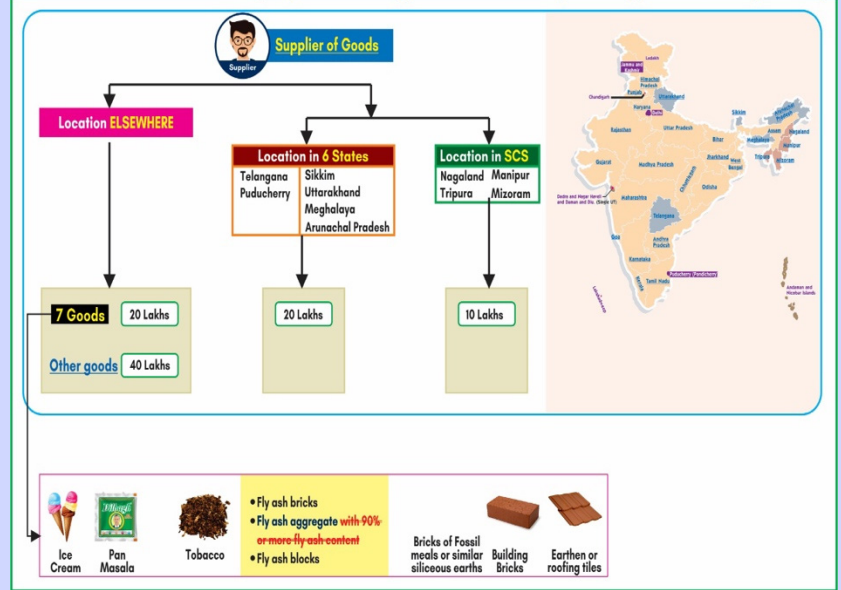
- persons required to take compulsory registration u/Sec 24 of the said Act;
- persons engaged in making supplies of the following goods

- | | |
|---|---|
| 1. Ice cream and other edible ice, whether or not containing cocoa [Heading 21 05 00 00] | 3. Tobacco and Manufactured tobacco substitutes [Chapter 24] |
| 2. Pan Masala. [Heading 21 06 90 20] | |
| 4. Fly ash bricks or fly ash aggregate with 90% or more fly ash content; Fly ash blocks; [Entry 68 15] | |
| 5. Bricks of fossil meals or similar siliceous earths; [Entry 69 01 00 10] | |
| 6. Building bricks; [Entry 69 04 10 00] | |
| 7. Earthen or roofing tile. [Entry 69 05 10 00] | |

[point (4) amended vide N/N 15/2022-CT (dated 13th July, 2022) w.e.f. 18th July, 2022]

- persons engaged in making intra-State supplies in the States of Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Puducherry, Sikkim, Telangana, Tripura, Uttarakhand;
- and
- persons exercising option under the provisions of section 25(3) (i.e., voluntarily registration), or such registered persons who intend to continue with their registration under the said Act.

TO based REGISTRATION liability of [Intra-State Supplier + who is not a special supplier covered by Sec. 24]



2. **Sec 29(2) r/w R-21: Sec 29 (2)(b) & (c) (as amended) read with Rule 21 (h) & (i) (as inserted) empowers PO to cancel registration of (a) Composition Supplier on non-submission of one return (GSTR-4) beyond 3 months of due date and (b) GSTR-3B filer on submission of consecutive '2 Quarterly Returns' or '6 Monthly Returns'** [Sec 29(2) (b) & (c) amended by FA, 2022 + Rule 21 (h) & (i) inserted vide N/N 14/2022- CT (dated 5th July, 2022) - BOTH effective from 1st Oct, 2022]

Section 29 : Cancellation or Suspension of registration

(1) **Cancellation: upon application by RP or Suo-moto action by PO**

(2) **Exclusive right of PO as to cancellation of registration in certain cases**

The PO may cancel the registration of a person from such date, **including any retrospective date**, as he may deem fit, **where,—**

(a) **a RP has contravened such provisions of the Act or the rules made thereunder as may be prescribed;** or

Contraventions as specified in Rule 21

- (a) RP does not conduct any business from the declared place of business; (i.e. Dummy registration)
- (b) RP issues invoice or bill without supply of goods or services; (i.e. Fake Invoicing)
- (c) RP violates the provisions of section 171 (i.e. found guilty of profiteering by the National Anti-profiteering Authority)
- (d) RP violates the provision of rule 10A (i.e., he obtained registration without furnishing bank account details at time of registration and failed to furnish these details post-registration within time prescribed u/Rule 10-A)
- (e) RP avails ITC in violation of the provisions of section 16 of the Act or the rules; (i.e. availing ineligible ITC)
- (f) furnishes the details of outward supplies in FORM GSTR-1 (for one or more tax periods) which is in excess of the outward supplies declared by him in his valid return for the said tax periods; (i.e., Declaring higher outward supplies but not paying tax thereon)
- (g) violates the provisions of Rule 86-B; (i.e., paying output tax liability through ITC in excess of legally permissible limits in Rule 86-B)

(b) **a person paying tax under section 10 has not furnished returns for 3 consecutive tax periods; the return for a FY beyond 3 months from the due date of furnishing the said return** or

Composition Supplier defaulted in filing SINGLE RETURN beyond 3 months of due date

(c) **any RP, other than a person specified in clause (b), has not furnished returns for a continuous period of 6 months; such continuous tax period as may be prescribed** or

Contraventions as specified in Rule 21

- (a)(g)
(w.e.f. 1st Oct, 2022)
- (h) **QRMP Taxpayer [GSTR-3B Return u/proviso to Sec 39 (1)]**; Default in furnishing continuous 2 Quarterly returns
- (i) **Non-QRMP Taxpayer [GSTR-3B Return u/Sec 39 (1)]**; Default in furnishing continuous 6 Monthly returns

- (d) any person who has taken voluntary registration under section 25(3) **has not commenced business within 6 months from the date of registration;** or
- (e) registration has been obtained by means of fraud, wilful misstatement or suppression of facts:

Voluntarily RP: failed to commenced business within 6 months of registration

RP: who has obtained registration fraudulently

Rule 21 : Registration to be cancelled in certain cases

Defaults by RP which triggers action on part of PO as to Cancellation of Registration

The registration granted to a person is **liable to be cancelled**, if the said person,-

(a)	does not conduct any business from the declared place of business; or	(i.e. Dummy Supplier - fraudulent registration)
(b)	issues invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder; or	(i.e. Fake Invoicing- which basically leads to passing on fake ITC)
(c)	violates the provisions of <u>section 171</u> of the Act or the rules made thereunder	(Sec 171 =Anti-profiteering measures - if any supplier is found guilty of profiteering, then National Anti-profiteering Authority is entitled to pass order as to cancellation of registration of such supplier.)
(d)	violates the provisions of <u>Rule 1 Q-A</u> ; or	(i.e., he obtained registration without furnishing bank account details at time of registration and failed to furnish these details post-registration within time prescribed u/Rule 10-A)
(e)	avails ITC in violation of the provisions of section 16 of the Act or the rules made thereunder; or	(i.e. Availment of ITC to which he is not entitled to)
(f)	furnishes the details of outward supplies in FORM GSTR-1 under section 37 for one or more tax periods which is in excess of the outward supplies declared by him in his valid return under section 39 for the said tax periods;	(i.e., Declaring higher outward supplies but not paying tax thereon) Default of one or more tax period - Default for a single tax period may also lead to cancellation
(g)	violates the provisions of <u>Rule 86-B</u> ;	(i.e., paying output tax liability through ITC in excess of legally permissible limits in Rule 86-B)
(h) 9	being a RP required to file return u/Sec 39(1) for each month or part thereof, has not furnished returns for a continuous period of 6 months; or	(Monthly GSTR-3B Return Filer- defaulting in filing of continuous 6 monthly returns)
(i)	being a RP required to file return u/proviso to Sec 39(1) for each quarter or part thereof, has not furnished returns for a continuous period of 2 tax periods;	(Quarterly GSTR-3B Return Filer- defaulting in filing of continuous 2 Quarterly returns)

⁹ Inserted vide N/N 19/2022-CT (w.e.f 1st Oct, 2022)

Author: Rule 21 (h) & (i) are prescribing period of default only for GSTR-3B filer

No tax period prescribed for RP other than those required to file GSTR-3B. [thus, Registration of such other RP (like NRTP, Tax Deductor, Tax Collector etc) cannot be cancelled NOW.] - it seems an unintended mistake and is likely to be rectified soon]

3. **Sec 29 r/w R-21-A (Suspension of Registration):** Rule 21-A deals with 'suspension of registration (pending completion of cancellation proceedings). Proviso has been inserted in Rule 21-A (4) to provide for **auto-revocation of 'suspension of registration'** where registration had been suspended on ground of consistent non-filing of returns for certain tax periods' but such registration had not been cancelled. [N/N 14/2022- CT (dated 5th July, 2022) - effective from 5th July, 2022]

Rule 21-A : Suspension of Registration

(4) Completion of cancellation proceedings = suspension proceedings stand revoked

[Deemed Revocation effective from the date on which suspension had come into effect]

The suspension of registration under

... **sub-rule (1)** (deemed suspension in case RP applied for cancellation) **or**
 ... **sub-rule (2)** (Invocation of cancellation by PO and discretionary suspension by PO)
or
 ... **sub-rule (2A)**,, (Suspension by GST System/portal followed by Cancellation of Reg by PO)

shall be **DEEMED to be REVOKED**

upon completion of the proceedings by the PO under rule 22

and **such revocation shall be effective from the date on which the suspension had come into effect.**

Pendency of cancellation proceedings: PO may revoke suspension ANYTIME

Provided that

the suspension of registration under this rule may be **REVOKED by the PO,**

anytime during the pendency of the proceedings for cancellation, if he deems fit.

Suspension due to consistent non-filing of return: Deemed Revocation as and when all pending returns are filed (if registration has not been cancelled already)

Provided further that

Where the registration has been suspended under sub-rule (2A) for contravention of the provisions contained in Sec 29(2) (b) or (c)

[i.e. due to non-submission of returns for specified tax period]

and

the registration has already not been cancelled,

the suspension of registration shall be deemed to be revoked upon furnishing of all the pending returns

Returns under GST

Legal Text of Act/Rules/Circulars

1. **Sec 37 [GSTR-1]: Amended by FA, 2022** [Amended by FA, 2022 -made effective from Notified Date- 1st Oct, 2022. (vide N/N 18/2022-CT)]

Section 37 : Furnishing details of Outward Supplies

(1) **Normal Supplier (including casual TP ¹²):** Details of OS in Form GSTR-1 to be furnished for tax period (by 10th)

<p><u>Every RP, other than</u> ... <u>an Input Service Distributor</u> or ... <u>a non-resident TP</u> or ... <u>a person paying tax under the provisions of section 10</u> (Composition Supplier) or ... <u>section 51</u> (Tax Deductor) or <u>section 52</u> (Tax Collector)</p>	<p>shall, furnish, electronically, <u>[subject to such conditions and restrictions and]</u> <u>in such form</u> (Form GSTR-1) <u>and manner as may be prescribed</u> (Rule 59) the <u>details of outward supplies</u> of goods or services or both effected during a tax period <u>on or before 10th day of the month succeeding the said tax period</u></p> <ul style="list-style-type: none"> • Details of OS = Tax Invoice, DN & CN, Revised Tax invoice - Refer Explanation at the end of Sec 37 • Tax Period = Return filing period [= Monthly / Quarterly (as per Sec 39)] <p>and such details</p> <table border="1"> <tr> <td style="text-align: center;">shall be <u>communicated</u></td> <td style="text-align: center;">to the recipient of the said supplies</td> <td style="text-align: center;">within such time and in such manner as may be prescribed (Rule 60):</td> </tr> <tr> <td style="text-align: center;"><u>shall,</u></td> <td style="text-align: center;"><u>subject to such conditions and restrictions, within such time and in such manner as may be prescribed</u> (Rule 60),</td> <td style="text-align: center;"><u>be communicated to the recipient of the said supplies:</u></td> </tr> </table> <p>Manner of Communication of "Details of OS (furnished by Supplier in GSTR-1 / IFF) to Recipient" - Details of B2B Supplies (supply to RP) such details are auto-populated (i.e., electronically made available) to GSTR-2A/ 2B of recipient [Rule 60]</p>	shall be <u>communicated</u>	to the recipient of the said supplies	within such time and in such manner as may be prescribed (Rule 60):	<u>shall,</u>	<u>subject to such conditions and restrictions, within such time and in such manner as may be prescribed</u> (Rule 60),	<u>be communicated to the recipient of the said supplies:</u>
shall be <u>communicated</u>	to the recipient of the said supplies	within such time and in such manner as may be prescribed (Rule 60):					
<u>shall,</u>	<u>subject to such conditions and restrictions, within such time and in such manner as may be prescribed</u> (Rule 60),	<u>be communicated to the recipient of the said supplies:</u>					

Had become redundant. (Hence, omitted by FA, 2022) - omission made effective from 1st Oct, 2022

<p>Provided that <u>the RP shall not be allowed to furnish the details of outward supplies</u></p>	<p>during the period from 11th day to the 15th day of the month succeeding the tax period.</p>
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¹² **Overseas Supplier of OIDAR Services to NTOR (Non-taxable online recipient) - requiring registration in terms of Sec 14 of IGST Act: He is also not required to furnish 'details of OS'** [Though covered by Sec 37, but excluded by R-59]

(i.e. if RP fails to furnish GSTR-1 by 10th, then he cannot file in between 11th to 15th - however, after 15th he can file GSTR-1 with late fees)

Extension of Due Date: Commissioner empowered to extend due date for a class of RP

Provided further that ~~Provided that~~

the Commissioner may,
for reasons to be recorded in writing,

by notification, extend the time limit for furnishing such details for such class of TPs as may be specified therein.

Extension by Commissioner (SGST/ UTGST) = Deemed Extension by Commissioner (CGST)

Provided also that ~~Provided further that~~

any extension of time limit notified by the Commissioner of State tax or Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.

Had become redundant. (Hence, omitted by FA, 2022) - omission made effective from 1st Oct, 2022

(2) ~~GSTR-1: Stands amended due to Acceptance of rejection of details furnished by recipient / ISD (and communicated to counterparty supplier in GSTR-1A)~~

Every RP who has been communicated

... the details u/Sec 38(3) or (Auto-population to (GSTR-1A))

... the details pertaining to inward supplies of ISD u/Sec 38 (4), (Auto-population to (GSTR-1A))

shall either accept or reject the details so communicated,

on or before the 17th day,

but not before the 15th day, of the month succeeding the tax period

and

the details furnished by him under sub-section (1) shall stand amended accordingly.

(3) **Details furnished in GSTR-1: may be rectified in subsequent return paying GST with interest**

Any RP,

... who has furnished the details under sub-section (1) for any tax period (i.e, has filed GSTR-1) and

... which have remained unmatched under section 42 or section 43, (* Sec 42/43 -practically redundant)

shall, upon discovery of any error or omission therein, rectify such error or omission in such manner as may be prescribed,

and

shall pay the tax and interest, if any, in case there is a short payment of tax on account of such error or omission, in the return to be furnished for such tax period.

Time limitation for making rectification:

Provided that

no rectification of error or omission in respect of the details furnished under sub-section (1) shall be allowed

after

furnishing
(Actual date)

of the return under section 39 for the month of September

30th November

following the end of financial year to which such details pertain,

or

furnishing
(Actual date)

of the relevant annual return,

[i.e., 31st Dec next FY - with presumption that RP is filing annual return on due date itself]

whichever is earlier.

(4) GSTR-1 defaulter for previous tax period: cannot file GSTR-1 for current tax period

A RP shall not be allowed to furnish the details of outward supplies under sub-section (1) for a tax period,

if the details of outward supplies for any of the previous tax periods has not been furnished by him

EXCEPTION: CG may (by notification) relax above restriction for a RP/ a class of RP :

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 RP or a class of RP to furnish the details of outward supplies under sub-section (1), even if he has not furnished the details of outward supplies for one or more previous tax periods

Explanation: For the purposes of this Chapter, the expression

“details of outward supplies”

shall include

details of **invoices, debit notes, credit notes** and **revised invoices** issued in relation to outward supplies made during any tax period.

2. Sec 39 [Return]: Amended by FA, 2022 [Amended by FA, 2022 - made effective from Notified Date= 1st Oct, 2022. (vide N/N 18/2022-CT)]

Sec 39 : Furnishing of Returns

Types of Returns - Different Returns prescribed for different categories of RP

(1) Normal Supplier (including Casual TP): Return is GSTR-3B (Monthly- by prescribed due date)

Exception: Notified RP- Quarterly GSTR-3B- by prescribed due date (called QRMP Scheme)

(2) Composition Supplier: Return is GSTR-4 (Annually - by prescribed due date)

(3) Tax Deductor: Return is GSTR-7 (Monthly - by 10th)

(4) ISD: Return is GSTR-6 (Monthly - by 13th)

(5) NRTP: Return is GSTR-5 (Monthly - by 13th)

Every registered non-resident taxable person (NRTP)

shall, for every calendar month or part thereof, furnish, in such form ^(Form GSTR-5) and manner as may be prescribed ^(Rule 63)

a RETURN electronically,

- within ~~twenty~~ **thirteen** days after the end of a calendar month or
- within seven days after the last day of the period of registration specified under section 27(1),

¹⁵ **Inserted by FA 2022** (enacted on 30th March, 2022) -- **made effective from Notified Date= 1st Oct, 2022.** (vide N/N 18/2022-CT)

** The amendment seeks to instil discipline in filing of GSTR-1. [similar provision is already existing as to filing of return - refer Sec 39(9)]

whichever is earlier,

Extension of Due dates of filing return - by Commissioner (via issuance of notification)

(6) **Extension of Due Date:** Commissioner empowered to extend due date for a class of RP

Due date of payment of tax

(7) RP required to furnish Monthly GSTR-3B / GSTR-7 / GSTR-5: **Tax liability shall be discharged by due date of return**

Exception 1.

QRMP Taxpayer: Tax liability shall be discharged on MONTHLY BASIS as per Rule 61 [i.e., (First 2 months – by deposit through GST Challan-GST PMT 06- by 25th of succeeding month)]

Provided that

~~every RP furnishing return under the proviso to sub-section (1) (i.e., QRMP taxpayer)~~

~~shall pay to the Government~~

~~the tax due~~

~~taking into account inward and outward supplies of goods or services or both, ITC availed, tax payable and such other particulars~~

~~during a month~~

~~in such form and manner, and within such time, as may be prescribed. (Rule 61)~~

Provided that

~~every RP furnishing return under the proviso to sub-section (1) (i.e., QRMP taxpayer)~~

~~shall pay to the Government in such form and manner, and within such time, as may be prescribed,-~~

~~(a) an amount equal to the tax due~~

~~taking into account inward and outward supplies of goods or services or both, ITC availed, tax payable and such other particulars~~

~~during a month or~~

~~(b) In lieu of the amount referred to in clause (a), an amount~~

~~determined in such manner and subject to such conditions and restrictions as may be prescribed.~~

Author:

Illustration: [Tax Payment under QRMP]

Method-1: [Proviso to Sec 39(7)] [Tax Payment under QRMP - proviso to Sec 39(7) + Rule 61(3)]

	Q1- QRMP Scheme			
	April	May	June	Total
Proviso to 39(7)	[M-1]	[M-2]	[M-3]	Q1
IGST (Cash liability)	500	300	200	1,000

CGST (Cash liability)	1,000	600	400	2,000
SGST (Cash liability)	2,000	1,200	800	4,000
Total	3,500	2,100	1,400	7,000
Rule 61 (3)	GST PMT-06	GST PMT-06		GSTR-3B
	25 th May (Note-1)	25 th June (Note-1)		22 nd / 24 th July
	(Note-2)	(Note-2)		

Note:

1. **Commissioner is empowered to extend Due date of GST PMT-06 for first 2 months of quarter** (i.e., M-1 and M-2 of Q)
2. **While making deposits through GST PMT-06 for first 2 months of quarter** (i.e., M-1 and M-2 of Q), **RP is entitled to consider existing balance in E-cash Ledger.**

Method-2: Presently, it is prescribed through Spl Procedure Notification issued u/Sec 148 - Such option is referred as '35% Challan Option'

Optional SEPCIAL PROCEDURE offered via N/N 85/2020-CT

2 Options	Eligible Person	GST Payable in [M-1] & [M-2]
Option-1	Continuing in QRMP (i.e., Quarterly GSTR-3B filed in PQ).	= Pay '35% of Cash Liability discharged in PQ'
Option-2	New entry in QRMP (i.e., Monthly GSTR-3B filed in PQ)	= Pay '100% of Cash Liability discharged in last month of PQ'

Exception 2.

Composition Supplier: Tax liability shall be discharged as per Rule 62 [i.e., Quarterly - by 18th]

Nil Return

(8) **Filing of NIL Return: mandatory for RP covered by Sec 39(1) and (2)**

Rectification of Errors/ Omissions in Return filed (with applicable time limitation)

(9) **Mistakes (errors or omissions) in the return: Rectification in SUBSEQUENT RETURN and subject to time limitation**

Subject to provisions of Sec 37 and Sec 38, Where

if any RP after furnishing a return under

... sub-section (1) GSTR-3B or
 ... sub-section (2) GSTR-4 or
 ... sub-section (3) GSTR-7 or
 ... sub-section (4) GSTR-6 or
 ... sub-section (5) GSTR-5

discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities,

he shall rectify such omission or incorrect particulars in the RETURN to be furnished for the month /quarter in which such omission or incorrect particulars are noticed subject to payment of interest under this Act.

Time limitation for making rectification:

Provided that

no such rectification of any omission or incorrect particulars **shall be allowed**

after

~~the due date of furnishing~~

of the return under section 39 for the month of September or second quarter 30th November following the end of financial year,

or

~~the actual date of furnishing~~

of the relevant annual return,

[i.e., 31st Dec next FY - with presumption that RP is filing annual return on due date itself]

whichever is earlier.

Ban on filing Return

(10) **Return furnishing not permissible –pending furnishing of (1) return of earlier tax period / (2) GSTR-1 of the current tax period**

A RP shall not be allowed to furnish a return for a tax period

if the return for any of the previous tax periods has not been furnished by him.

[or the details of outward supplies under section 37(1) for the said tax period has not been furnished by him].

EXCEPTION: CG may (by notification) relax above restriction for a RP/ a class of RP :

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 RP or a class of RP to furnish the return, even if he has not furnished the returns for one or more previous tax periods or has not furnished the details of outward supplies under section 37(1) for the said tax period.

3. **Sec 41 :: Originally enacted Sec 41 provided for allowance of provisional ITC initially and subsequent finalization of that post-matching as per provisions of Sec 42. However, matching provisions were never made effective. Therefore, Sec 41 has been substituted to remove the concept of provisional ITC and to provide that ITC availed in the regular return shall be considered as final [Sec 41 substituted by FA, 2022- made effective from Notified Date- 1st Oct, 2022. (vide N/N 18/2022-CT)]**

Section 41: Claim of ITC and provisional acceptance thereof.

(1) **RP to claim ITC in his return (based on self assessment) + Such credit shall be credited to E-Credit Ledger on provisional basis**

Every RP shall, subject to such conditions and restrictions as may be prescribed, be entitled to ~~take the credit of eligible input tax, as self-assessed, in his return~~

and such amount shall be credited on the provisional basis to his electronic credit ledger.

(2) **Provisional ITC allowed to be utilized – but only for SELF-ASSESSED LIABILITY as reported in the return**

The credit referred to in sub-section (1) (i.e., provisional ITC) shall be **utilized**

only for payment of self-assessed OUTPUT TAX as per the return referred to in the said sub-section.

Section 41: Availment of ITC

(1) **RP to claim ITC in his return (based on self assessment) + Such credit shall be credited to E-Credit Ledger**

Every RP shall,
subject to such conditions and restrictions as may be prescribed,
be entitled to **take the credit** of *eligible input tax, as self-assessed, in his return*

and *such amount shall be credited to his electronic credit ledger.*

(2) **If supplier failed to pay tax to Govt, the recipient shall be liable to reverse ITC availed with interest**

[However, as and when tax is paid by supplier, recipient can re-avail ITC]

The credit of input tax availed by a RP under sub-section (1) in respect of such supplies of goods or services or both, the tax payable whereon has not been paid by the supplier,

shall be reversed along with applicable interest, by the said person in such manner as may be prescribed:

Provided that

where the said supplier makes payment of the tax payable in respect of the aforesaid supplies,

the said RP may re-avail the amount of credit reversed by him in such manner as may be prescribed.

4. **Sec 42 [Matching of ITC availed by the recipient with GST liability discharged by the corresponding supplier]: Omitted by FA, 2022** [made effective from Notified Date: 1st Oct, 2022. (vide N/N 18/2022-CT)]

Section 42: Matching, Reversal and reclaim of Reduction in Input Tax Credit

Sec 42 was not of any practical relevance Hence, omitted by FA, 2022. (w.e.f. 1st Oct, 2022)

Rules relating to MATCHING PROVISIONS contained Sec 42:

[S 42 omitted by FA, 2022 (effective from 1st Oct, 2022)

- consequently, corresponding rules have also been omitted vide N/N 19/2022-CT (w.e.f 1st Oct, 2022)]

Rule 69 : Matching of claim of ITC

Omitted (w.e.f 1st Oct, 2022)

Rule 70 : Final acceptance of ITC and communication thereof

Omitted (w.e.f 1st Oct, 2022)

Rule 71 : Communication and rectification of discrepancy in claim of ITC and reversal of claim of ITC**Omitted (w.e.f 1st Oct, 2022)****Rule 72 : Claim of ITC on the same invoice more than once****Omitted (w.e.f 1st Oct, 2022)**

5. **Sec 43 [Matching of OTL liability adjustment by the supplier with the corresponding ITC reversals by the corresponding recipient]: Omitted by FA, 2022** [made effective from Notified Date= 1st Oct, 2022. (vide N/N 18/2022-CT)]

Section 43: Matching, Reversal and reclaim of Reduction in Output Tax Liability (OTL)**Sec 42 was not of any practical relevance. Hence, omitted by FA, 2022. (w.e.f. 1st Oct, 2022)****Rules relating to MATCHING PROVISIONS contained Sec 43:****[S 42 omitted by FA, 2022 (effective from 1st Oct, 2022)****- consequently, corresponding rules have also been omitted vide N/N 19/2022-CT (w.e.f 1st Oct, 2022)]****Rule 73 : Matching of claim of reduction in the OTL****Omitted (w.e.f 1st Oct, 2022)****Rule 74 : Final acceptance of reduction in OTL and communication thereof****Omitted (w.e.f 1st Oct, 2022)****Rule 75 : Communication and rectification of discrepancy in reduction in OTL and reversal of claim of reduction****Omitted (w.e.f 1st Oct, 2022)****Rule 76 : Claim of reduction in OTL more than once****Omitted (w.e.f 1st Oct, 2022)****Rule 77 : Refund of interest paid on reclaim of reversals****Omitted (w.e.f 1st Oct, 2022)**

6. **Sec 43-A [Provisions as to filing of NEW RETURN]: Omitted by FA, 2022** [made effective from Notified Date= 1st Oct, 2022. (vide N/N 18/2022-CT)]

Section 43-A: Procedure for furnishing return and availing ITC.

- Sec 43-A was introduced by CGST Amendment Act, 2018 enabling Government to prescribe new return filing procedure.
- But later on Govt decided to continue with the existing return filing system of [GSTR-1 and GSTR-3B].
- Consequently, Sec 43-A became irrelevant. **Hence, omitted by FA, 2022. (w.e.f. 1st Oct, 2022)**

7. **ANNUAL RETURN (for FY 2021-22):: RP having ATO upto 2 crore in FY 2021-22 exempted from filing Annual Return u/Sec 44 for the FY 2021-22** [N/N 10/2022- CT (dated 5th July, 2022) - effective from 5th July, 2022]

Sec 44 : Annual Return

RP (to file Annual Return – [Time Limit + Form + manner to be prescribed by rules]

Exception-1: Commissioner empowered to exempt filing of AR for any class of RP (if so recommended by GSTC)

Provided that

the Commissioner may,
on the recommendations of the Council,

by notification,
exempt any class of RPs from filing annual return under this section.

N/N 31/2021- CT

Dated: 30th July, 2021

Issued in exercise of powers given u/first proviso to Sec 44

FY 2020-21: RP whose ATO in FY 2020-21 is upto ₹ 2 cores exempted from filing AR for the FY 2020-21.

N/N 10/2022- CT

Dated: 5th July, 2022

Issued in exercise of powers given u/first proviso to Sec 44

FY 2021-22: RP whose ATO in FY 2021-22 is upto ₹ 2 cores exempted from filing AR for the FY 2021-22.

Input Tax Credit [ITC]

Legal Text of Act/Rules/Circulars

1. **Sec 16(2) (Conditions for ITC availment) : Sec 16 (2) amended to incorporate additional condition as to ITC availment - w.e.f. 1st Oct, 2022, ITC shall be admissible if it is NOT RESTRICTED as per Sec 38.. [FA, 2022 amendment notified vide N/N 18/2022 - effective from 1st Oct, 2022]**

Section 16 : Eligibility and condition for taking ITC.

- (1) **RP: Right to claim ITC on goods/ services used or intended to be used in business**

[ITC shall be subject to prescribed conditions/restrictions] + [ITC shall be claimed in the manner specified in Sec. 49]

Author

Manner of claiming ITC: **Sec 49(2) of CGST Act**

RP shall self-assess ITC in his return. → His self-assessed ITC shall be credited to e-credit ledger. → Such ITC shall be in accordance with provisions of **Sec 41**.

Sec 41 [Pre-FA, 2022]. (upto 30th Sep, 2022)

41(1)

ITC shall be allowed **provisionally**.

41(2)

Post matching of ITC as per provisions of Sec 42 (i.e. tax paid by the corresponding supplier), ITC will be finalized.

Till finalized, ITC can be used but only for payment of self-assessed output tax liability as per RETURN.

Sec 41 [Post-FA, 2022] (w.e.f. 1st Oct, 2022)

ITC shall be allowed **FINALLY**. (not provisionally)

If tax is not paid by the corresponding supplier, recipient shall be required to reverse ITC with interest (in prescribed manner)

... However, if subsequently supplier makes payment of tax, then RP may re-avail the ITC.

- (2) **Credit shall be allowed on fulfilment of specified conditions**

Notwithstanding anything contained in this section,

no RP shall be entitled to the **credit** of any input tax in respect of any supply of goods or services or both to him **unless,—**

- (a) **he is in possession of**

- **a tax invoice or debit note issued by a supplier registered** under this Act, or
- **such other tax paying documents as may be prescribed;**

- (aa)

the details of the invoice or debit note referred to in clause (a)

has been furnished by the supplier in the statement of outward supplies (i.e., GSTR-1)

and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37 (i.e., auto-population of details from GSTR-1 of Supplier to GSTR-2B of the recipient as per provisions of Rule 60);

- (b)

he has **received the goods or services or both.**

(ba)	<i>the details of ITC in respect of the said supply communicated to such registered person under section 38 has not been restricted;</i>
(c)	<i>subject to the provisions of section 41 (of Section 43-A¹⁶), the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilization of input tax credit admissible in respect of the said supply;</i>
<i>and</i>	
(d)	<i>he has furnished the RETURN under section 39:</i>

1-A. **Sec 38 (Communication of details of Inward Supply and ITC)** : Existing Sec 38 was inoperational. It has been substituted by FA, 2022. New Sec 38 provides for communication of details of inward supply and ITC to the recipient. It provides that communication shall be made of (a) Supplies of which ITC may be available; and (b) Supplies of which ITC cannot be availed. [FA, 2022 amendment notified vide N/N 18/2022 - effective from 1st Oct, 2022]

Section 38 : Communication of details of Inward Supplies and Input Tax Credit

(1) **Communication of details of Inward Supply to recipient + Auto-Generated ITC Statement**

<p>The details <i>of outward supplies furnished by the RPs u/sec 37(1)</i></p> <p style="text-align: center;"><i>and</i></p> <p><i>of such other supplies as may be prescribed,</i></p> <p><i>and</i></p> <p><i>an auto-generated statement containing the details of ITC. [GSTR-2B]</i></p>	<p>shall be made available electronically to the recipients of such supplies</p> <p><i>in such form and manner, within such time, and subject to such conditions and restrictions</i></p> <p style="text-align: right;"><i>as may be prescribed, [Rule 60]</i></p>
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(2) **Auto-generated ITC Statement [GSTR-2B]: (a) Eligible ITC (b) Ineligible ITC (6 situations)**

The auto-generated statement under sub-section (1) shall consist of—

<p>(a) <i>details of inward supplies in respect of which credit of input tax may be available</i> to the recipient; and</p> <p>(b) <i>details of supplies in respect of which such credit cannot be availed¹⁷, whether wholly or partly, by the recipient, on account of the details of the said supplies being furnished under section 37(1),—</i></p>	<p>(i) <i>by any RP within such period of taking registration as may be prescribed;</i> or <i>Purpose of this restriction: To curb/control passing of massive ITC by fraudulent entities who registered themselves and issue fake invoices within a short period of time. (Rules will prescribe that period)</i></p> <p>(ii) <i>by any RP who has defaulted in payment of tax and where such default has continued for such period as may be prescribed;</i> or <i>Purpose of this restriction: To put a check over situation where GST is not reaching Govt but its benefit (ITC) is being availed by the recipient. (Rules will</i></p>
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¹⁶ **Omitted by FA, 2022** (enacted on 30th March, 2022) - **made effective from Notified Date= 1st Oct, 2022.** (vide N/N 18/2022-CT)

¹⁷ **Author:** Restrictions on ITC as intended to be implemented by Sec 38(2)(b) are linked to defaults of the suppliers (Supplier = Normal Supplier + Casual TP - the one who is required to furnish GSTR-1 u/Sec 37). **These restrictions require to be tested judicially as recipient cannot be punished/denied ITC for every fault of suppliers.**

	<i>specify the period of default of GST payment by supplier which will hit right of recipient to avail ITC)</i>		
(iii)	by any RP the output tax payable by whom in accordance with the statement of outward supplies furnished by him under the said sub- section during such period, as may be prescribed,	exceeds (>)	the output tax paid by him during the said period by such limit as may be prescribed;
	<i>Purpose of this restriction: To put a check over situation where supplier's GSTR-1 (GST payable) is not matching with his GSTR-3B (Tax paid) and the mismatch is exceeding the tolerable limit . (Rules will specify the tolerable limit)</i> <i>(Rules will also specify the period for which such default of mismatch will trigger this restriction)</i>		
(iv)	by any RP who, during such period as may be prescribed, has availed credit of input tax of an amount	that exceeds (>)	the credit that can be availed by him in accordance with clause (a), by such limit as may be prescribed; OR [i.e. ITC admissible as per Auto-drafted ITC Statement (GSTR-2B)]
	<i>Purpose of this restriction: To put a check over situation where supplier is one who himself is guilty of availing ITC in excess of what is available to him as per Sec 38(2)(a) and the excess ITC so availed is exceeding the tolerable limit (Rules will specify the tolerable limit)</i> <i>(Rules will also specify the period for which such default of excess availment will trigger this restriction)</i>		
(v)	by any RP who has defaulted in discharging his tax liability in accordance with the provisions of section 49(12) subject to such conditions and restrictions as may be prescribed; <i>[i.e., Supplier who defaulted in complying mandatory payment of tax liability in cash if applicable (1% of Output Tax liability)]</i>		
	<i>Purpose of this restriction: To curb/control passing of massive ITC by fraudulent entities who register themselves and issue fake invoices, but they themselves discharge all their liabilities by fake ITC availed by themselves (i.e. don't pay anything in cash/ or pay very nominal amount in cash) . (Rules will prescribe the conditions and restrictions subject to which this restriction will be applicable)</i>		
(vi)	by such other class of persons as may be prescribed.		

Author:

Sec 38 is providing for 6 situations on account of which ITC shall NOT be available to the recipient (i.e. ITC will be restricted). *All these 6 restrictions shall be imposed in accordance with certain provisions to be prescribed.*

Corresponding rules have not been notified and thus, presently these newly intended restrictions are not operational.

2. **Sec 16(4) (Time limitation for ITC availment) : w.e.f. 1st Oct, 2022, Sec 16(4) has been amended to extend time limitation for ITC availment.** [FA, 2022 amendment notified vide N/N 18/2022 - effective from 1st Oct, 2022]

Section 16 : Eligibility and condition for taking ITC.

(4) Time limitation for availment of 'Invoice based ITC' + 'Debit Noted based ITC':

<p>A RP shall not be entitled to take ITC</p>	<p><i>in respect of any <u>Invoice</u> or <u>Debit Note</u> for supply of goods or services or both</i></p>	<p><i>after</i></p> <p><i><u>the due date of furnishing of the return under section 39 for the month of September 30th Nov</u></i></p> <p><i>following the end of financial year to which such invoice or debit note pertains</i></p> <p style="text-align: center;"><i>or</i></p> <p><i><u>Furnishing of the relevant annual return.</u></i></p> <p style="text-align: center;"><i><u>whichever is earlier.</u></i></p>
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Illustration: ITC Availment based on TAX INVOICE / DEBIT NOTE (where it was not availed initially)

[Presume: **RP - Monthly return filer**]

Supply	Date of tax invoice	Date of DN	Time limitation for ITC on basis of TI <i>[Time limitation is linked to Year of Issuance of Invoice]</i>	Time limitation for ITC on basis of DN <i>[Time limitation is linked to Year of Issuance of DN]</i>
10 Jan, 20x2 [FY 20x1-x2]	10 Jan, 20x2 [FY 20x1-x2]	10 March, 20x2 [FY 20x1-x2]	20th Oct, 20x2	20th Oct, 20x2 30th Nov, 20x2
10 Jan, 20x2 [FY 20x1-x2]	10 Jan, 20x2 [FY 20x1-x2]	10 April, 20x2 [FY 20x2-x3]	20th Oct, 20x2	20th Oct, 20x3 30th Nov, 20x3

3. Proviso to Sec 16(1) r/w Rule 37 (Reversal of ITC in case of NON-PAYMENT OF CONSIDERATION): Rule has been amended to the effect of providing for full ITC reversals (instead of pro-rata) if recipient fails to pay the supplier within 180 days from the date of issue of invoice by supplier) [Rule 37 (1) & (2) substituted & Rule 37(3) omitted vide N/N 19/2022-CT (w.e.f. 1st Oct, 2022)]

Section 16 : Eligibility and condition for taking ITC.

(2) Credit shall be allowed on fulfilment of specified conditions

Recipient shall pay its supplier timely (within 180 days): Else ITC becomes reversible

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 180 days from the date***

*an amount **equal to the ITC availed by the recipient** shall be **added to his output tax liability,** along with interest thereon, **in such manner as may be prescribed:***

of issue of invoice by the supplier,

[R-37(1): Addition shall be made through RETURN]

Provided also that

the recipient shall be entitled to avail of the credit of input tax *on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.*

[R-37(4):: Re-booking of credit post payment to supplier: **Limitation shall not be applicable**]

Rule 37 : Reversal of ITC in case of NON-PAYMENT OF CONSIDERATION

(1) **Supplier (supplying under FCM) remaining unpaid for more than 180 days: consequences**

A RP,

who has ~~availed of ITC on any inward supply of goods or services or both,~~
but ~~fails to pay to the supplier~~ thereof

the value of such supply along with the tax payable thereon

within the time limit specified in the second proviso to section 16(2), (i.e., 180 days from date of issue of invoice by supplier)

shall furnish

~~the details of such supply,~~

~~the amount of value not paid and~~

~~the amount of ITC availed of~~ **proportionate to** ~~such amount not paid to the supplier~~

~~in FORM GSTR-2.~~¹⁸

for the month immediately following the period of 180 days from the date of issue of invoice.

Exception 1: Schedule I Supplies (Supply without consideration): Value deemed to have been paid to supplier

Provided that

the ~~value of supplies made without consideration~~ as specified in Schedule I

shall be deemed to

have been paid for the purposes of the ~~second proviso to section 16(2).~~

(i.e. No ITC reversals shall be required — as obviously, in case of supply without consideration, recipient is not liable to pay anything to the supplier)

Exception 2: Expenditure to be incurred by supplier, but actually incurred by the recipient and paid for directly— Such exp though includible in Value of Supply— Such value deemed to have been paid to supplier

Provided further that

~~the value of supplies on account of any amount added~~ in accordance with the provisions of ~~section 15(2)(b)~~

[15(2)(b) provides for addition of any expenditure to be incurred by supplier, but actually incurred by the recipient and paid for directly]

shall be deemed to

have been paid for the purposes of the ~~second proviso to section 16(2).~~

(i.e. No ITC reversals shall be required — as obviously, such consideration already stood paid)

(2) **Recipient (post furnishing details of unpaid supplier): Add the amount in OTL of corresponding month**

The amount of ITC referred to in ~~rule 37(1)~~

shall be added

to the Output tax liability (OTL) of the RP

for the month in which the details are furnished.

¹⁸ **Furnishing of details in GSTR-2:** This is not relevant as GST law has been amended to omit Sec 38 which provided for filing of GSTR-2 (Statement containing details of INWARD SUPPLIES)]

(1) Supplier (supplying under FCM) remaining unpaid for more than 180 days: Recipient who has availed ITC shall pay equivalent amount with interest

A RP, who has **availed of ITC** on any inward supply of goods or services or both, *other than the supplies on which tax is payable on reverse charge basis*, but **fails to pay to the supplier** thereof **the amount towards the value of such supply** along with the tax payable thereon

within the time limit specified in the second proviso to section 16(2). (i.e., 180 days from date of issue of invoice by supplier)

shall pay an amount *equal to* **the ITC availed in respect of such supply** **along with interest payable thereon under section 50,**

while furnishing the return in FORM GSTR-3B for the tax period immediately following the period of 180 days from the date of issue of invoice:

Exception-1: Schedule I Supplies (Supply without consideration): - Value deemed to have been paid to supplier**Provided that**

the **value of supplies made without consideration** as specified in Schedule I the said Act

shall be deemed to

have been paid for the purposes of the second proviso to section 16(2). (i.e. no payment shall be required to be made shall be required - as obviously, in case of supply without consideration, recipient is not liable to pay anything to the supplier)

Exception-2: Expenditure to be incurred by supplier, but actually incurred by the recipient and paid for directly—Such exp though includible in Value of Supply- Such value deemed to have been paid to supplier**Provided further that**

the value of supplies on account of any amount added in accordance with the provisions of section 15(2)(b)

[15(2)(b) provides for addition of any expenditure to be incurred by supplier, but actually incurred by the recipient and paid for directly]

shall be deemed to

have been paid for the purposes of the second proviso to section 16(2). (i.e. No payment shall be required to be shall be required - as obviously, such consideration already stood paid)

(2) Recipient shall be eligible to re-avail ITC as and when payment is made subsequently

Where the said RP subsequently makes the payment of the amount towards the value of such supply along with tax payable thereon to the supplier,

he shall be entitled to re-avail the ITC referred to in sub-rule (1).

(3) RP shall pay this liability alongwith interest @18% p.a.

The **RP shall be liable to pay interest**

at the rate

notified under section 50(1) ~~[i.e., @18% p.a.]~~

for the period

starting from

the date of availing credit on such supplies

till

the date when the amount added to the OTL, as mentioned in rule 37(2), is paid.

(4) Re-bookng of credit post payment to supplier: Limitation shall not be applicable

The **time limit specified in section 16(4)** [i.e. Time limitation for availment of ITC]

shall not apply to a claim for re-availing of any credit, in accordance with the provisions of the Act or these rules, that had been reversed earlier.

4. **Sec 17 (2) r/w Rule 42 & 43** (pro-rata ITC in case supplier is engaged in making exempt supply as well as non-exempt supply): **Explanation to R-43** provides that certain exempted supplies shall not be considered into 'Aggregate Value of Exempted Supplies'. The said explanation has been amended to incorporate another exempted supply - now, onwards 'Exempted supply of 'Duty Credit Scrip' shall also not be considered into 'Aggregate TO of Exempted Supply' (and thus, supplier shall NOT be required to make any ITC reversals in respect thereof) [Explanation 1 to Rule 43 amended amended vide N/N 14/2022- CT (dated 5th July, 2022) - effective from 5th July, 2022]

Rule 43 : Manner of determination of ITC in respect of capital goods and reversal thereof in certain cases

Explanation 1: -For the purposes of **rule 42 and this rule** [i.e. Rule 43], it is hereby clarified that

the aggregate value of exempt supplies shall exclude: ¹⁹

(a)	--- omitted ---		
(b)	the value of services by way of accepting deposits, extending loans or advances in so far as the consideration is represented by way of interest or discount,	except in case of a banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances;	= Lending/discounting: 'Interest element' Exempted presently- but excluded from Agg. Value of Exempt Supply [but not for Banking Co. / FI]
(c)	the value of supply of services by way of transportation of goods by a vessel from the customs station of clearance in India to a place outside India.		= Sea/ ocean transportation of export goods: Exempted presently- but excluded from Agg. Value of Exempt Supply
and			
(d)	the value of supply of DUTY CREDIT SCRIPS specified in the N/N 35/2017-CT (Rate);		

¹⁹ Aggregate value of 'Exempt Supply'

Exempt Supply	=	Sec 2(47)	+	Sec 17(3)	(-)	Expl to R-42 / 43	Expl to R-42 / 43
		Normal meaning Nil Rated Wholly Exempt Non-Taxable		Extended Meaning RCM Supply Sale of securities Sale of Land & complete building		ED (Centre/State) Sales Tax (Centre/State)	Interest/ discount (for non-banking entity) Value of Sr of Sea transportation of export goods Value of Supply of Duty Credit Scrip (as specified in N/N 35/2017)

TO in the State/ UT as defined in **Sec 2(119)** includes 'exempt supply'.

[Explanation to R-42/43 providing for exclusion of ED / Sales tax is specifically made applicable to TO in the State/UT] [but not other inclusions/exclusions specifically made applicable]

Issue: Whether for TO in the state value of exempt supply shall be taken as computed above for purposes of Sec 17 r/w R-42 & 43?

Logically, Yes.

5. **Sec 17 (4) r/w Rule 38: [Special OPTIONAL method of ITC availment for Banking Company/ FI (including NBFC) (pro-rata ITC as exempt supply as well as non-exempt supply involved): Rule 38 (c) amended to provide that where such entity is entitled to 50% ITC, then it shall avail 100% ITC (as auto-populated in its GSTR-2B) and make corresponding reversals of 50% in the GSTR-3B. [Amended vide N/N 19/2022-CT (w.e.f 1st Oct, 2022)]**

Rule 38 : Claim of credit by Banking Company or A Financial Institution

A banking company or a financial institution, including a non-banking financial company, engaged in supply of services by way of accepting deposits or extending loans or advances

that **chooses not to comply with the provisions of Section 17(2)**, in accordance with the option permitted u/Sec 17(4),

shall follow the procedure specified below, namely-

(a)	the said company or institution shall not avail the credit of,-	(i) tax paid on inputs and input services ²⁰ that are used for non-business purposes, and (ii) the credit attributable to supplies specified in section 17(5), in FORM GSTR-2;	No ITC of Non-business purpose ITC blocked u/Sec 17(5)
(b)	the said company or institution shall avail the credit of	tax paid on inputs and input services referred to in the second proviso to section 17(4) and not covered under clause (a); <small>[i.e. Self-supply (One RP to another RP with same PAN)]</small>	Inward Supply in nature of self-supply (supply by other branch/BE registered separately) = <u>100% ITC</u>
(c)	50% of the remaining amount of input tax shall be the ITC admissible to the company or the institution	and shall be furnished in FORM GSTR-2; and the balance amount of ITC shall be reversed in FORM GSTR-3B	All other inward supplies = <u>50% ITC</u> [Balance 50% shall be reversed in GSTR-3B]
(d)	the amount referred to in clauses (b) and (c)	shall, subject to the provisions of sections 41, 42 and 43, be credited to the electronic credit ledger of the said company or the institution.	[100% ITC as per clause (b) + 50% ITC as per clause (c)] availed shall only be credited to e-credit ledger.

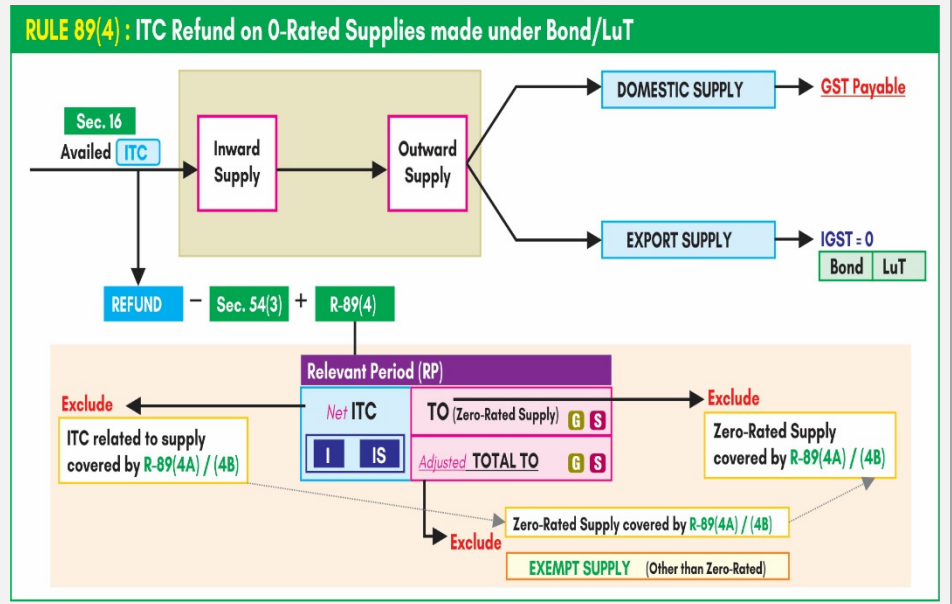
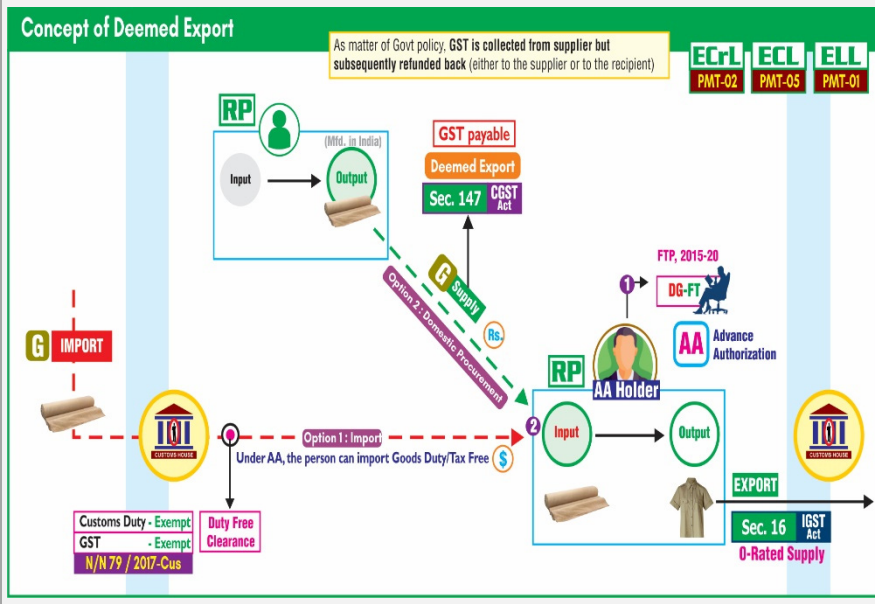
²⁰ **Author:** Reference to capital goods is missing. This is unintended omission.

6. Miscellaneous:: CBIC has clarified certain issues pertaining to refund. [CBIC Circular 172/04/2022-GST (Dated: 6th July, 2022)]

CBIC Circular 172/04/2022-GST [Dated: 6th July, 2022.]

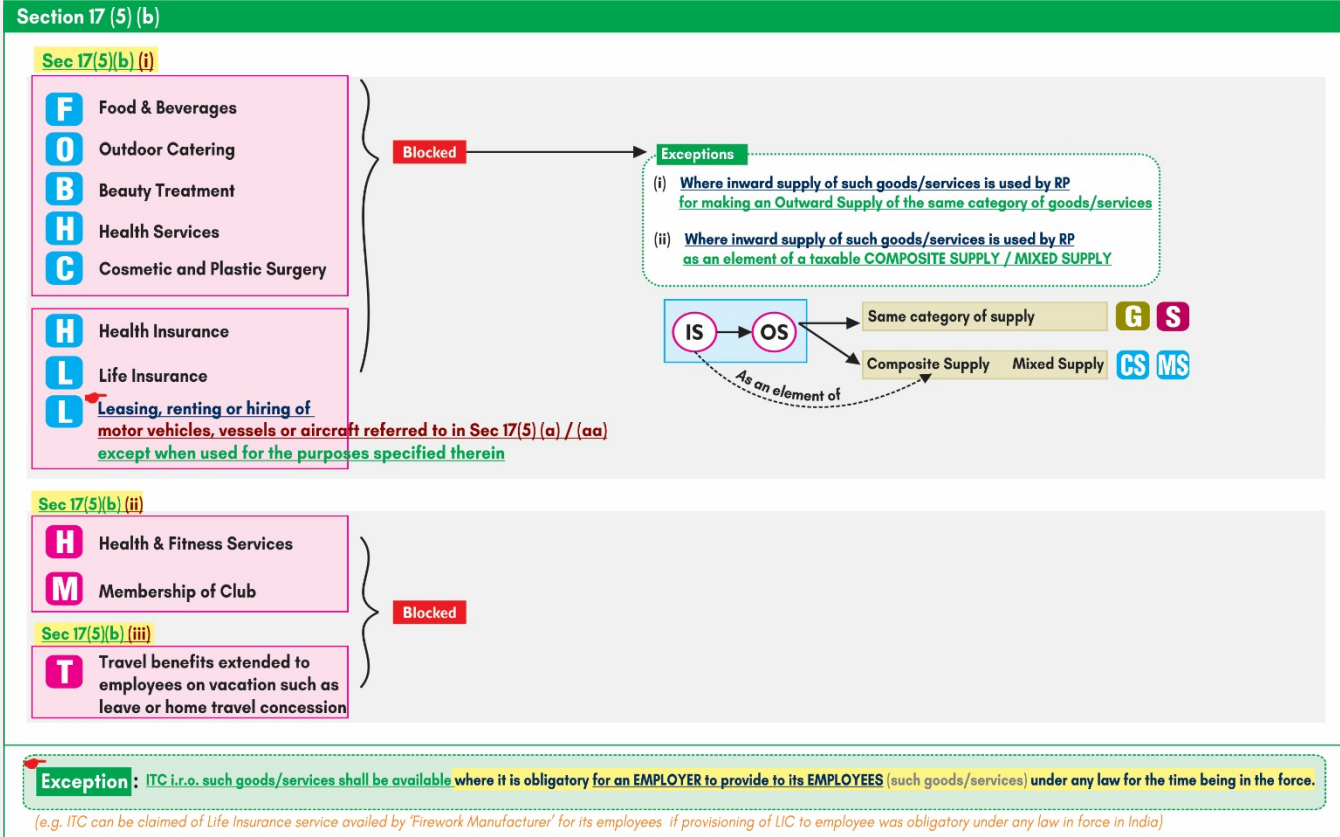
Subject: Clarification on various issue pertaining to GST- reg.

Issues	Clarification
Refund claimed by the recipients of supplies regarded as deemed export	
1 Whether the (ITC) availed by the recipient of deemed export supply for claiming refund of tax paid on supplies regarded as deemed exports would be subjected to provisions of Section 17 of the CGST Act, 2017.	The refund in respect of deemed export supplies is the refund of tax paid on such supplies. However, the recipients of deemed export supplies were facing difficulties on the portal to claim refund of tax paid due to requirement of the portal to debit the amount so claimed from their e-credit ledger. Considering this difficulty, the tax paid on such supplies, has been made available as ITC to the recipients vide Circular No. 147/03/2021-GST dated 12.03.2021 only for enabling them to claim such refunds on the portal. The ITC of tax paid on deemed export supplies, allowed to the recipients for claiming refund of such tax paid, is not ITC in terms of the provisions of Chapter V of the CGST Act, 2017. Therefore, the ITC so availed by the recipient of deemed export supplies would not be subjected to provisions of Section 17 of the CGST Act, 2017.
2 Whether the ITC availed by the recipient of deemed export supply for claiming refund of tax paid on supplies regarded as deemed exports is to be included in the "Net ITC" for computation of refund of unutilized ITC under rule 89(4) & rule 89(5) of the CGST Rules, 2017.	The ITC of tax paid on deemed export supplies, allowed to the recipients for claiming refund of such tax paid, is not ITC in terms of the provisions of Chapter V of the CGST Act, 2017. Therefore, such ITC availed by the recipient of deemed export supply for claiming refund of tax paid on supplies regarded as deemed exports is not to be included in the "Net ITC" for computation of refund of unutilized ITC on account of zero-rated supplies under rule 89(4) or on account of inverted rated structure under rule 89(5) of the CGST Rules, 2017.



Clarification on various issues of section 17(5) of the CGST Act

3	<p>Whether the proviso at the end of 17(5)(b) of the CGST Act is applicable to the entire clause (b) or the said proviso is applicable only to sub-clause (iii) of clause (b)?</p> <p>Proviso to Sec 17 (5) (b) of the CGST Act "Provided that the ITC in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force."</p>	<p>The above proviso at the end of section 17(5)(b) of the CGST Act is applicable to the entire clause (b).</p>
4	<p>Whether the provisions of 17(5)(b) (i) of the CGST Act bar availment of ITC on input services by way of "leasing of motor vehicles, vessels or aircraft" or ITC on input services by way of any type of leasing is barred under the said provisions?</p> <p>Sec 17 (5) (b) (i) of the CGST Act ITC shall not be available i.r.o. following supply of goods or services or both— "(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) except when used for the purposes specified therein, life insurance and health insurance:</p>	<p>"Leasing" referred in section 17(5)(b)(i) refers to leasing of motor vehicles, vessels and aircrafts only and not to leasing of any other items. Accordingly, availment of ITC is not barred under section 17(5)(b)(i) of the CGST Act in case of leasing, other than leasing of motor vehicles, vessels and aircrafts.</p>



Refunds under GST

Legal Text of Act/Rules/Circulars

1. **Sec 54 (1) (Time Limitation = 2 Year from Relevant Date): for claiming refund on 'Zero-rate supply of supply of goods/ services to SEZ unit / Developer': Explanation to Sec 54 amended to provide specific relevant date for computation of time period for refund i.r.o. such supply** (Relevant Date = Due Date of filing return i.r.o. such supply). [Explanation to Sec 54 amended by FA, 2022 - effective from 1st Oct, 2022]

Section 54 : Refund of tax

Explanation.—For the purposes of this section,

(2)	“Relevant Date” means—	
(ba)	in case of zero-rated supply of goods or services or both to a SEZ developer or a SEZ unit where a refund of tax paid is available in respect of such supplies themselves [i.e. Output tax] or, as the case may be, the inputs or input services used in such supplies [i.e. Input tax],	the due date for furnishing of return under section 39 in respect of such supplies;
	(All other residuary situations)	
(g)	in the case of a person, other than the supplier,	the date of receipt of goods or services or both by such person; and
(h)	in ANY OTHER CASE,	the date of payment of tax.

- 1A. **Rule 89 (Refund Application for claiming refund):** Proviso to R-89(1) mandates refund application claiming refund i.r.o. zero-rated supply made to SEZ Unit / Developer shall be filed after receipt of goods/ services is endorsed by the 'SPECIFIED OFFICER of the SEZ'. Explanation has been inserted defining 'Specified Officer' to mean 'Specified Officer' or 'Authorized Officer' as per SEZ Rules, 2006 [Explanation to Proviso to R-89(1) inserted vide N/N 14/2022- CT- effective from 5th July, 2022]

Rule 89 : Application for refund of tax, interest, penalty, fees or any other amount

- (1) **All refunds (except covered by Sec 55): Refund Application in Form GST RFD-01**
Refund i.r.o. supplies to SEZ Unit / SEZ Developer: Refund Claim by SUPPLIER with evidence as to receipt of goods/ services by SEZ Unit/ Developer for Authorized Operations

Provided that

in respect of supplies to

- a SEZ unit or
- a SEZ developer,

the application for refund shall be filed by the –

- | | | | |
|-----|----------------------|---|---|
| (a) | supplier of goods | after such goods have been admitted in full in the SEZ for authorized operations, | as endorsed by the specified officer of the Zone; |
| (b) | supplier of services | along with such evidence regarding receipt of services for authorized operations | as endorsed by the specified officer of the Zone. |

EXPLANATION. - For the purposes of this sub-rule,

"**specified officer**" means a "**specified officer**" or an "**authorised officer**" as defined under rule 2 of the SEZ Rules, 2006.

Author: As per SEZ Rules,

Specified Officer means AC/DC/JC of Customs for the time being posted in the SEZ and

Authorized officer means **an Inspector or Preventive Officer or Appraiser or Superintendent of Customs posted in the SEZ and authorized by the Specified Officer.**

2. **Sec 54 (2) (Time Limitation for refund claim of GST paid on inward supplies by certain Specified /Notified Entities)::: Time limitation of '6 months' as specified in Sec 54(2) has been enhanced to '2 Years' (thus bringing it parity with time limit applicable in other cases). [Sec 54(2) amended by FA, 2022 - effective from 1st Oct, 2022]**

Section 54 : Refund of tax

- (2) **Refund Claim certain 'Specified Entities + Notified Entities' [UIN Holder]:**
Time Limit = 2 Years from the last day of the quarter in which such supply was received

(Specified Entities)

- (a)
- Any specialized agency of the **United Nations Organization** or
 - any **Multilateral Financial Institution and Organization** notified under the United Nations (Privileges and Immunities) Act, 1947,
 - **Consulate or Embassy of foreign countries ;**

AND

(Notified Entities)

- (b) **any other person or class of persons, as may be notified by the Commissioner,**

N/N 6/2017-CT (Rate) Refund to CSD (Canteen stores Department)
 + N/N 6/2017-IT (Rate)

entitled to a refund of tax paid by it on inward supplies of goods or services or both, [refund entitlement as per Sec 55]

... may make **an application** for such refund,

... **in such form and manner as may be prescribed**, [R- 95 + 95-A of CGST Rules]

before the expiry of

6 months

2 Years

from the last day of the quarter in which such supply was received.

3. **Sec 54 (1) r/w Rule 89(2) (Supporting documents for claiming refund - to be filed with refund application): Rule 89(2) has been amended to separately providing supporting documents for (a) Export of Goods (other than electricity) and (b) Export of Electricity . [R-89 (2) amended vide N/N 14/2022- CT (dated 5th July, 2022) - w.e.f. 5th July, 2022]**

Rule 89 : Application for refund of tax, interest, penalty, fees or any other amount

(2) **Documentary Evidence to establish that refund is due**

The application under rule 89(1) shall be accompanied by any of the following documentary evidences in Annexure 1 in Form GST RFD-01, as applicable, to establish that a refund is due to the applicant, namely:-

[Evidence establishing that refund is due]	
Refund arising out of Appeal	
(a)	
Export of Goods / Services	
(b)	in a case where the refund is on account of export of goods (other than electricity) a STATEMENT containing the number and date of shipping bills or bills of export and the number and the date of the relevant export invoices
(ba)	in a case where the refund is on account of export of electricity a STATEMENT containing the number and the date of the export invoices, details of energy exported, tariff per unit of electricity as per agreement, along with <ul style="list-style-type: none"> - the copy of Statement Of Scheduled Energy for exported electricity by Generation Plants issued by the Regional Power Committee Secretariat as a part of the Regional Energy Account (REA) under Regulation 2 (1) (nnn) of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010 and - the copy of agreement detailing the tariff per unit,

CBIC Circular 175/07/2022-GST [Dated: 6th July, 2022.]

Clarifications regarding manner of filing refund of unutilized ITC on account of export of electricity

Reference has been received from Ministry of Power regarding the problem being faced by power generating units in filing of refund of unutilised Input Tax Credit (ITC) on account of export of electricity. It has been represented that **though electricity is classified as "goods" in GST, there is no requirement for filing of Shipping Bill/ Bill of Export in respect of export of electricity.** However, the extant provisions under Rule 89 of CGST Rules, 2017 provided for requirement of furnishing the details of shipping bill/ bill of export in respect of such refund of unutilised ITC in respect of export of goods. **Accordingly, a clause (ba) has been inserted in rule 89(2) and a Statement 3B has been inserted in FORM GST RFD-01 of the CGST Rules, 2017 vide N/N 14/2022-CT dated 5th July, 2022.**

The current circular has been issued to lay down **the procedure in which refund of unutilized ITC** shall be claimed.

1.	Form	Application shall be made under "Any Other" category" electronically on the common GST portal in FORM GST RFD-01 . Reason for refund - "Export of electricity- without payment of tax (accumulated ITC)." <i>At this stage, the applicant is not required to make any debit from the e-credit ledger.</i>
2.	Supporting Document	The applicant would be required to furnish the details contained in Statement 3B of FORM GST RFD-01 , containing the number and date of the export invoices, details of energy exported, tariff per unit for export of electricity as per agreement. <ul style="list-style-type: none"> • The applicant will also be required to upload the copy of 'Statement of SCHEDULED ENERGY for electricity exported by the Generation Plants' issued as part of Regional Energy Account by Regional Power Committee Secretariat ("RPC") under regulation 2 (1)(nnn) of the CERC (Indian Electricity

		Grid Code) Regulations, 2010 for the relevant period and the copy of the relevant agreement(s) detailing the tariff per unit for the electricity exported
3.	<u>Relevant Date</u>	As per Sec 54 (1), time period of 2 years from the relevant date has been specified for filing an application of refund. Electrical energy is in nature of "goods" under GST and is exported on a continuous basis through the transmission lines attached to the land . Therefore, it is not possible to determine the specific date on which a specific unit of electricity passes through the frontier . However, a statement of scheduled energy for export of electricity by a Generation Plant is issued by Regional Power Committee RPC Secretariat, as a part of Regional Energy Account (hereinafter referred to as "REA") under Regulation 2(1)(nnn) of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010. <ul style="list-style-type: none"> Accordingly, it is hereby clarified that The relevant date shall be the last date of the month, in which the electricity has been exported as per monthly Regional Energy Account (REA) issued by the RPC Secretariat under regulation 2(1)(nnn) of the CERC (Indian Electricity Grid Code) Regulations, 2010
4.	<u>Formulae for claiming refund</u>	The formula provided u/Rule 89(4) shall be used for calculation of refund of unutilised ITC Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) x Net ITC ÷ Adjusted Total Turnover <ul style="list-style-type: none"> The turnover of export of electricity would be calculated by multiplying the energy exported during the period of refund with the tariff per unit of electricity, specified in the agreement. Further, the turnover of electricity supplied domestically would be excluded while calculating the adjusted total turnover since the same is exempted under GST and the PO shall verify that no ITC has been availed in making domestic supply of electricity.
5.	<u>Processing of Refund</u>	Once the PO is satisfied with the calculation and the amount of refund due has been computed, the PO shall request the applicant, in writing, if required, to debit the said amount from the e-credit ledger through FORM GST DRC-03 and only when the proof of debit in E.Cr. L. is submitted , the PO shall proceed to issue the refund order in FORM GST RFD-06 with corresponding payment order.

4. **Sec 54 (1) (proviso) r/w R-89 (Refund from e-cash ledger): Proviso to Sec 54(1) amended to provide that RP may claim refund of ECL in prescribed form and manner (instead of claiming such refund in the return). Correspondingly, proviso to R-89 (1) omitted which was providing for claiming such refund through return. [Proviso to Sec 54(1) amended by FA, 2022 + Proviso to R-89 omitted vide N/N 14/2022- CT (dated 5th July, 2022) - BOTH effective from 1st Oct, 2022]**

Section 54 : Refund of tax

- (1) **Refund of (tax + interest + other amounts): Refund Application required (T/L: 2 years)**

Any person

claiming refund of **any tax** and **interest, if any, paid on such tax or any other amount*** paid by him,

may **make an application**

before the expiry of

two years from the RELEVANT DATE

in such form and manner

as may be prescribed: [Rule 89 of CGST Rules, 2017]

Refund of (Balance in e-Cash Ledger balance): in prescribed manner (i.e. through GST RFD-01 application)

Provided that

a RP,

claiming
refund of

any balance in the electronic cash ledger in accordance with the provisions of section 49 (6) ,

may claim such refund

in

the return furnished under section 39 such form and

in such manner

as may be prescribed:

[Rule 89(i) of CGST Rules, 2017]

Rule 89 : Application for refund of tax, interest, penalty, fees or any other amount

(1) All refunds (except covered by Sec 55): Refund Application in Form GST RFD-01

Any person, *except the persons covered under notification issued under section 55*, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of section 49(6) or any tax, interest, penalty, fees or any other amount paid by him, other than refund of IGST paid on goods exported out of India

may file an application, subject to the provisions of Rule 10-B electronically in FORM GST RFD-01 through the common portal, either directly or through a Facilitation Centre notified by the Commissioner.

Author :

Applicant		Form of Refund Application	
Entities notified /specified u/Sec 55	R-89: N.A.	FORM GST RFD-10, FORM GST RFD-10-A	[R-95 + 95-A]
ANY OTHER ENTITY			
(a) Refund of IGST paid on Export (goods)	R-89: N.A.	Shipping Bill / Bill of Export filed under Customs = Deemed as Refund Application	[R-96]
(b) Any other refund	R-89: Applicable	FORM GST RFD-01	[R-89]

Refund of Balance in E-cash ledger: Claimable through return also

Provided that

any claim for refund relating to balance in the electronic cash ledger in accordance with the provisions of section 49(6)

may be made through

the return furnished for the relevant tax period

in FORM GSTR-3 or
FORM GSTR-4 or
FORM GSTR-7,

as the case may be.

5. **Sec 54 (3) r/w Rule 89(4) (ITC refund on account of zero-rated supply made under Bond/ LuT): Rule 89(4) lays down the formulae as per which admissible refundable ITC shall be computed. It has been amended to provide that in case of EXPORT OF GOODS, the value of exported goods shall be taken as lower of following (a) FOB Value (as declared in the Shipping Bill/ Bill of Export) and (b) Value as declared in tax invoice (FOB/CIF). [R-89 (4) amended vide N/N 14/2022- CT (dated 5th July, 2022) - effective from 5th July, 2022]**

(D)	"Turnover of zero-rated supply of services "	means	
(E)	"Adjusted Total turnover"	means	
(F)	"Relevant period"	means	

EXPLANATION. - For the purposes of this sub-rule,

the value of goods exported out of India	shall be taken as	(i) the Free on Board (FOB) value declared in the Shipping Bill or Bill of Export form , as the case may be, as per the Shipping Bill and Bill of Export (Forms) Regulations, 2017; or (ii) the value declared in tax invoice or bill of supply, whichever is less.
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6. **Sec 54 (3) r/w Rule 89(5) (ITC refund on account of OS having inverted tax structure):** Rule 89(5) lays down the formulae as per which admissible refundable ITC shall be computed. The said formulae has been modified as directed by Hon'ble SC in case of **M/s VKC FOOTSTEPS INDIA - 2020- SC**. [R-89 (5) amended vide N/N 14/2022-CT (dated 5th July, 2022) - effective from 5th July, 2022]

Rule 89 : Application for refund of tax, interest, penalty, fees or any other amount

ITC refund in case of supplier making supply having Inverted Tax Structure

- (5) **Refund claim by person having INVERTED TAX STRUCTURE: Refundable ITC to be computed as per formulae**

In the case of **refund on account of inverted duty structure**,

refund of ITC shall be granted as per the following formula-

Maximum Refund Amount

= **Net ITC*** x

(TO of INVERTED rated supply of **Goods and Services**)

Adjusted Total TO*

Less :

tax payable on such inverted rated supply of goods or services

tax payable on such inverted rated supply of goods or services * **Net ITC**

ITC availed on inputs and input services

Explanation.- For the purposes of this sub rule, the expressions

Term	Meaning
(a) "Net ITC"	shall mean ITC availed on inputs during the relevant period other than the ITC availed for which refund is claimed under rule 89 (4A) or (4B) or both;
(b) "Adjusted Total turnover" and "Relevant period"	shall have the same meanings as assigned to them in sub-rule (4).

6A. Proviso to Sec 54 (3) r/w Rule 89(5) (ITC refund on account of OS having inverted tax structure): CBIC issued clarification regarding refund under Inverted Duty Structure when the supplier is supplying goods under some concessional notification . [Circular No. 173 / 05 / 2022 - GST (dated 6th July, 2022)]

Issue: **[Where IS and OS are same, whether there can be a case of 'inverted tax Structure' ?]**

Circular No. 173 / 05 / 2022 - GST dated 06.07.2022

Clarifications regarding refund under Inverted Duty Structure when the supplier is supplying goods under some concessional notification.

Earlier Circular::

Refund of accumulated ITC /proviso (ii) to Sec 54(3) of the CGST Act would not be applicable in cases where the input and the output supplies are the same

The current circular has been issued which intends to amend Para 3.2 of the Circular No. 135/05/2020-GST dated 31.03.2020 (as reproduced below)

Para 3.2 of Circular No. 135/05/2020-GST dated 31.03.2020:

"Refund of accumulated ITC in terms Sec 54(3) (ii) of the CGST Act is available where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies. **It is noteworthy that, the input and output being the same in such cases, though attracting different tax rates at different points in time, do not get covered under Sec 54(3) (ii).** It is hereby clarified that **refund of accumulated ITC / proviso (ii) to Sec 54(3) of the CGST Act would not be applicable in cases where the input and the output supplies are the same.**"

New Circular:: para 3.2 of the Circular No. 135/05/2020-GST dated 31.03.2020 stands substituted as under

- **In cases where though inputs and output goods are same but the output supplies are made under a concessional notification such cases would be admissible for refund under the provisions of proviso (ii) to Section 54(3) of the CGST Act, 2017 as this case would also lead to credit accumulation.**
- However, **where the input and output being the same in such cases, though attracting different tax rates at different points in time, do not get covered under the provisions of proviso (ii) to Section 54(3) of the CGST Act, 2017.**

7. Sec 55 r/w Sec Rule 95-A (Refund claim of GST paid on inward supplies by certain Specified /Notified Entities):: Rule 95-A laid down procedure for a Retail Outlet in departure area of an international airport and supplying domestic goods to an outgoing international passenger as to claiming refund of taxes paid on inward supply of such goods. Courts have held that such supply qualify as 'export supply' which view has been accepted by the Department. Accordingly, such supply shall be eligible for 'zero-rating benefit' and consequent refund. Hence, Rule-95A has been omitted. [N/N 14/2022- CT (dated 5th July, 2022) - with RETROSPECTIVE effect from 1st July, 2019

Rule 95 A : Refund of taxes to the retail outlets established in departure area of an international Airport beyond immigration counters making tax free supply to an outgoing international tourist

Omitted N/N 14/2022- CT (dated 5th July, 2022) -- with RETROSPECTIVE effect from 1st July, 2019 ²⁸

²⁸ Omitted vide N/N 14/2022- CT (dated 5th July, 2022) - with RETROSPECTIVE effect from 1st July, 2019

Sec 55 r/w Sec Rule 95-A (Refund claim of GST paid on inward supplies by certain Specified /Notified Entities):: Rule 95-A laid down procedure for a Retail Outlet in departure area of an international airport and supplying domestic goods to an outgoing international passenger as to claiming refund of taxes paid on inward supply of such goods. Courts have held that such supply qualify as 'export supply' which view has been accepted by the Department. Accordingly, such supply shall be eligible for 'zero-rating benefit' and consequent refund. Hence, Rule-95A has been omitted.

Refer: M/s Flemingo Travel Retail Limited & Ors - 2019- Bombay HC [Writ petition]

N/N 11/2019-CT (Rate) (effective from 1st July, 2019) — (issued in exercise of powers given by Sec 55 of CGST Act)

The retail outlets established in departure area of an international Airport beyond immigration counters have been notified in terms of Sec 55 and thus, become entitled to claim refund of GST paid on inward supply of domestic goods which they are supplying these goods further tax free at international airport. This refund has been made subject to compliance with Rule 95 A.

(1) Retail Outlet (at Departure area of IA + Making tax free supply of goods to OIT): Eligible to claim GST paid on inward supply of such goods

Retail outlet

... ~~established in departure area of an international airport, beyond the immigration counters,~~
... ~~supplying indigenous goods to an outgoing international tourist who is leaving India~~

shall be eligible to claim

refund of tax paid by it on inward supply of such goods.

(2) Refund Claim [GST RFD 10B]: to be submitted on MONTHLY / QUARTERLY basis

Retail outlet claiming refund of the taxes paid on his inward supplies,

shall furnish

... **the application** for refund claim in **FORM GST RFD 10B**
... **on a monthly or quarterly basis**, as the case may be,
... through the common portal either directly or through a Facilitation Centre notified by the Commissioner.

(3) Supporting documentation for claiming refund:

[Details as to tax free outward supply + Purchase invoices of corresponding inward supply]

~~The self-certified compiled information of invoices issued for the supply made during the month or the quarter, as the case may be,~~

~~along with~~

~~concerned purchase invoice~~

shall be submitted along with the refund application.

(4) Conditions as to allowance of refund

The refund of tax paid by the applicant shall be available if-

- (a) **the inward supplies** of goods were received by the said retail outlet **from a RP against a tax invoice;**
 (b) **the said goods were supplied** by the said retail outlet **to an outgoing international tourist against foreign exchange without charging any tax;**
 (c) **name and GSTIN of the retail outlet is mentioned in the tax invoice for the inward supply;** and
 (d) **such other restrictions or conditions, as may be specified, are satisfied.**

(i.e., purchases from registered supplier with tax invoice)

(i.e., outward supply to OIT against foreign exchange and without GST)

(i.e., invoice of inward supply/purchases shall contain name of GSTIN of the retail outlet)

(5) Refund order and payment order

The provisions of **rule 92** (i.e., order sanctioning refund) shall, *mutatis mutandis*, apply for the sanction and payment of refund under this rule.

[Refund Order = Form GST RFD-06
Payment Order = Form GST RFD-05]

Explanation. For the purposes of this rule, the expression

"Outgoing International Tourist"

shall mean

a person

... **not normally resident in India,**

... **who enters India for a stay of not more than 6 months [6 M] for legitimate non-immigrant purposes.**

CBIC Circular 176/08/2022-GST [Dated: 6th July, 2022.]

Subject: Withdrawal of Circular No. 106/25/2019-GST dated 29.06.2019 - Reg.

- Kind attention is invited to Circular No. 106/25/2019-GST dated 29.06.2019 wherein certain clarifications were given in relation to rule 95A, inserted in the CGST Rules, 2017 w.e.f. 01.07.2019, for refund of taxes paid on inward supply of indigenous goods by retail outlets established at departure area of the international airport beyond immigration counters when supplied to outgoing international tourist against foreign exchange.
- The said rule 95A has been omitted, retrospectively** w.e.f. 01.07.2019, vide N/N 14/2022-CT, dated 05.07.2022. Accordingly, the Board, in exercise of its powers conferred by section 168(1) of the CGST Act, 2017, hereby **withdraws, ab-initio, Circular No 106/25/2019-GST** dated 29th June, 2019.

- Sec 54 (10) (Withholding of refund/ Adjustment of refund): Sec 54(10) empowers PO to 'withhold / adjust refund to a RP where (a) he has defaulted in furnishing of return or (b) he is required to pay tax/other dues which have not been stayed in appeal. Sec 54(10) has been amended to expand its scope to 'any type of refund' (earlier, it was applicable to only 'ITC refund'). [Sec 54(2) amended by FA, 2022 - effective from 1st Oct, 2022]**

Section 54 : Refund of tax

(10) **WITHHOLDING by PO:** (Refund of ANY KIND)

Where any refund is due under sub-section (3) to a RP	the PO may—
<u>who has defaulted in furnishing any return</u>	(a) withhold payment of refund due until <u>the said person has furnished the return or paid the tax, interest or penalty, as the case may be;</u>
or	
<u>who is required to pay any tax, interest or penalty,</u> which has NOT been stayed by any court, Tribunal or Appellate Authority by the specified date, <i>[Specified Date = Last Date for filing appeal under CGST Act – see Explanation below]</i>	(b) deduct from the refund due, <u>any tax, interest, penalty, fee or any other amount which the TP is liable to pay but which remains unpaid under this Act or under the existing law</u> (i.e., Central Excise Act, VAT Act etc – refer Sec 2(48) of CGST Act).

Explanation.—For the purposes of this sub-section, the expression

“specified date” shall mean the last date for filing an appeal under this Act.

- Rule 96 (Export of GOODS payment of IGST- IGST refund is sanctioned and disbursed by Customs):** (A) Rule 96(1) has provides that 'Shipping Bill/ Bill of Export' filed by exporter is deemed as 'Refund Application' deemed to be filed on the date when PIC of conveyance carrying such export goods files Departure Manifest/ Export Report and applicant has furnished valid GSTR 3-B and applicant has undergone Aadhar Authentication. Now, a proviso has been inserted providing that **if there is mismatch in data furnished in the Shipping Bill and GSTR-1: then application shall be deemed to have been furnished on the date such mismatch is rectified by the exporter**: (B) Rule 96(4) provides for 2 situations where such refund can be withheld by Customs. It has been amended to incorporate another situation where such refund can be withheld (i.e. where Commissioner in the Board/ Officer Authorized by Board is of the opinion that verification of credential of exporter is required before sanctioning of refund). Also, Rule 96(5A), (5B) & (5C) have been inserted providing to the effect that in such cases, claim shall be e-transmitted to **GST Officer (by way of auto-generated refund application GST RFD-01) who shall then process the refund as per Rule 89.** (Consequently, old provisions in Rule 96(5), (6) & (7) have been omitted) [Amended by N/N 14/2022- CT (dated 5th July, 2022) - with **RETROSPECTIVE effect from 1st July, 2017**]

Rule 96 : Refund of integrated tax paid on Goods or Services EXPORTED OUT OF INDIA*Exporter of Goods: IGST refund by Customs Officer (no separate refund application is required)*

- (1) **Shipping Bill / Bill of export = Gets status of R/A automatically when** [**'Departure Manifest or EGM/ER filed by PIC of conveyance'** and **'GSTR-3B is filed by the applicant exporter'** + **Aadhar Authentication done**]

[However, if there is mismatch in data furnished in 'the Shipping Bill/ Bill of Export' and 'GSTR-1': then application shall be deemed to have been furnished on the date such mismatch is rectified by the exporter]

The shipping bill / bill of export filed by an exporter of goods	shall be deemed to be	an application for refund of IGST paid on the goods* exported out of India
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and such application shall be **deemed to have been filed only when:-**

- (a) **the person in charge of the conveyance** carrying the export goods duly files **a Departure Manifest²⁹ / Export Manifest or an Export Report** covering the number and the date of shipping bills or bills of export

- (b) **the applicant** has furnished a valid return in **FORM GSTR-3B**

Provided that

if there is any mismatch between the data furnished by the exporter of goods in Shipping Bill and those furnished in statement of outward supplies in FORM GSTR-1,

such application for refund of IGST paid on the goods exported out of India

shall be deemed to have been filed

on such date when such mismatch in respect of the said shipping bill is rectified by the exporter;

- (c) **the applicant** has undergone Aadhaar authentication in the manner provided in rule 10-B

- (2) **Transmission of details of EXPORT INVOICES (details furnished in FORM GSTR-1): From GST Portal to Customs Portal** (Customs Portal will send confirmation to GST Portal as to actual export materialized)

The details of the relevant export invoices in respect of export of **goods contained in FORM GSTR-1**

shall be **transmitted electronically**

by the common portal to the system designated by the Customs

and

the said system shall electronically transmit to the common portal, a confirmation that the goods covered by the said invoices have been exported out of India.

- (3) **Valid return GSTR-3B (tax paid) filed by Exporter – Information transmission to Customs Portal – Customs Portal / Customs Officer will process refund claim.** (IGST refund disbursement – direct credit to bank account of applicant)

²⁹ PIC of conveyance:: PIC of vessel/ aircraft: to file Departure Manifest/ EGM- export general manifest PIC of vehicle: to file ER- export report

Upon the receipt of the information regarding the furnishing of a valid return in **FORM GSTR-3B from the common portal**,

⇒ **the system designated by the Customs** or

⇒ **the PO of customs**, as the case may be,

shall process the claim for refund in respect of export of good

and **an amount** equal to the IGST paid in respect of each shipping bill or bill of export shall be **electronically credited to**

the bank account of the applicant

mentioned in his registration particulars

and

as intimated to the Customs authorities.

(4) Customs Officer can withhold IGST refund

The claim for refund shall be withheld where,-

Request received from **jurisdictional GST Commissioner** (as per provisions of sec 54(10) & (11))

PO (Customs) finds that goods exported in violation of Customs Act, 1962

(a) a request has been received from the jurisdictional Commissioner of central tax, State tax or Union territory tax **to withhold the payment of refund due to the person** claiming refund in accordance with the provisions of **section 54 (10) & (11)**;

OR

(b) the PO of Customs determines that the goods were exported in violation of the provisions of the Customs Act, 1962.

96(5)

In case refund is withheld on request of jurisdictional GST **Commissioner**,

PO (IGST) at Customs Station

shall intimate

the applicant and

the jurisdictional Commissioner of central tax, State tax

or

Union territory tax, as the case may be,

and a copy of such intimation shall be **transmitted to the common portal**.

96(6)

Upon transmission of intimation under sub-rule (5),

PO (CGST / SGST or UTGST), as the case may be, shall pass **ORDER**

in **Part A** of **FORM GST RFD-07** [**Refund Withholding Order**]

96(7)

If subsequently applicant becomes entitled to refund withheld Rule 96(4)(a),

the concerned **jurisdictional officer** (CGST/ SGST or UTGST), as the case may be, shall **proceed to refund the amount**

by passing **AN ORDER** in **FORM GST RFD-06**

after passing an order for release of withheld refund in

Part B of **FORM GST RFD-07**

(4) Withholding of IGST refund by Customs

The claim for refund shall be withheld where,-

- (a) **a request has been received from the jurisdictional Commissioner** of central tax, State tax or Union territory tax **to withhold the payment of refund due to the person** claiming refund in accordance with the provisions of **section 54 (10) & (11)**;
- (b) **the PO of Customs** determines that the goods were exported in violation of the provisions of the Customs Act, 1962; **or**
- (c) **the Commissioner in the Board or an officer authorized by the Board** , *on the basis of data analysis and risk parameters, is of the opinion that*
- **verification of credentials of the exporter**, including the availment of ITC by the exporter, **is considered essential before grant of refund**, in order to safeguard the interest of revenue.

Request received from **jurisdictional GST Commissioner** (as per provisions of sec 54(10) & (11))

PO (Customs) finds that goods exported in violation of Customs Act, 1962

(5) [Omitted w.e.f. 1st July, 2017]**(5A) Refund withhold u/R 96 (4) (a)/(c) = Claim shall be transmitted to GST Officer electronically**

[System Generated GST RFD-01 + Deemed R/A filed by exporter + Deemed filed on date of such transmission]

Where refund is withheld in accordance with the provisions of clause (a) or clause (c) of sub-rule (4),

such claim shall be transmitted to the PO of Central tax, State tax or Union territory tax, as the case may be, electronically through the common portal in a system generated FORM GST RFD-01

and

the intimation of such transmission shall also be sent to the exporter electronically through the common portal,

and

notwithstanding anything to the contrary contained in any other rule,

the said system generated form shall be deemed to be the application for refund in such cases	and	shall be deemed to have been filed on the date of such transmission.
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(5B) Refund withhold u/R 96 (4) (b) = Claim shall be transmitted to GST Officer electronically

[System Generated GST RFD-01 + Deemed R/A filed by exporter + Deemed filed on date of such transmission]

Where refund is withheld in accordance with the provisions of clause (b) of sub-rule (4),

and

the PO of the Customs passes an order that the goods have been exported in violation of the provisions of the Customs Act, 1962.

then,

such claim shall be transmitted to the PO of Central tax, State tax or Union territory tax, as the case may be, electronically through the common portal in a system generated FORM GST RFD-01

and

the intimation of such transmission shall also be sent to the exporter electronically through the common portal,

and

notwithstanding anything to the contrary contained in any other rule,

	the said system generated form shall be deemed to be the application for refund in such cases	and	shall be deemed to have been filed on the date of such transmission.
(5C)	R/A transmitted electronically as per R-96 (5A) / (5B) = Shall be dealt with in accordance with R-89		
	The application for refund in FORM GST RFD-01 transmitted electronically through the common portal in terms of sub-rules (5A) and (5B)		shall be dealt with in accordance with the provisions of rule 89.
(6)	[Omitted w.e.f. 1 st July, 2017]		
(7)	[Omitted w.e.f. 1 st July, 2017]		

Fake Invoicing :: Penalty Provisions / Tax Proceedings

Legal Text of Act/Rules/Circulars

CBIC Circular 171/03/2022-GST [Dated: 6 July, 2022.]

Sub: Clarification on various issues relating to applicability of demand and penalty provisions under the CGST Act in respect of transactions involving fake invoices-Reg

Issues	Clarification
<p>1 In case where a RP "A" has issued tax invoice to another RP "B" without any underlying supply of goods or services or both, whether such transaction will be covered as "supply" under section 7 of CGST Act and whether any demand and recovery can be made from 'A' in respect of the said transaction under the provisions of section 73 or section 74 of CGST Act.</p> <p>Also, whether any penal action can be taken against registered person 'A' in such cases.</p>	<p>Since there is only been an issuance of tax invoice by the RP 'A' to RP 'B' without the underlying supply of goods or services or both, therefore, such an activity does not satisfy the criteria of "supply", as defined under section 7 of the CGST Act. As there is no supply by 'A' to 'B' in respect of such tax invoice in terms of the provisions of section 7 of CGST Act, no tax liability arises against 'A' for the said transaction, and accordingly, no demand and recovery is required to be made against 'A' under the provisions of section 73 or section 74 of CGST Act in respect of the same. Besides, no penal action under the provisions of section 73 or section 74 is required to be taken against 'A' in respect of the said transaction.</p> <p>The RP 'A' shall, however, be liable for penal action under section 122 (1)(ii) of the CGST Act for issuing tax invoices without actual supply of goods or services or both.</p>
<p>2 A RP "A" has issued tax invoice to another RP "B" without any underlying supply of goods or services or both. 'B' avails ITC on the basis of the said tax invoice. B further issues invoice along with underlying supply of goods or services or both to his buyers and utilizes ITC availed on the basis of the above mentioned invoices issued by 'A', for payment of his tax liability in respect of his said outward supplies. Whether 'B' will be liable for the demand and recovery of the said ITC, along with penal action, under the provisions of section 73 or section 74 or any other provisions of the CGST Act.</p>	<p>Since the RP 'B' has availed and utilized fraudulent ITC on the basis of the said tax invoice, without receiving the goods or services or both, in contravention of the provisions of section 16(2)(b) of CGST Act, he shall be liable for the demand and recovery of the said ITC, along with penal action, under the provisions of section 74 of the CGST Act, along with applicable interest under provisions of section 50 of the said Act.</p> <p>Further, as per provisions of section 75(13) of CGST Act, if penal action for fraudulent availment or utilization of ITC is taken against 'B' under section 74 of CGST Act, no penalty for the same act, i.e. for the said fraudulent availment or utilization of ITC, can be imposed on 'B' under any other provisions of CGST Act, including under section 122.</p>
<p>3 A RP 'A' has issued tax invoice to another RP 'B' without any underlying supply of goods or services or both. 'B' avails ITC on the basis of the said tax invoice and further passes on the said ITC to another registered person 'C' by issuing invoices without underlying supply of goods or services or both. Whether 'B' will be liable for the demand and recovery and penal action, under the provisions of section 73 or section 74 or any other provisions of the CGST Act.</p>	<p>In this case, the ITC availed by 'B' in his e-credit ledger on the basis of tax invoice issued by 'A', without actual receipt of goods or services or both, has been utilized by 'B' for passing on of ITC by issuing tax invoice to 'C' without any underlying supply of goods or services or both.</p> <p>As there was no supply of goods or services or both by 'B' to 'C' in respect of the said transaction, no tax was required to be paid by 'B' in respect of the same. The ITC availed by 'B' in his e-credit ledger on the basis of tax invoice issued by 'A', without actual receipt of goods or services or both, is ineligible in terms of section 16 (2)(b) of the CGST Act. In this case, there was no supply of goods or services or both by 'B' to 'C' in respect of the said transaction and also no tax was required to be paid in respect of the said transaction. Therefore, in these specific cases, no demand and recovery of either ITC wrongly/ fraudulently availed by 'B' in such case or tax liability in respect of the said outward transaction by 'B' to 'C' is required to be made from 'B' under the provisions of section 73 or section 74 of CGST Act.</p> <p>However, in such cases, 'B' shall be liable for penal action both under section 122(1)(ii) and section 122(1)(vii) of the CGST Act, for issuing invoices without any actual supply of goods and/or services as also for taking/ utilizing ITC without actual receipt of goods and/or services.</p>

Invoicing

Legal Text of Act/Rules/Circulars

1. **R-48 (2) r/w N/N 13/2020-CT (E-INVOCING):: W.e.f. 1st Oct, 2022, Threshold limit of ATO e-invoicing reduced (from 20 Cr to 10 Cr) - Now, RP having ATO exceeding Rs 10 Crore shall be required to comply with e-invoicing [N/N 17/2022-CT (10th Aug, 2022) - w.e.f. 1st Oct, 2022]**

Notified RP mandated to do e-invoicing

N/N 13/2020-CT (dated 21st march, 2020)

(as amended by **N/N 17/2022-CT** (10th Aug, 2022) - w.e.f. 1st Oct, 2022

(issued in exercise of powers given by Rule 48(4))

RP

(other than

- A Government Department or
- Local Authority or
- those referred in Rule 54 (2), (3), (4), (4A) or
- a SEZ Unit)

whose

ATO

(in any preceding FY from 2017-18 onwards)

exceeds (>)

₹-50 Crore

₹-20 Crore

₹ 10 Crore

shall prepare

invoice and

other prescribed documents (Debit Note and Credit Notes)

in terms of Rule 48(4) (i.e., Document with QR Code (with embedded IRN)

in respect of supply of goods or services or both

- to a RP (i.e., B2B supply) or
- for EXPORT

2. **Sec 31 r/w R-46 (Invoice Particulars): Rule 46- clause (s) inserted [N/N 14/2022- CT (dated 5th July, 2022) - effective from 5th July, 2022]**

Rule 46 : Tax invoice

Particulars to be stated on Tax Invoice

Subject to rule 54, a tax invoice referred to in section 31 shall be issued by the RP containing the following particulars:-

(a) name, address and **GSTIN of the supplier;**

(r) **Quick Response code,**
having embedded Invoice Reference Number (IRN) in it,

in case invoice has been issued in the manner prescribed under **Rule 48 (4) [i.e. e-invoicing]**

(s) **a declaration as below, that invoice is not required to be issued in the manner specified rule 48(4),**

in all cases

where an invoice is issued, other than in the manner so specified under rule 48(4),

by the taxpayer having aggregate turnover in any preceding financial year from 2017-18 onwards more than the aggregate turnover as notified under rule 48(4) -

"I/We hereby declare that though our aggregate turnover in any preceding FY from 2017-18 onwards is more than the aggregate turnover notified under rule 48(4), we are not required to prepare an invoice in terms of the provisions of the said sub-rule."

3. **Sec 34(2) (Time limitation as to reporting of CREDIT NOTE for claiming adjustment in output tax liability)::** [Sec 34(2) amended by FA, 2022 (vide N/N 18/2022- CT)- effective from 1st Oct, 2022]

Section 34 : Credit and debit notes.

(1) **Credit Note: Issued by Registered Supplier (4 situations)**

(2) **Credit Note for claiming adjustment in Tax Liability: Disclose in the return & associated time limit**

Any RP who issues a credit note in relation to a supply of goods or services or both

shall

- **declare the details of such credit note**
- **in the RETURN for the month during which such credit note has been issued**

but not later than

September 30th Nov following the end of financial year in which such supply was made

or

the date of furnishing of the relevant annual return,

whichever is earlier.

and the tax liability shall be adjusted (decreased/ reduced) *in such manner as may be prescribed.*

Composition Scheme

Legal Text of Act/Rules/Circulars

N/N 14/2019- CT

(Issued in exercise of powers given by proviso to Sec 10(1) of CGST Act)

General Eligibility limit = RP with ATO (PY) upto ₹ 150 Lakh :

An eligible RP, whose ATO in the preceding financial year did not exceed ₹ 150 Lakh, may opt to pay, in lieu of the tax payable by him under section 9(1), **an amount of tax as prescribed under rule 7 of the CGST Rules, 2017.**

However, for 8 SCS (Special Category States)- Eligibility limit = RP with ATO (PY) upto ₹ 75 Lakh

Provided that the said ATO in the preceding financial year shall be ₹ 75 Lakh in the case of an eligible RP, registered under section 25 of the said Act, in any of the following States, namely: -

- | | | | |
|------------------------|------------------|---------------|---------------------|
| (i) Arunachal Pradesh, | (iii) Meghalaya, | (v) Nagaland, | (vii) Tripura, |
| (ii) Manipur, | (iv) Mizoram, | (vi) Sikkim, | (viii) Uttarakhand: |

Ineligible Supplier = Manufacturer of Notified Goods (8 Categories notified)

Provided further that the RP shall not be eligible to opt for composition levy under section 10(1) of the said Act if such person is a MANUFACTURER of following goods:

- | | |
|---|---|
| 1. Ice cream and other edible ice, whether or not containing cocoa [Tariff Item 21 05 00 00] | 3. Tobacco and Manufactured tobacco substitutes [Chapter 24] |
| 2. Pan Masala. [Tariff Item 21 06 90 20] | |
| 2A. Aerated Water [Tariff Item 22 02 10 10] | |
| 4. Fly ash bricks or fly ash aggregate with 90% or more fly ash content; Fly ash blocks; .
[Heading 68 15] | 6. Building bricks; . [Tariff Item 69 04 10 00] |
| 5. Bricks of fossil meals or similar siliceous earths; [Tariff Item 69 01 00 10] | 7. Earthen or roofing tile. [Tariff Item 69 05 10 00] |

[point (4) amended vide N/N 14/2022-CT **w.e.f. 18th July, 2022**]

Reverse Charge.

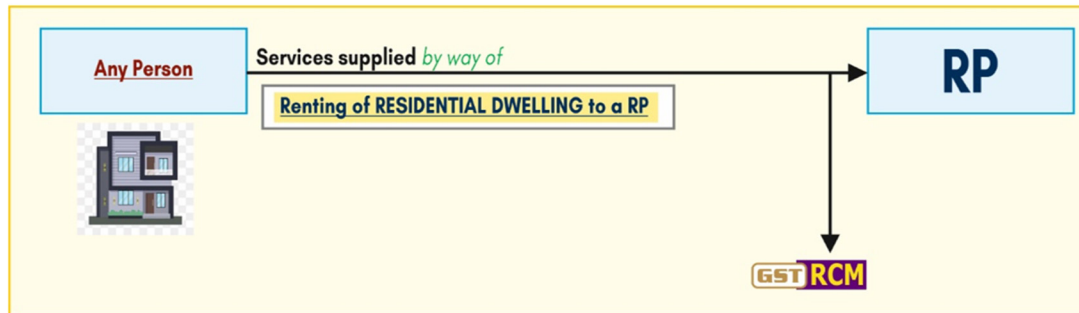
Rental Service: Renting of IMMOVABLE PROPERTY

+

N/N 13/2017- CT (Rate)

Entry No. 5-AA

Services of Renting of RESIDENTIAL DWELLING to a RP.

(w.e.f. 18th July, 2022)

Related Exemption: Entry No. 12 of N/N 12/2017-CT

Services *by way of* **renting of residential dwelling for use as residence****except****where the residential dwelling is rented to a registered person.**(w.e.f. 18th July, 2022)

Illustrations :

Discuss whether renting of residential dwelling shall be exempt or not under following situations:

Landlord	Tenant	Renting of residential dwelling for	GST	Remarks
RP / URP	<u>Mr A</u> = URP	Use as residence	Exempt	
	<u>Mr B</u> = RP	Use as residence (personal use) (not business use)	Exempt	Seema Gupta -2022- Delhi HC Individual Registered as Sole Proprietorship Firm and registered under GST:: Residential property taken by him for personal use- GST will continue to be exempted
RP / URP	A Ltd. = URP	Use as residence of its employees / directors	Exempt	
	B Ltd. = RP	Use as residence of its employees / directors	GST payable	RCM applicable (GST payable by tenant- B Ltd.)

GOVERNMENT SERVICES [Services supplied by 'CG/ SG/ UT/ Local Authority']

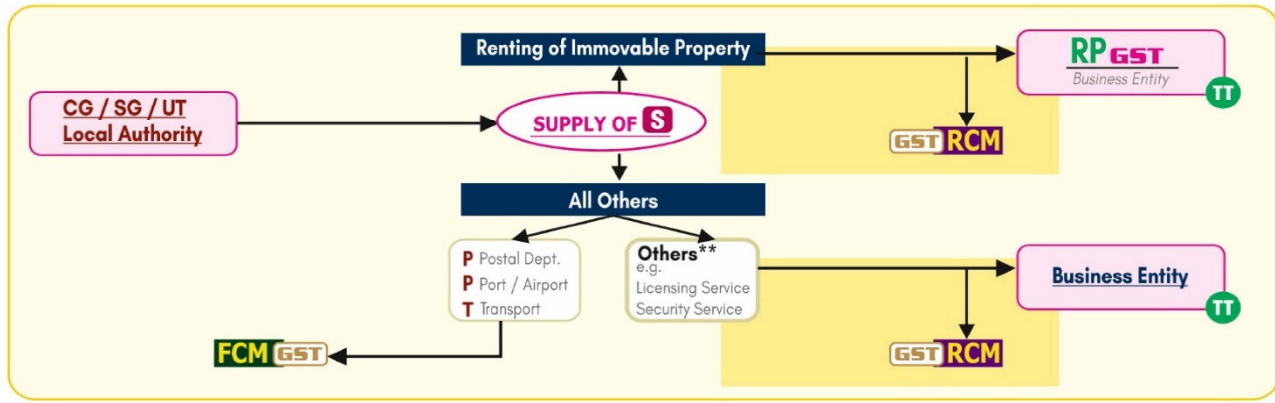
N/N 13/2017- CT (Rate)

Entry No. 5 & 5-A

Services supplied by 'CG/ SG/ UT/ Local Authority'

Supplier of Service CG, SG UT or Local authority	Nature of Service Service supplied <i>by way of</i> renting of immovable property	Recipient of Service Any person registered under the CGST Act, 2017.	Reg in any capacity
---	---	--	---------------------

Supplier of Service CG, SG UT or Local authority	Nature of Service Any service supplied excluding, - <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 5%;">(1)</td> <td>Renting of immovable property, and</td> </tr> <tr> <td>(2)</td> <td>Services specified below- (i) Services by the Department of Posts <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 5px;"><i>by way of</i> speed post, express parcel post, life insurance, and agency services</td> <td style="width: 50%; padding: 5px;">provided to a person other than CG, SG or UT or local authority; (w.e.f. 18th July, 2022)</td> </tr> </table> </td> </tr> <tr> <td>(ii)</td> <td>Services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;</td> </tr> <tr> <td>(iii)</td> <td>Transport of goods or passengers.</td> </tr> </table>	(1)	Renting of immovable property, and	(2)	Services specified below- (i) Services by the Department of Posts <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 5px;"><i>by way of</i> speed post, express parcel post, life insurance, and agency services</td> <td style="width: 50%; padding: 5px;">provided to a person other than CG, SG or UT or local authority; (w.e.f. 18th July, 2022)</td> </tr> </table>	<i>by way of</i> speed post, express parcel post, life insurance, and agency services	provided to a person other than CG, SG or UT or local authority; (w.e.f. 18 th July, 2022)	(ii)	Services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;	(iii)	Transport of goods or passengers.	Recipient of Service Any business entity located in the taxable territory.
(1)	Renting of immovable property, and											
(2)	Services specified below- (i) Services by the Department of Posts <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 5px;"><i>by way of</i> speed post, express parcel post, life insurance, and agency services</td> <td style="width: 50%; padding: 5px;">provided to a person other than CG, SG or UT or local authority; (w.e.f. 18th July, 2022)</td> </tr> </table>	<i>by way of</i> speed post, express parcel post, life insurance, and agency services	provided to a person other than CG, SG or UT or local authority; (w.e.f. 18 th July, 2022)									
<i>by way of</i> speed post, express parcel post, life insurance, and agency services	provided to a person other than CG, SG or UT or local authority; (w.e.f. 18 th July, 2022)											
(ii)	Services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;											
(iii)	Transport of goods or passengers.											



[Explanation (h) of RCM Notification]

Provisions of this notification in so far as they apply to the CG and SG shall also apply to the Parliament and State Legislatures.

Note: Supply of service by Parliament / State Legislature (attracting GST levy) → No GST exemption for them - However, RCM entries as applicable to CG/SG is also applicable to supply of services by them

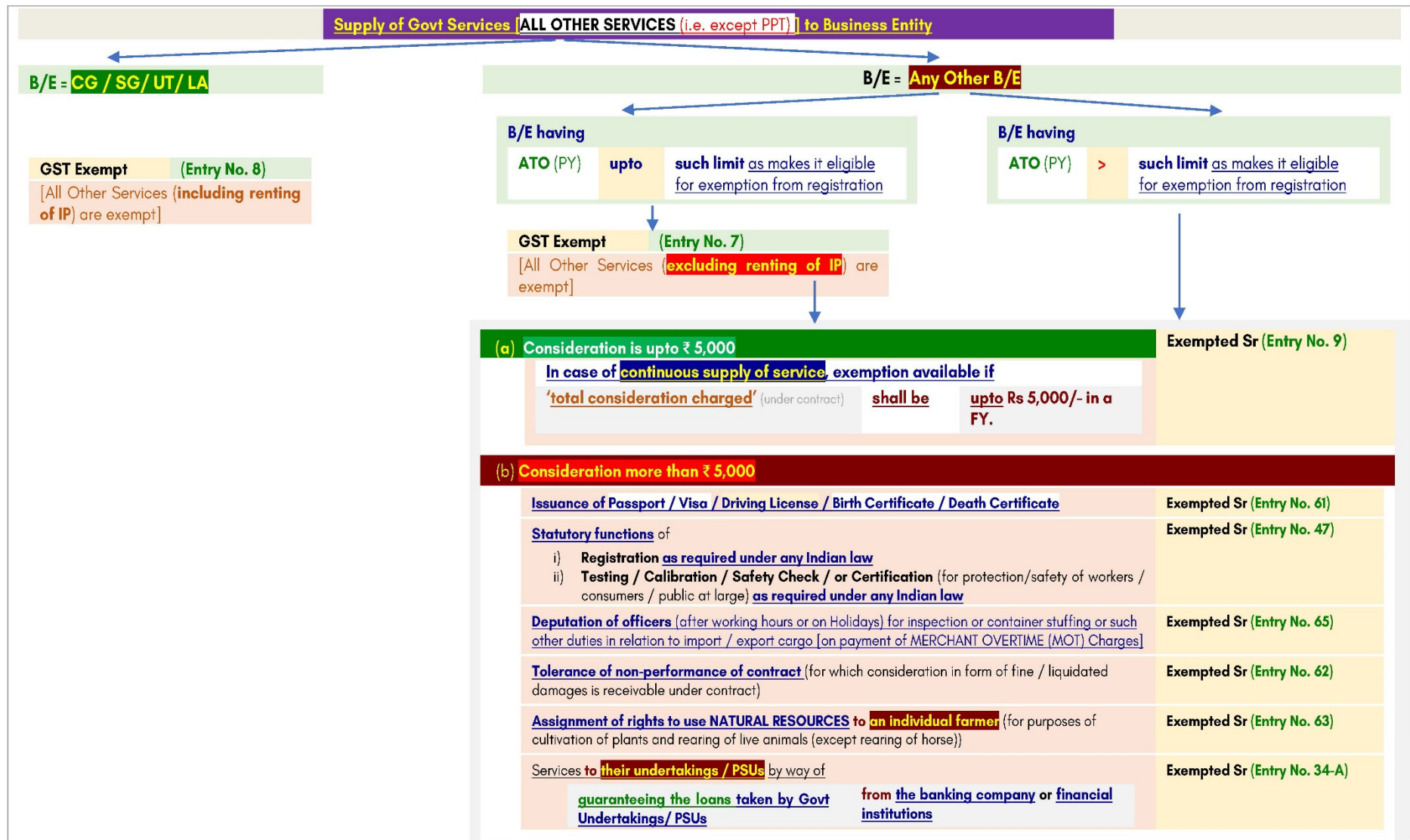
Related Exemptions. N/N 12/2017-CT (Rate) - Entry No. 6 & 24-C:

Taxability of services by Govt./ LA - considering Exemption Entry No. 6 & 24-C

Supplier	Service supplied	Recipient		
CG / SG / UT * Local Authority *	1. Postal Department			
	(a) PIBO Post card, Inland letter, Book post and Ordinary post (envelops weighing less than 10 gm).	Any Person	- GST exempt	
	(b) All Other Services [Speed Post, Express Parcel Post, Life Insurance, Agency Services (e.g. Commission based like distribution of Mutual Funds, Collection of telephone & electricity bills) Opening of saving accounts, Money Order, Postal Order, Pension Payments etc.]	Any Person (Non-B/E or BE)	- GST payable	(FCM applicable)
	2. Port/ Airport Services (relating to aircraft / vessel) (inside / outside the precincts of Port/ Airport)	Any Person (say, Shipping lines, Airlines)	- GST payable	(FCM applicable)
	3. Transport Services (Goods or Passengers)	Any person (Non-B/E or BE)	- GST payable ⁵	(FCM applicable)
	4. All Other Services (any other services other than above 3)	Non- B/E (Household entity)	- GST exempt	
	(Sr of Renting of IP)			
	(Security service)	B/E	- GST payable	
	(Licensing - telecom license, mining license)			
	(Passport Issuance/ VISA issuance)			
				Sr of Renting of IP RCM (if BE= RP) FCM (if BE= URP)
				All others RCM (BE= RP/ URP)

If exempt, Then no GST payable. **But, certain other exemption entries are ALSO there, which shall also be considered.** If Not exempt, then

⁵ Certain kind of transportation of goods and passengers is exempt vide separate exemption entries. Those exemptions are applicable to all B/Es (Govt or Non-Govt).



N/N 13/2017- CT (Rate)

Entry No. 1

Services of Goods Transportation by GTA

[amended w.e.f. 18th July, 2022]

Supplier of Service

Goods Transport Agency (GTA), who has not paid GST@12%

(6% CGST + 6% SGST)

Nature of Service

Supply of Services **by a GTA** in respect of **transportation of goods by road, who has not paid GST@12%** (6% CGST + 6% SGST)



TOTAL BILTY 65156132123

BILTY NO : D-0011
TRUCK NO: CG-04-LR-1234
CONSIGNOR: SARGUJA TRANSPORT
CONSIGNEE: MADAN TREDARS PVT LTD

Recipient of Service

Following persons located in taxable territory

RP under GST

1. any person **registered** under the CGST Act or the IGST Act or the SGST Act or the UTGST Act; or

URP under GST

- 2. any **casual taxable person***.
- 3. any **body corporate*** established, by or under **any law**; or
- 4. any **partnership firm*** whether registered or not under any law including association of persons; or
- 5. any **co-operative society** established by or under **any law**; or
- 6. any **society** registered under the Societies Registration Act, 1860 or under any other law for the time being in force in any part of India; or
- 7. any **factory** registered under or governed by the Factories Act, 1948;

However, RCM shall not be applicable to following RP who are registered as tax deductor for discharge of his tax deduction obligation u/Sec 51 and not for making a taxable supply

- (a) a Department or Establishment of the CG or SG or Union territory; or
- (b) local authority; or
- (c) Governmental agencies,

Author: I.r.o. Such RP : GST (FCM) – but GST Exempt

Author: I.r.o. Other URP : GST (FCM) – but GST Exempt (GST exempted also for recipient who is unregistered Casual TP)

If a GTA selects the option to pay GST on a FCM basis then a declaration as specified in Annexure V needs to be filed with the Jurisdictional Officer before the commencement of the FY. (upto 15th March of PY)

Provided that **nothing contained in this entry shall apply where**

(i) **The supplier has taken registration under the CGST Act, and exercised the option to pay tax under on the services of GTA in relation to transport of goods by him under forward charge**

and

(ii) **The supplier has issued a tax invoice to the recipient charging tax at the applicable rates and has made a declaration as prescribed in the Annexure III on such invoice issued by him.**

Annexure III: Declaration
I/we have taken registration under the CGST Act and have exercised the option to pay on services of GTA in relation to transport of goods supplied by us during the FY Under forward charge.

GTA Service. [Explanation (a) of RCM Notification]


The person who PAYS or IS LIABLE TO PAY freight for the transportation of goods by road in goods carriage, located in the taxable territory

shall be treated

as the person who receives the service for the purpose of this notification.

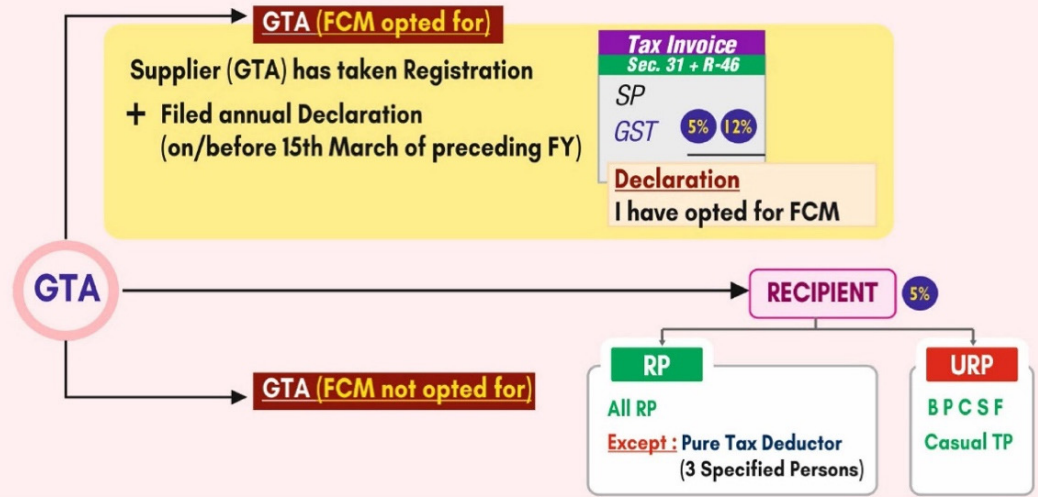
2022
w.e.f. 18 July, 2022

Transportation of Goods by ROAD
(by GTA - Goods Transportation Agency)

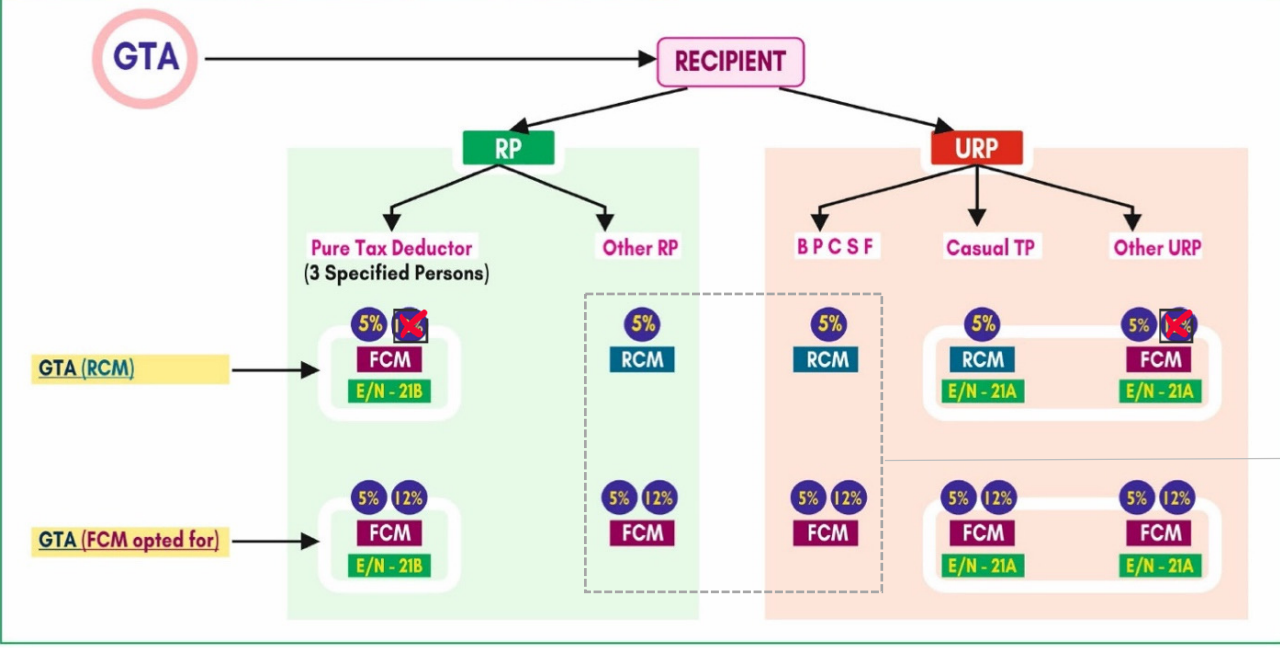


SUPPLY OF S

(a) GTA does not exercise the option to itself pay GST on the services supplied by it <i>i.e. Does not opt for FCM</i>	5% [No ITC]
(b) GTA exercises the option to itself pay GST on services supplied by it <i>i.e. Opt for FCM</i>	5% [No ITC] 12% [With ITC]



GTA Sr. – Applicability of RCM (Alongwith related Exemption)



Transportation of "8 specified Goods" is exempt vide Entry No 21

All Relief Material / All Agricultural Produce

- Defence or military equipments;
- Organic manure.
- Newspaper or magazines registered with the Registrar of Newspapers;
- Milk, Salt and food grain including flours, pulses and rice;

Exemption to SERVICES

Legal Text of Act/Rules/Circulars

1. Amendment to E/N 12/2017-CT (R):: Exemption withdrawn, Exemption issued, Exemption amended [w.e.f. 18th July, 2022]

Services by certain SPECIFIC ORGANIZATIONS

Entry No. 32 — (Services by IRDA (Insurance Regulatory & Development Authority of India) — ~~to INSURER~~)

Services provided

~~by the IRDA~~

{IRDA = Insurance Regulatory and Development Authority of India}

~~to insurers~~ under the Insurance Regulatory and Development Authority of India Act, 1999.

Entry No. 33 — (Services by SEBI (Securities & Exchange Board of India) — ~~protection of investor interest + development/regulation of security market~~)

Services provided

~~by the SEBI set up under the SEBI Act, 1992~~

~~by way of~~

... ~~protecting the interests of investors in securities and to promote the development of, and to regulate, the securities market.~~



भारतीय प्रतिभूति और विनियम बोर्ड
Securities and Exchange Board of India

Entry No. 47 A — (Services by FSSAI (Food Safety and Standards Authority of India) — ~~to Food Business Operators~~)

Services provided ~~by way of licensing, registration and analysis or testing of food samples~~

~~by FSSAI (Food Safety and Standards Authority of India) — to Food Business Operators~~



Health-Care Services (& related services)

Entry No. 73 — (Cord Blood Banking)

Services provided ~~by the cord blood banks~~

~~by way of preservation of stem cells or any other service in relation to such preservation.~~

Entry No. 75 — (Common bio-medical waste treatment facility)

Services provided

~~by operators of the common bio-medical waste treatment facility~~

~~to a clinical establishment~~

~~by way of treatment or disposal of bio-medical waste or the processes incidental thereto~~

Entry No. 74 (Health care services of Human beings)

(a) Services *by way of* **health care services** *by a clinical establishment,*
an authorized medical practitioner or para-medics;*

Provided that nothing contained in this entry shall apply to the

Services provided **by a Clinical Establishment by way of providing room** [other than Intensive Care Room (ICU) / Critical Care Unit (CCU) / Intensive Cardiac Care Unit (ICCU) / Neo Natal Intensive Care Unit (NICU)] **having room charges exceeding Rs 5000 per day** to a person receiving health care services

(b) Services *by way of* **transportation of a patient in an ambulance,** *other than those specified in (a) above.*

Illustration : Aarogya Multi-specialty Hospital provides **palliative care to patients** facing serious and life-threatening illness. Palliative care is given to improve the quality of life of patients who have a series or life-threatening disease, but the goal of such care is not to cure the disease. On request, such care is also provided to patients at their homes. Health care service has been defined to cover 'care' also and thus, palliative care for terminally ill patients provided at their homes is included in health care services.

Supplier

Clinical Establishment
(Hospital / Nursing Home etc.)

Medical Practitioner
(Doctor / Surgeons etc.)

Para Medics
(Lab Technicians, Radiologists etc.)

Supply of Health Care Service

Health Care Service means
Diagnostic Treatment Care
 रोग की पहचान इलाज/उपचार सेवा
For illness, injury, deformity, abnormality or pregnancy
In any recognized system of medicines in India

Recipient



Includes

Transportation (Ambulance)

Does not Include

**Hair Transplant
Cosmetic / Plastic Surgery**

[RSM = **AAYUSH. + Others**
 = **Allopathy, Ayurveda, Yoga, Naturopathy, Unani, Sidha, Homeopathy,** or any other system of medicine that may be recognized by CG]

Hair transplant /cosmetic or plastic surgery = **Health care services** when undertaken to restore or to reconstruct anatomy or functions of body affected due to **congenital defects, developmental abnormalities, injury or trauma**

Banking /Financial Services

Entry No. 26 (Services by RBI)

Services *by* **the Reserve Bank of India.**

Services relating to Agriculture

Entry No. 53-A (Fumigation/ dis-infection in Warehouse of agricultural produce)

Services by way of fumigation* in a warehouse of AGRICULTURAL PRODUCE.

[This entry shall be applicable if service getting classified under SAC 9985]

* **Fumigation** is a method of pest control that completely fills an area with gaseous pesticides—or **fumigants**—to suffocate or poison the pests within.]

Entry No. 54 (Services relating to Agriculture (cultivation of plants) + Rearing of all life forms of Animals (except horse))

Services relating to **cultivation of plants** and **rearing of all life forms of animals, except the rearing of horses**, for food, fibre, fuel, raw material or other similar products or agricultural produce **by way of—**

- (a) **agricultural operations directly related to production of any agricultural produce *** including cultivation, harvesting, threshing, plant protection or testing;
- (b) **supply of farm labour;**
- (c) **processes carried out at an agricultural farm** including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, **fumigating**, curing, sorting, grading, **cooling** or **bulk packaging** and such like operations **which do not alter the essential characteristics of agricultural produce** but make it only marketable for the primary market;
- (d) **renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;**
(e.g., Leasing of vacant land with a green house or a storage shed which is incidental to its use for agriculture is covered in this entry).
Renting or leasing of land by farmers for agriculture, forestry, fishing or animal husbandry on batai (share cropping) or otherwise is exempt from GST - CBIC - Press Release 28 May, 2018)
- (e) **loading, unloading, packing, storage or warehousing of agricultural produce;**
- (f) **agricultural extension services;**
(i.e., application of scientific research and knowledge to agricultural practices through farmer education & training - e.g. Tata Kisan Sansaar provides such kind of services to framers)
- (g) **services by any Agricultural Produce Marketing Committee or Board**
or services provided by a commission agent for sale or purchase of agricultural produce.
- (h) **services by way of fumigation in a warehouse of agricultural produce; [Omitted w.e.f 18th July, 2022]**

Service of Renting of Immovable Property

Entry No. 12 (RRR - Renting of residential dwelling for use as residence to URP)

Services *by way of* **renting of residential dwelling for use as residence**

except where the residential dwelling is rented to a registered person.

(w.e.f. 18th July, 2022)

Illustrations :

Discuss whether renting of residential dwelling shall be exempt or not under following situations:

Landlord	Tenant	Renting of residential dwelling for	GST	Remarks
RP / URP	Mr A = URP	Use as residence	Exempt	
	Mr B = RP	Use as residence by the proprietor (i.e., personal use) (not business use)	Exempt	Seema Gupta -2022- Delhi HC Individual Registered as Sole Proprietorship Firm and registered under GST:: Residential property taken by him for personal use- GST will continue to be exempted
RP / URP	A Ltd. = URP	Use as residence of its employees / directors	Exempt	
	B Ltd. = RP	Use as residence of its employees / directors. (i.e. business use)	Exempt GST payable	RCM applicable (GST payable by tenant- B Ltd.)
RP / URP	A Ltd. = URP	Commercial use (say, running trading business)	GST payable	RCM applicable (GST payable by tenant- A Ltd.)
	B Ltd. = RP	Commercial use (say, running trading business)	GST payable	RCM applicable (GST payable by tenant- B Ltd.)

Entry No. 14 (Room renting by Hotel etc. where value of supply is upto ₹1,000 per day)

Services *by*
a hotel,
inn, guest house,
club or campsite,
by whatever name called,

for residential or lodging purposes,

having

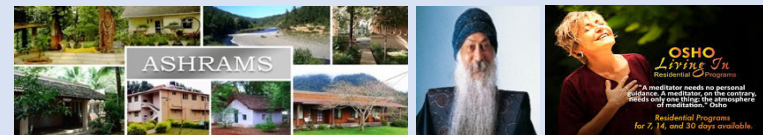
value of supply of a unit of accommodation

below or equal to

₹ 1,000 per day or equivalent.

Author

- Room renting by Hotel, Inn, Guest House - **not exempt**
- Room renting by CLUB (whether to outsiders or to own members) - **not exempt**
- Room renting by DHARAMASHALAS, ASHRAM or any such like entity.



Whether renting by 'religious bodies' is exempt under any entry?

Yes - Entry No 13 available to them in that entry rooms renting by temples is **exempt** only when charges are **less than ₹ 1,000**.



- Room renting by HOSTEL to students etc. - **not exempt**

Issue: Whether it is covered by Entry 12 or 14?

Entry No. 12: **Not applicable** (it is not renting of residential dwelling for use as residence)

Reason: Hostel is not residential dwelling (it is commercial building like hotel)
Hostel renting is generally of short-term duration.

Entry No. 14: Earlier, CBIC issued circular clarifying that hostel can claim exemption under Entry no. 14

CBIC Circular 32/06/2018-GST**Is hostel accommodation provided to students exempt?**

Services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having **value of supply** of a unit of accommodation **upto ₹ 1,000 per day or equivalent** are exempt.

Thus, accommodation service in hostels having **value of supply upto ₹ 1,000 per day is exempt**.

But, with omission of Entry No 14, no exemption therein available to HOSTEL w.e.f. 18th July, 2022.

Education & Related Services (Education, Vocation, training, assessment etc.)

Entry No. 80 (Training/ Coaching in (a) Recreational activities - related to **Arts / Culture** by an Individual Supplier (b) Sports by Charitable Entity (Registered u/Sec 12-AA or Sec 12-AB of Income Tax Act, 1961)

Services by way of training or coaching in recreational activities relating to—

(a) **arts** [e.g. painting, drawing] **or**
culture [e.g. Dance, Music],

Author: Exempt only any supplier

(b) **sports** **by** **charitable entities** registered under section 12AA or Sec 12-AB of the Income tax Act.

Author: Exempt only when supplier is charitable entity registered u/Sec 12-AA / 12-AB of IT Act

[Substituted w.e.f 18th July, 2022]

Services by way of training or coaching in—

(a) **recreational activities** relating to
arts [e.g. painting, drawing] **or**
culture [e.g. Dance, Music],
by an Individual

Author: Exempt only for individual supplier

(b) **sports** **by** **charitable entities** registered under section 12AA or Sec 12-AB of the Income-tax Act.

Author: Exempt only when **supplier is charitable entity** registered u/Sec 12-AA / 12-AB of IT Act

Services of Transportation of Passengers (with or without belongings)

Transportation of Passengers (with or without belongings)

Land

Stage Carriage

- AC → **GST Payable**
- Non-AC → **Exempt Entry No 15(c)**

Contract Carriage

- Autorikshaw (Including e-rickshaw), Metered Cab (Excluding - Radio Taxi) → **Exempt Entry No 17(e)**
- Radio Taxi → **GST Payable**
- Others
 - AC → **GST Payable**
 - Non-AC
 - Tourism, Conducted Tour, Charter or Hire → **GST Payable**
 - Public Transport → **Exempt Entry No 17(e)**

Railway

- Intra-city : Metro Rail / Mono Rail / Tramway → **Exempt Entry No 17(b)**
- Inter-City : Railway
 - Non-AC Coaches
 - First Class Tickets → **GST Payable**
 - Other Tickets → **Exempt Entry No 17(a)**
 - AC Coaches → **GST Payable**

Water

- Inland Transportation (Public Transport / Tourism) → **Exempt Entry No 17(c)**
- Coastal Transportation
 - Public Transport → **Exempt Entry No 17(d)**
 - Tourism → **GST Payable**
- Overseas Transportation (Public Transport / Tourism) → **GST Payable**

Air

- Flights starting from or ending at airports in specified states (Northern Eastern States [for West Bengal exemption only if airport is in Bagdogra])
 - Economy Class → **Exempt Entry No 15(a)**
 - Other than Economy Class → **GST Payable** **2022** w.e.f. 18 July, 2022
- Flights starting from or ending at airports covered under RCS (Regional Connectivity Scheme)
 - Exemption to 'Viability Gap Funding' (Exemption only for 3 years)
 - REGIONAL CONNECTIVITY SCHEME (RCS)**
 - CG → Airlines → Air Travel Concessional Fare → Passengers
 - BCS of CG - there are many areas which are under-served or unserved by Airlines due to profitability issues. CG has created a fund - called VGF (Viability Gap Fund) - out of which it will pay some amount (per passenger) as consideration to Airlines so that airline charges less to the passenger.
 - This consideration (viability gap funding) has been exempted from GST. Thus, **GST shall be payable only on air-fare charged from Customer.**
- All Others → **GST Payable**

Land (Additional Info): Ola, redBus, E-COMMERCE PLATFORM, Sec. 9(5) ECO as Deemed Supplier (Liable to pay GST). No Exemption i.r.o. transportation of passengers by ROAD services supplied through an ECO, and notified u/Sec 9(5) of the CGST Act, 2017.

Entry No. 15 (Passenger Transportation- certain cases -- (Air) / (Road))

Transport of PASSENGERS, with or without accompanied belongings, **by**–

- (a) **AIR (in economy class)**³⁷, **embarking from** (i.e., starting from) or **terminating in** (i.e., ending at) an airport located in the state of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, or Tripura or at Bagdogra located in West Bengal;


Goods Transportation Sector
Entry No. 21 (Transportation of certain goods (without freight limit) + other goods (subject to freight limit) – by GTA)

Services provided **by a GTA by way of** transportation of–

following specified goods

- **Relief Materials** meant for victims of natural or man-made disasters, calamities, accidents or mishap;
- **Agricultural produce**;
- **Defence or military equipments**;
- **Organic manure**.
- **Newspaper** or magazines registered with the Registrar of Newspapers;
- **Milk, Salt** and **food grain including flours, pulses and rice**;

All other goods [Consideration is upto ₹1500/ Single-Carriage or Consideration is upto ₹750/ Single consignee]

Any goods ,	where	consideration charged for the transportation of goods on a consignment transported in a single carriage	does not exceed	₹1,500;
Any goods ,	where	consideration charged for the transportation of all such goods for a single consignee	does not exceed	₹750;

withdrawn w.e.f 18th July, 2022

³⁷ Amended w.e.f. 18th July, 2022

Author: Exemption is to any transportation (domestic or other)

Transportation of SPECIFIED GOODS

Exempt (irrespective of freight)

Relief material	<ul style="list-style-type: none"> • <i>Any goods</i> - transportation exempt
Other cases	<ul style="list-style-type: none"> • <i>All agricultural produce</i> - transportation exempt • <i>Non-agricultural produce</i> - specified goods. [abbreviation - DON + FMS]

Transportation of OTHER GOODS

Exempt (subject to freight limit)

Consideration is upto ₹ 1500/ Single Carriage
or
Consideration is upto ₹ 750/ Single consignee

Entry No. 20 (Domestic Transportation of certain goods - by Rail / by water)

Services *by way of transportation of GOODS by RAIL or a VESSEL*

from one place in India to another

of the following goods—

- **Relief Materials** meant for victims of natural or man-made disasters, calamities, accidents or mishap;
- **Agricultural produce**;
- **Defence or military equipments**;
- **Railway equipments or materials**; (w.e.f. 18th July, 2022)
- **Organic manure**.
- **Newspaper or magazines** registered with the Registrar of Newspapers;
- **Milk, salt and food grain including flours, pulses and rice**;

Entry No. 19 A & 19 B (Transportation of Export Goods - by air / sea) - Exempted till 30th Sep, 2022

Entry 19-A

Services *by way of transportation of GOODS by an AIRCRAFT*

from customs station of clearance in India

upto a place outside India.

Exemption shall apply only upto 30th Sep, 2022.

Entry 19-B

Services *by way of transportation of GOODS by an VESSEL*

from customs station of clearance in India

upto a place outside India.

Exemption shall apply only upto 30th Sep, 2022.

Author: The recipient of such service is exporter of goods who (in absence of this exemption) is entitled to claim ITC and refund thereof.

- This exemption was given as refund mechanism was not fully established. Initially, exemption was given up to 30.9.2018 and then extended every year. Now, refund regime is fully established and thus, exemption has been withdrawn.

Support Services in Transport

Entry No. 24-B (Service of storage or warehousing - of Cereals, Pulses Fruits and Vegetables)

Services *by way of*

storage and warehousing



of

... **cereals, pulses,**

... **fruits, nuts and vegetables,**

... **spices, copra,**

... **sugarcane, jaggery,**

... ~~raw vegetable fibres such as cotton, flax, jute etc.,~~

... ~~indigo,~~

... ~~unmanufactured tobacco, betel leaves, tendu leaves,~~

... ~~coffee and tea.~~

Services *by way of*

storage and warehousing

of

... **cereals, pulses,**

fruits, and vegetables,

Services to Government (& related Entities)

Entry No. 51 (Services by GSTN ~~to CG/SG/UT~~)

Supply of service

~~by the GSTN~~

to the CG/SG/UT or local authority for implementation of GST

Services by Government (& related Entities)

Entry No. 24-C (Certain Services by Dept of Post-)

Services **by the Department of Posts**

by way of post card, inland letter, book post and ordinary post (envelops weighing less than 10 gm).

(inserted - w.e.f. 18th July, 2022)

Entry No. 6 (All Services - by **CG/SG/UT/LA** - except **Post, Port, Transport** + other services to non-B/E)

Services **by the CG, SG or UT or local authority**
excluding the following services-

(a) **services by the Department of Posts**
 by way of ~~speed post, express parcel post, life insurance, and agency services~~ **provided to a person other than the CG, SG, UT;**

(b) **services in relation to an aircraft or a vessel, inside or outside** the precincts of **a port or an airport;**

(b) **transport of goods or passengers;** or

(d) **any service, other than services covered under entries (a) to (c) above, provided to business entities.**

(w.e.f. 18th July, 2022)

Scope of Exemption

Taxability of services by Govt./ LA - considering Exemption Entry No. 6 & 24-C

Service supplied	Recipient	Taxability	Notes				
1. Postal Department							
(a) PIBO Post card, Inland letter, Book post and Ordinary post (envelops weighing less than 10 gm).	Any Person	- GST exempt					
(b) All Other Services [Speed Post, Express Parcel Post, Life Insurance, Agency Services (e.g. Commission based like distribution of Mutual Funds, Collection of telephone & electricity bills) Opening of saving accounts, Money Order, Postal Order, Pension Payments etc.]	Any Person	- GST payable	(FCM applicable)				
2. Port/ Airport Services (relating to aircraft / vessel) (inside / outside the precincts of Port/ Airport)							
	Any Person (say, Shipping lines, Airlines)	- GST payable	(FCM applicable)				
3. Transport Services (Goods or Passengers)							
	Any person (Non-B/E or BE)	- GST payable ³⁸	(FCM applicable)				
4. All Other Services (any other services other than above 3)							
(Sr of Renting of IP)	Non- B/E (Household entity)	- GST exempt					
(Security service) (Licensing - telecom license, mining license) (Passport Issuance/ VISA issuance)	B/E	- GST payable	<table border="1"> <tr> <td>Sr of Renting of IP</td> <td>RCM (if BE= RP) FCM (if BE= URP)</td> </tr> <tr> <td>All others</td> <td>RCM (BE= RP/ URP)</td> </tr> </table>	Sr of Renting of IP	RCM (if BE= RP) FCM (if BE= URP)	All others	RCM (BE= RP/ URP)
Sr of Renting of IP	RCM (if BE= RP) FCM (if BE= URP)						
All others	RCM (BE= RP/ URP)						
			<p>It exempt, Then no GST payable.</p> <p>But, certain other exemption entries are ALSO there, which shall also be considered.</p> <p>If Not exempt, then</p>				

³⁸ Certain kind of transportation of goods and passengers is exempt vide separate exemption entries. Those exemptions are applicable to all B/Es (Govt or Non-Govt).

Entry No. 8 (All Services not covered by Entry No. 6 - by CG/SG/UT/LA - to another CG/SG/UT/LA)

Services provided

by
the CG, SG or UT or
local authority → **to another CG, SG, UT or local authority:**

Explanation.—For the purposes of this entry, it is hereby clarified that **the provisions of this entry shall not be applicable to services,—**

- (i) **by the Department of Posts** **by way of speed post, express parcel post, life insurance, and agency services** **provided to a person other than the CG, SG, UT;** (w.e.f. 18th July, 2022)
- (ii) **in relation to an aircraft or a vessel**, inside or outside the precincts of a port or an airport;
- (iii) **of transport of goods or passengers;**

Author.g., Water Resources Ministry (CG) has provided data services to Water Resource Ministry of Karnataka State for ₹ 25 Lakh.

- Under GST, Govt also constitutes a 'business entity'. Thus, recipient (Water Resource ministry of Karnataka State) is a B/E with ATO (PY) definitely more than ₹ 20 / 10 Lakh.
- However, still service to such recipient shall be **exempt** vide Entry No. 8.

Entry No. 7 (All Services not covered by Entry No. 6 (except renting of IP) - by CG/SG/UT/LA - to Business Entity having ATO (PY) upto such amount as makes it eligible for exemption from registration)

Services provided

by
the CG, SG or UT or
local authority → **to a business entity** **with an ATO**
upto such amount in preceding FY as makes it eligible for exemption from registration
under the CGST Act, 2017;

Explanation.—For the purposes of this entry, it is hereby clarified that **the provisions of this entry shall not be applicable to—**

- (a) services,—
 - (i) **by the Department of Posts** **by way of speed post, express parcel post, life insurance, and agency services** **provided to a person other than the CG, SG, UT;** (w.e.f. 18th July, 2022)
 - (ii) **in relation to an aircraft or a vessel**, inside or outside the precincts of a port or an airport;
 - (iii) **of transport of goods or passengers; and**
- (b) **services by way of renting of immovable property.**

Entry No. 9 (All Services not covered by Entry No. 6 - by CG/SG/UT/LA - where consideration is upto ₹ 5,000)

Services provided

by the CG, SG or UT or local authority **where the consideration for such services does not exceed ₹ 5,000/-**

Provided further that

in case where continuous supply of service, as defined in section 2 (33) of CGST Act, is provided by the CG, SG, UT or a local authority,

the exemption shall apply only.

where the consideration charged for such service	does not exceed	₹ 5,000 in a financial year
---	------------------------	------------------------------------

Provided that

nothing contained in this entry shall apply to services—

- (i) by the Department of Posts ~~by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the CG, SG, UT;~~ (w.e.f. 18th July, 2022)
- (ii) **in relation to an aircraft or a vessel**, inside or outside the precincts of a port or an airport;
- (iii) **of transport of goods or passengers;**

Author e.g.,

1. Housing Board of Haryana has taken sanitary fee of ₹ 3000/- from companies – Such fee shall be **exempt** from GST.
2. HOWEVER, if CG/SG/UT/ LA is providing a service which is not one time supply but **continuous supply** – then Exemption will be available only when **annual consideration charged is upto 5,000/-**. For example, the Government provides services of renting of immovable property to a business entity at ₹ 4000 per month for 1 year. This is a continuous supply of service. This service will become taxable as the total consideration exceeds ₹ 5000 in a financial year even though the value of the monthly supply is ₹ 4000 only.

Miscellaneous Services**Entry No. 56** — (Service ~~by way of~~ Slaughtering of Animals)

Services ~~by way of~~ **SLAUGHTERING of animals**

Tour Operator's Service. (w.e.f. 18th July, 2022)**Author**

Background	Place of Supply of 'Tour Operator Services'	
	Sec 12 (Both LoS and LoR – In India)	Sec 13 (Either LoS or LoR – In India)
	Sec 12 (2)- default rule	Sec 13 (3) (b)
Tour Operator Service	Location of Recipient	Place of performance of service (If service is provided both in TT and Non-TT (say, a composite tour of India and Nepal), then PoS is in India for whole service by virtue of Sec 13(6) of IGST Act)
Issue	Tours having a foreign component and an Indian component are taxed as if the entire tour happened in India in view of the PoS provisions.	
Amendment	Foreign Component has been exempted vide newly inserted Entry No. 52-A	

Entry No. 52-A (Service by Indian Tour Operator - to foreign tourist i.r.t. tour conducted partly outside India)

Tour operator service, which is performed partly in India and partly outside India,

supplied by a tour operator

to a foreign tourist

exempt to the extent of the value of the tour operator service which is performed outside India

Provided that

value of the tour operator service performed outside India

shall be

such proportion of the total consideration charged for the entire tour which is equal to the proportion which the number of days for which the tour is performed outside India has to the total number of days comprising the tour,

or

50% of the total consideration charged for the entire tour,

whichever is less

Provided that

in making the above calculations,

any duration of time equal to or exceeding 12 hours

shall be considered as one full day

and

any duration of time less than 12 hours

shall be taken as half a day.

Explanation. -

"foreign tourist"

means

a person not normally resident in India,

who enters India for a stay of not more than six months for legitimate non-immigrant purposes.

Illustrations:

A tour operator provides a tour operator service to a foreign tourist as follows: -

Tour Details	Value Exempted [Value of Tour Sr conducted outside India]	Taxable Value [Value of Tour Sr conducted in India]
3 days in India, 2 days in Nepal; Consideration Charged for the entire tour: Rs.1, 00, 000/-	Exempted value = 40,000 Being Lower of following Proportionate value computed on basis of no of days (= Rs.1, 00, 000 x 2/5) 40,000 50% of the total consideration 50,000	TV= Rs.60, 000
2 days in India, 3 nights in Nepal; Consideration Charged for the entire	Exempted value = 50,000 Being Lower of following	TV= Rs.50, 000

tour: Rs. 1,00,000/-	Proportionate value computed on basis of no of days (= Rs.1,00,000 x 3/5) 60,000	TV= Rs.50,000
	50% of the total consideration 50,000	
2.5 days in India, 3 days in Nepal; Consideration charged for the entire tour: Rs.1,00,000/-	Exempted value = 50,000 Being Lower of following	
	Proportionate value computed on basis of no of days (= Rs.1,00,000- x 3/5.5) 54,545	
	50% of the total consideration 50,000	

2. Amendment to E/N 9/2017-IT (R):: Exemption withdrawn [w.e.f. 18th July, 2022]

Miscellaneous Services

Entry No. 42 (~~Import of Service by RBI (in relation to For ex Reserves management)~~)

Services ~~received~~

Import of services

by

~~the Reserve Bank of India~~

~~from outside India in relation to management of foreign exchange reserves.~~

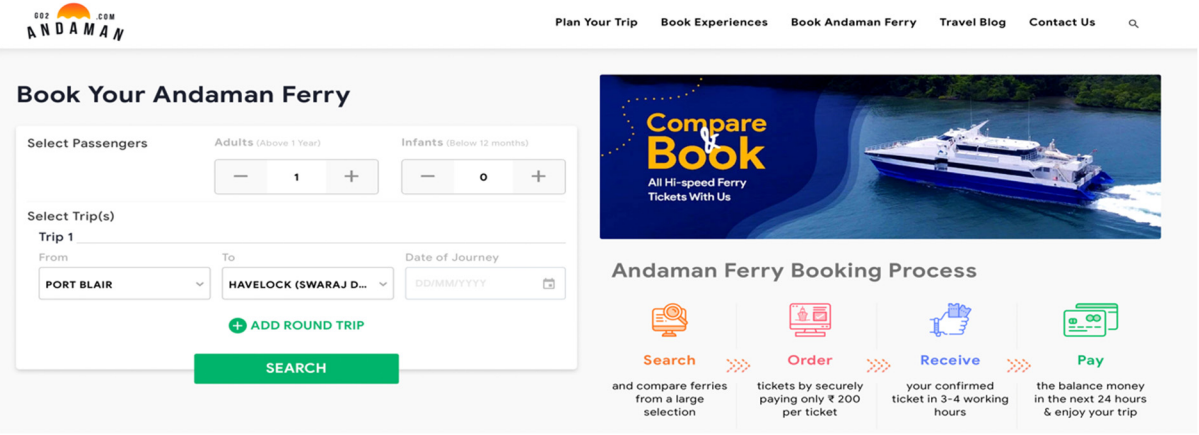
[Omitted w.e.f. 18th July, 2022]

2. CBIC issued clarification as to applicability of exemption [CBIC Circular 177/09/2022-TRU]

CBIC Circular 177/09/2022 [Dated: 3rd Aug, 2022.]

	Issues	Clarification
1	Applicability of GST on application fee charged for entrance or the fee charged for issuance of eligibility certificate for admission or for issuance of migration certificate by educational institutions	<ul style="list-style-type: none"> Application fee charged for entrance GST Exempt vide Entry No. 66 of E/N 12/2017-CT (R) Fee charged for issuance of eligibility certificate for admission or for issuance of migration certificate by educational institutions GST Exempt vide Entry No. 66 of E/N 12/2017-CT (R) The exemption is wide enough to cover the amount or fee charged for admission or entrance, or amount charged for application fee for entrance, or the fee charged from prospective students for issuance of eligibility certificate to them in the process of their entrance/admission to the educational institution. <u>Services supplied by an educational institution by way of issuance of migration certificate to the leaving or ex-students are also covered by the exemption.</u>

2	<p>Applicability of GST on transportation of EMPTY CONTAINERS returning from Nepal and Bhutan after delivery of transit cargo, to India</p> <p>Entry No. 9-B</p> <p>Supply of service associated with TRANSIT CARGO to Nepal and Bhutan (landlocked countries)</p>	<p>GST on supply of services associated with transit cargo to Nepal and Bhutan was exempted w.e.f 29.09.2017 based on recommendations of the 20th GST Council Meeting. The opening sentence of the Agenda Item 7(ix) placed before the GST Council on this issue, makes it clear that the proposal was to exempt supply of services associated with transit cargo both to and from Nepal and Bhutan.</p> <p>Accordingly, as recommended by the GST Council, it is clarified that exemption under Entry No. 9-B of N/N 12/2017- CT (R) covers services associated with transit cargo both to and from Nepal and Bhutan.</p> <p>Clarified that movement of empty containers from Nepal and Bhutan, after delivery of goods there, is a service associated with the transit cargo to Nepal and Bhutan and is therefore covered by the exemption.</p>
3	<p>Applicability of GST on preferential location charges (PLC) collected in addition to the lease premium for long term lease of land constitute part of the lease premium or of upfront amount charged for long term lease of land and are eligible for the same tax treatment</p> <p>Entry No. 41</p> <p>upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable i.r.o. service by way of granting of long term lease (of 30 years, or more) of industrial plots etc."</p>	<p>Allowing choice of location of plot is integral part of supply of long-term lease of plot and therefore, location charge/PLC is nothing but part of consideration charged for long term lease of plot. Being charged upfront along with the upfront amount for the lease, the same is exempt.</p>
4.	<p>Applicability of GST on the additional toll fees collected in the form of higher toll charges from vehicles not having fastag</p> <p>Entry No. 23</p> <p>Service by way of access to a road or a bridge on payment of Toll Charges.</p>	<p>Ministry of Road Transport & Highways (MORTH) vide circular dated 16.02.2021 has directed to collect additional amount from the users of the road to the extent of two times of the fees applicable to that category of vehicle which is not having a valid functional Fastag.</p> <p>Essentially, the additional amount collected from the users of the road not having a functional Fastag, is in the nature of Toll Charges and should be treated as ADDITIONAL toll charges.</p> <ul style="list-style-type: none"> On a similar issue of collection of overloading charges in the form of a higher toll (2/4/6/7 times of the base rate of toll), it has already been clarified vide circular number 164/20/2021-GST dated 06.10.2021, which was issued on the basis of recommendation of GST Council that overloading charges at toll plazas would get the same treatment as given to toll charges. Therefore, it is clarified that additional fee collected in the form of higher toll charges from vehicles not having Fastag is essentially payment of toll for allowing access to roads or bridges to such vehicles and may be given the same treatment as given to toll charges.
5	<p>Applicability of GST on services in form of Assisted Reproductive Technology (ART)/ In vitro fertilization (IVF)</p> <p>Entry No. 74</p> <p>Service by way of Health Care Services.</p>	<p>The abnormality/disease/ailment of infertility is treated using ART procedure such as IVF.</p> <p>It is clarified that services by way of IVF are also covered under the definition of health care services for the purpose of above exemption notification.</p>

<p>6</p> <p>Applicability of GST on sale of land after levelling, laying down of drainage lines etc.</p> <p>Schedule III - para 5</p> <p>Activities neither supply of goods nor supply of services.</p> <p>Sale of land</p>	<p>Land may be sold either as it is or after some development such as levelling, laying down of drainage lines, water lines, electricity lines, etc. It is clarified that sale of such developed land is also sale of land and is covered by Sr. No. 5 of Schedule III of the CGST Act, 2017 and accordingly does not attract GST.</p> <ul style="list-style-type: none"> • However, it may be noted that any service provided for development of land, like levelling, laying of drainage lines (as may be received by developers) shall attract GST at applicable rate for such services.
<p>7</p> <p>Applicability of GST on tickets of private ferry used for passenger transportation (<i>private ferries are used as means of transport from one island to another in Andaman and Nicobar Islands</i>)</p> <p>Entry No. 17(d)</p> <p>Transportation of passengers by public transport, other than predominantly for tourism purpose, in a vessel between places located in India.</p>	<p>It is clarified that this exemption would apply to tickets purchased for transportation from one point to another irrespective of whether the ferry is owned or operated by a private sector enterprise or by a PSU/government.</p> <ul style="list-style-type: none"> • It is further clarified that, the expression 'public transport' used in the exemption notification only means that the transport should be open to public. It can be privately or publicly owned. Only exclusion is on transportation which is predominantly for tourism, such as services which may combine with transportation, sightseeing, food and beverages, music, accommodation such as in shikara, cruise etc. 
<p>8</p> <p>Applicability of GST on hiring of vehicles by firms for transportation of their employees to and from work</p> <p>Entry No. 15 (b)</p> <p>Transportation of passengers, with or without accompanied belongings, by non-air conditioned contract carriage, other than radio taxi, for transport of passengers, excluding tourism, conducted tour, charter or hire.</p>	<p>It is clarified that charter or hire' excluded from the above exemption entry is charter or hire of a motor vehicle for a period of time, where the renter (person taking on rent) defines how and when the vehicles will be operated, determining schedules, routes and other operational considerations.</p> <ul style="list-style-type: none"> • The exemption shall not be applicable in such cases. • HOWEVER, the said exemption would apply to passenger transportation services by non-AC contract carriages falling under Heading 9964 where according to explanatory notes, transportation takes place over pre-determined route on a pre-determined schedule.

9.	<p>Applicability of GST on transport of minerals from mining pit head to railway siding, beneficiation plant etc., by vehicles deployed with driver for a specific duration of time</p> <p>Entry No. 18 (a)</p> <p>Services <u>by way of transportation of GOODS</u>—</p> <p>(a) by ROAD except the services of—</p> <p>(i) a GTA; (ii) a courier agency;</p>	<p>Usually in such cases the vehicles such as tippers, dumpers, loader, trucks etc., are given on hire to the mining lease operator. Expenses for fuel are generally borne by the recipient of service. The vehicles with driver are at the disposal of the mining lease operator for transport of minerals within the mine area (mining pit to railway siding, beneficiation plant etc.) as per his requirement during the period of contract.</p> <p>Such services are nothing but "RENTAL SERVICES of transport vehicles with operator" which fall under heading 9966 and attract GST @ 18%. The person who takes the vehicle on rent defines how and when the vehicles will be operated, determines schedules, routes and other operational considerations. The person who gives the vehicles on rent with operator can not be said to be supplying the service by way of transport of goods.</p> <p>Accordingly, as recommended by the GST Council, it is clarified that such renting of trucks and other freight vehicles with driver for a period of time is a service of renting of transport vehicles with operator falling under Heading 9966 and not service of transportation of goods by road. This being so, it is not eligible for exemption under Sl. No. 18 of notification No. 12/2017- CT (Rate) dated 28.06.2017.</p> <p>[*** On such rental services of goods carriages where the cost of fuel is included in the consideration charged from the recipient of service, GST rate has been reduced from 18% to 12% with effect from 18.07.2022.]</p>
10.	<p>Applicability of GST on payment of honorarium to the Guest Anchors</p> <p>(e.g. Sansad TV and other TV channels invite guest anchors for participating in their shows and pays remuneration to them in the form of honorarium.)</p>	<p>Supply of all goods & services are taxable unless exempt or declared as 'neither a supply of goods nor a supply of service'. Services provided by the guest anchors in lieu of honorarium attract GST liability.</p> <p>However, guest anchors whose ATO in a FY does not exceed Rs 20 lakhs (Rs 10 lakhs in certain states) shall not be liable to take registration and pay GST.</p>
11.	<p>Applicability of GST on sanitation and conservancy services supplied to Army and other CG/SG' departments</p> <p>Entry No. 3</p> <p>Pure services → provided to the CG/ SG/UT or local authority</p> <p>by way of any activity—</p> <p>in relation to any function entrusted to a Panchayat under Article 243-G of the Constitution or</p> <p>in relation to any function entrusted to a Municipality under Article 243-W of the Constitution.</p> <p>Entry 3-A exempts COMPOSITE SUPPLY of goods and services in which the value of supply of goods constitutes not more than 25% of the value of the said composite supply</p>	<p>Municipalities and Panchayats and other local authorities such as Cantonment Boards listed in Section 2(69) of the CGST Act, 2017 carry out functions entrusted to them under Articles 243W & 243G of the Constitution respectively. Functions that may be entrusted to panchayats and municipalities are listed in Schedule 11 & 12 of the Constitution. CG, SG & UT also perform functions listed in Schedule 11 & 12 such as irrigation, public health etc.</p> <ul style="list-style-type: none"> Services by CG/SG/UT or any LA by way of any activity in relation to a function entrusted to a Panchayat under article 243G of the constitution or to a municipality under article 243W of the constitution have been declared as 'neither a supply of goods nor a supply of service' [Sec 7(2) r/w N/N 14/2017- CT (Rate)]. The exemption under Entry 3& 3A of N/N2/2017- CT (Rate) has been given on pure services & composite supplies procured by CG/SG/UT or any LA for performing functions listed in the 11th and 12th schedule of the constitution. It is clarified that if such services are procured by Indian Army or any other Government Ministry/Department which does not perform any functions listed in the 11th and 12th Schedule, in the manner as a local authority does for the general public, the same are not eligible for exemption under Sl. No. 3 and 3A of N/N 12/2017- CT (Rate).

Customs + FTP

Valuation of Goods

Legal Text of Act/Rules/Circulars

Sec 14 : Valuation of Goods

(1) **AV=TV** [if import/ export transaction if fulfilling certain conditions]Provided further that **the rules made in this behalf may provide for,-**

(i)	the circumstances in which the buyer and the seller shall be deemed to be RELATED;	R-2
(ii)	the manner of determination of value i.r.o. goods when → there is no sale, or → the buyer and the seller are related, or → price is not the sole consideration for the sale or → in any other case;	R-4 to 9
(iii)	the manner of acceptance or rejection of value declared by the importer or exporter, as the case may be, <i>where the PO has reason to doubt the truth or accuracy of such value, and determination of value for the purposes of this section.</i>	R-12
(iv) 39	the ADDITIONAL OBLIGATIONS of the importer in respect of any class of imported goods and the checks to be exercised, including the circumstances and manner of exercising thereof, as the Board may specify, where, the Board has reason to believe that the value of such goods may not be declared truthfully or accurately, having regard to the trend of declared value of such goods or any other relevant criteria:	<i>Nothing specified presently</i>

³⁹ inserted by FA, 2022 (enacted on 30th March, 2022) - Effective from 1st April, 2022

PAYMENT OF DUTY (Ledgers)**Legal Text of Act/Rules/Circulars****Regulation 6 : Use and validity of e-scrip**

(1) **Utilization of Scrip: Only for payment of Basic Customs Duty. (BCD) levied under Customs Act, 1962**

(2) **Validity period within scrip shall be utilized = 2 Years from date of Scrip Generation in ledger**

The e-scrip shall be **valid for a period of ~~1 year~~ 2 Years from the date of its creation in the ledger** and any duty credit in the said **e-scrip remaining unutilized at the end of this period shall lapse.**

Regulation 7 : Transfer of duty credit in e-scrip

(1) **Transfer of e-Scrip (over CAS):: Transferee must have active IEC**

(2) **Condition of transfer:: Entire duty credit in e-scrip shall be transferred** (part transfer is not allowed)

(3) **Validity Period shall remain same** (i.e. transferee shall also utilize scrip within **2 years** from date of its generation)

The period of validity of the e-scrip, of ~~1 year~~ 2 Years from its creation, shall not change on account of transfer of the e-scrip.

CUSTOMS (Import of goods at Concessional Rate of Duty or For Specified End Use) RULES, 2022 (substituting IGCR, 2017)

[w.e.f. 9th Sep, 2022]

CBIC Circular 18/2022-Cus [Dated: 10th Sep, 2022.]

1	Clarification as to time-period of utilization of imported goods:	[Rules- 6 Months]. vs [Period in the Notification]
	Provision to extend the said period in certain cases	[Extension of period of 6 Months]
	When time period for utilisation is specified in the notifications, the said time period will apply.	
	If not specified, the time period of six months will apply.	
	<ul style="list-style-type: none"> Additionally, a provision has been introduced wherein the jurisdictional Commissioner can further extend the period of 6 months by another 3 months. However, it is clarified that such extension can be given provided the importer furnishes sufficient reason/s for not conforming to the time period so prescribed, which were beyond the importer's control. 	
2	Prescribing a procedure for immediate re-credit of Bond	[No waiting till time of filing of Monthly statement]
	As a trade facilitation measure, a new Form IGCR-3A has been notified for confirmation of consumption for intended purpose at the common portal at any point in time for immediate re-credit of the bond by the jurisdictional AC/DC, without waiting for the filing of monthly statement on the 10th of every month.	
	<ul style="list-style-type: none"> The details filed in form IGCR-3A shall get auto populated in the monthly statement of the subsequent month, which has to be only confirmed by the importer. 	
3	Expansion of Scope	[Now covering 'Specified End Use mentioned in Customs Notifications, i.e. apart from those pertaining to manufacturing and in respect of those for providing output services]
	From 'IGCR'	
	To 'IGCR or SEU'	
	IGCR or SEU Rule, 2022 is also expanded to include cases where the intended purpose is for putting the goods imported to specified end use and not necessarily manufacturing or for providing output services.	
	Illustration 1 [Applicability of IGCR or SEU Rules, 2022]	
E/N	Exemption	Applicability of IGCR or SEU Rules, 2022
E/N-1	Import of 'A' shall be exempt if it is for use in manufacture of product 'Y'	Applicable
E/N-2	Import of 'B' shall be exempt if it is for use in provision of service 'Z'	Applicable
E/N-3	Import of 'C' shall be exempt if it is for supply to ABC Ltd for use in mfd of Product X.	Applicable
E/N-4	Import of 'D' shall be exempt if it is for personal use of importer.	Applicable
Author:	Specified End use defined u/Rule 3(m) to cover :	
1.	Dealing with imported goods by the importer in the manner specified in the notification;	
2.	Supplying of imported goods to the intended person;	

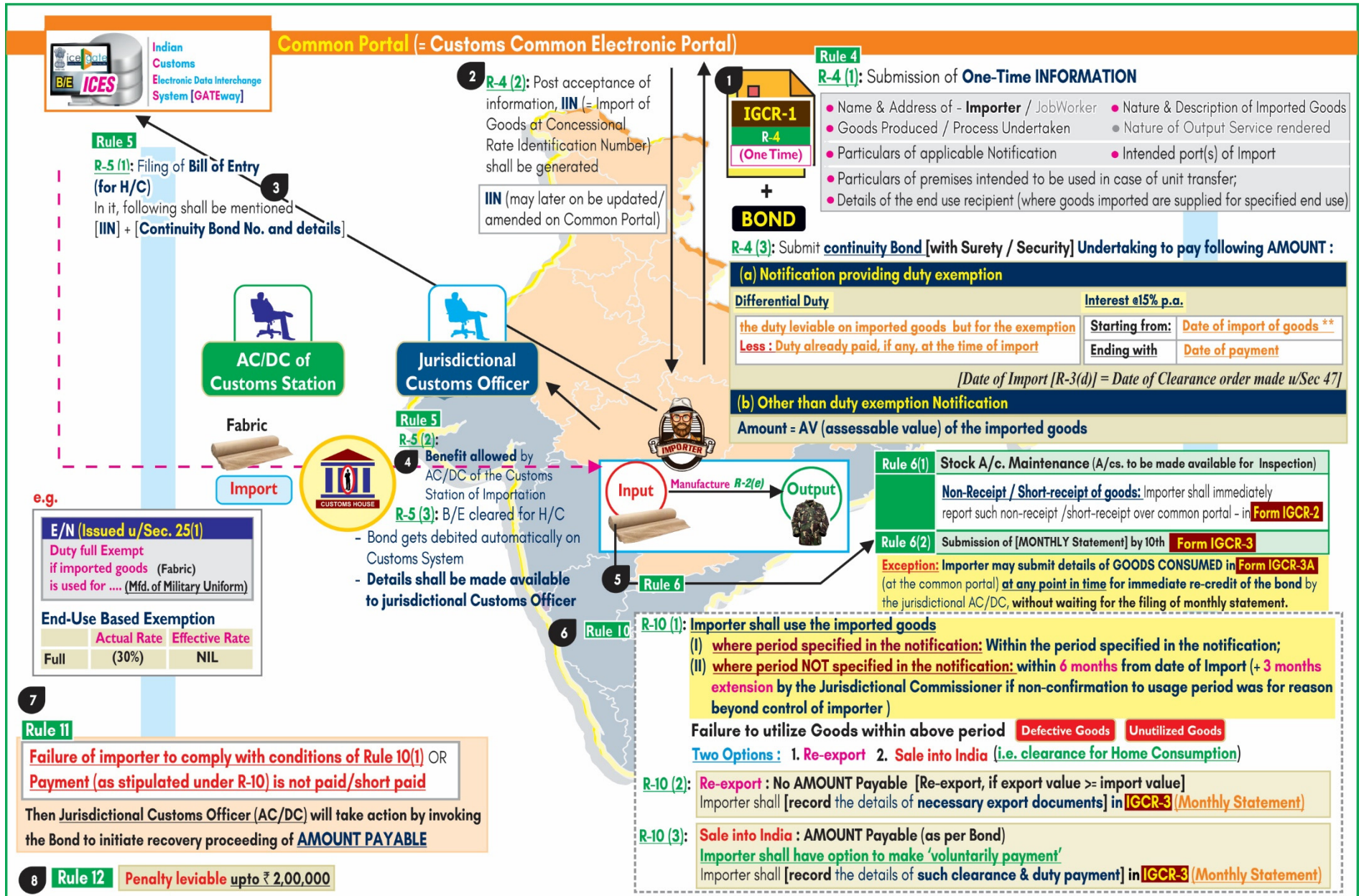
In this regard, it is clarified that:

- a) Procedure of intimation, generation of a unique IGCR Identification Number (IIN), import of the goods, submission of bond, maintenance of records, filing of monthly statement or any other procedures remains the same. *The Importer shall undertake compliance to the officer having jurisdiction over primary address specified in the Importer Exporter Code (IEC) issued by DGFT.*
- b) End use may be specified by a notification under **Sec 25(1) or Sec 11 of the Customs Act, 1962.**
- c) **Where the import is undertaken for a specified end use and no differential duty is involved, the value of the bond shall be equal to the assessable value of the goods.**
- d) In cases where the intended purpose of import is supply of the goods to an end use recipient, **the importer shall supply these goods under an invoice or where ever applicable, through an EWB, as mentioned in the CGST Act, 2017.** The description and quantity of such goods shall be clearly mentioned by the importer.
- e) The importer shall **maintain a record of all such goods** supplied in a month and provide the details in the monthly statement.
- f) **The restrictions on JOB WORK are only relating to the case where it is undertaken on the goods belonging to importer and does not apply to the end use recipient who receives the goods on the supply and deals with it as stipulated in the notification.**

4 Changes in Forms appended to the rules

[to better capture the different intended purposes (manufacturing, import for specified end use, export of goods using goods imported, supply to end use recipient or for provision of output service) and additional details such as Sl.No. of the Notification etc.]

Revised Charts on next pages:



* **Jurisdictional Customs Officer** - an officer of Customs of a rank equivalent to the rank of Superintendent or an Appraiser exercising jurisdiction over -
 (a) the premises where either the goods imported shall be put to use for manufacture or for rendering output services;
 (b) the primary address specified in the IEC issued by the DGFT in other cases;

Duty Free clearance of Capital Goods → Use for some years → thereafter, sold into India

R-10 (5): Importer shall have option to make 'voluntarily payment' Importer shall [record the particulars of such clearance & duty payment] in **IGCR-3 (Monthly Statement)**

Rule 10(4): Differential Duty Payable on

Depreciated Value	
Original Value	XX
Less Depreciation (SLM)	(XX)

Differential Duty Payable (alongwith Interest @15% p.a.)

Year	% SLM
1st Year	Q 4%
2nd Year	Q 3%
3rd Year	Q 3%
4th Year	Q 2.5%
5th Year	Q 2.5%
Thereafter	Q 2%

Notes:
 1. Part of Quarter = Full Quarter
 2. Period for Depreciation Computation
 ← Date When CG Come into use → Date of clearance of CG

E/N (Issued u/Sec. 25(1))
 Duty full Exempt if imported goods (Machine) is used for ... (Mfd. of Connectors)

End-Use Based Exemption

	Actual Rate	Effective Rate
Full	(30%)	NIL

Rule 7 : Procedure for allowing imported goods for JOB WORK.

Any Goods can be send **Excluding** Gold • Gold Jewellery • Gold Articles • Precious Metals • Precious Stones

1 R-7 (1): Importer shall [maintain records of goods sent for J/W] + [Mention same in **IGCR-3 (Monthly Statement)**]

2 R-7 (2): Goods shall be sent under cover of [Invoice] / [EWB]

R-7 (3): Obligations of Job-Worker

1. Maintain Accounts
2. On demand produce account details before jurisdictional Customs Officer
3. After Completion of Jobwork send Processed Goods
 - to Importer or
 - to another Job Worker as directed by Importer

R-7 (4): Importer shall establish that imported goods sent for J/W have been used as per particulars mentioned in IGCR-1
Failure to establish that - Jurisdictional Customs Officer will initiate following actions as necessary:

1. Recovery of [Duty + Interest @15% p.a.] - in terms of R-11
2. Levy of [Penalty upto Rs 2,00,000] - in terms of R-12

Contravention of Rules
 JOB-WORKER liable to penalty upto ₹ 2,00,000 **Rule 12**

Rule 9 : Procedure for supplying imported goods to the END USE RECIPIENT

- 1 **R-9 (1):** Importer shall [maintain records of goods supplied to END USE RECIPIENT during the month] + [Mention same in **IGCR-3 (Monthly Statement)**]



- 2 **R-9 (2):** Goods shall be sent under cover of [Invoice] / [EWB]

R-9 (3): Obligations of END USE RECIPIENT (In Certain Cases)

In case of supply for replenishment or Export against supply, the END USE RECIPIENT shall,-

- Maintain an account of receipt of goods, manufacturing process undertaken thereon and the waste generated, if any, during such process;
- Produce the account details before the jurisdictional Customs Officer as and when required by the said officer;
- Produce the relevant details to the importer for fulfilment of the benefit under the notification;

Note :

- Procedure of intimation, generation of a unique IGCR Identification Number (IIN), import of the goods, submission of bond, maintenance of records, filing of monthly statement or any other procedures remains the same. The Importer shall undertake compliance to the officer having jurisdiction over primary address specified in the Importer Exporter Code (IEC) issued by DGFT.
- End use may be specified by a notification under **Sec 25(1)** or **Sec 11 of the Customs Act, 1962**.
- Where the import is undertaken for a specified end use and **no differential duty is involved** the value of the bond shall be equal to the assessable value of the goods.

Legal Text of Act/Rules/Circulars

CUSTOMS (Import of goods at Concessional Rate of Duty or For Specified End Use) RULES, 2022

Rule 1 to Rule 13

[Notified vide N/N 74/2022-Customs (NT) - dated 9th Sep, 2022 - w.e.f. 9th Sep, 2022]**Rule 1 : Short Title and Date of Commencement****Title =** CUSTOMS (Import Of Goods At Concessional Rate Of Duty or For Specified End Use) RULES, 2022.**Rule 2 : Application****(1) Criteria for applicability**

These rules shall apply where

- (a) A **notification provides for the observance of these rules;** and (b) **An importer intends to avail the benefit of any notification and such benefit is dependent upon the use of goods imported being covered by that notification for the MANUFACTURE of any commodity**
- [Manufacture = Creation of a new commodity - Rule 3 (i)]
- or
- provision of OUTPUT SERVICE.**
- [Output Service = Any service (excluding after sales service) - Rule 3 (k)]
- or
- being put to a SPECIFIED end use.**

Illustration 1 [Applicability of IGCR or SEU Rules, 2022]

E/N	Exemption	Applicability of IGCR or SER Rules, 2022
E/N-1	Import of 'A' shall be exempt if it is for use in manufacture of product 'Y'	Applicable
E/N-2	Import of 'B' shall be exempt if it is for use in provision of service 'Z'	Applicable
E/N-3	Import of 'C' shall be exempt if it is for supply to ABC Ltd for use in mfd of Product X.	Applicable
E/N-4	Import of 'D' shall be exempt if it is for personal use of importer.	Applicable

Author : Applicability of 'IGCR or SEU' Rules, 2022**Importer importing specified goods for use in the manufacture of any commodity**

1. **Importer with complete manufacturing facility:** i.e., importer will do complete manufacturing process himself.
2. **Importer with partial manufacturing facility:** i.e., Importer will get some treatment/processing done from some Job-worker (for that he shall follow the specified J/W procedure).
3. **Importer without any manufacturing facility:** i.e., Importer will get complete manufacturing done from some Job-worker (for that he shall follow the specified J/W procedure).

However, sensitive sectors such as gold, articles of jewellery and other precious metals or stones have been excluded from the facility of J/W.

Rule 3 : Definitions

(1) In these rules, unless the context otherwise requires, -

(a)	Act	means	the Customs Act, 1962
(b)	Capital Goods	means	goods, the value of which is capitalised in the books of account of the importer;
(c)	Customs Automated System	means	the Indian Customs Electronic Data Interchange System ; [ICES]
(d)	Date of Import	means	the date of the order made by the PO under section 47 of the Act, permitting clearance of such goods ; <i>Author:</i> Date of Import = Date of making of 'clearance order u/Sec 47' (= Out of Charge order)
(e)	Form	means	a form annexed to these rules;
(f)	Information	means	the information provided by the importer who intends to avail the benefit of a notification;
(g)	Job-work	means	any treatment, process or manufacture, consistent with the notification undertaken by a person on GOODS belonging to the Importer <i>except gold, jewellery and articles thereof, and other precious metals or stones,</i> and the term "job worker" shall be construed accordingly
<i>Author: Job-work coverage</i>			
Scope of Job-work		Remarks	
Any treatment or process involved in manufacture			
Complete manufacturing activity		Even importers who do not have any manufacturing facility can avail the IGCRD, 2017, to import goods at a concessional customs duty and get the final goods manufactured entirely on job work basis.	
However, certain goods (gold, jewellery, precious stones and metals) can't be sent for job-work.			
(h)	Jurisdictional Customs Officer	means	an officer of Customs of a rank equivalent to the rank of Superintendent or an Appraiser exercising jurisdiction over – (a) the premises where either the goods imported shall be put to use for manufacture or for rendering output services; (b) the primary address specified in the IEC issued by the DGFT in other cases;

(i)	Manufacture	means	the processing of raw materials or inputs by the importer in any manner that results in emergence of a new product having a distinct nature or character or use or name ; <i>and the term 'manufacturer' shall be construed accordingly</i>
(j)	Notification	includes	any notification issued under section 25(1) and section 11 of the Act;
(k)	Output Service	means	supply of service excluding after-sales service , utilizing imported goods;
(l)	Section	means	a section of the Act.
(m)	Specified End Use	means	dealing with the goods imported in a manner specified in the notification
		and includes	supply to the intended person
			and the term "END USE RECIPIENT" shall be construed accordingly.

(2) **Words and expressions used in these rules and not defined but defined in the Act** shall have the same meanings as assigned to them in the said Act.

Rule 4 : Importer to give PRIOR information

(1) **Importer to give On-Time information over Customs Common Portal (in Form IGCR-1)**

<p>The importer shall provide one-time INFORMATION</p>	<p>on "the common portal" in Form IGCR-1</p>	<p>about the following particulars, namely:</p> <ul style="list-style-type: none"> (i) the name and address of the importer and his job worker, if any; (ii) the goods produced or process undertaken at the manufacturing facility of the importer or his job worker, if any, or both; (iii) the nature and description of goods imported used in the manufacture of goods at the premises of the importer or the job worker, if any; (iv) particulars of the notification applicable on such import; (v) nature of output service rendered utilising the goods imported; and (vi) particulars of premises intended to be used in case of unit transfer; (vii) details of the end use recipient in cases where goods imported are supplied for specified end use; and (viii) The intended port (s) of import
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(2) **Acceptance of information over portal: IIN shall be generated**

On acceptance of the above information, **an Import of Goods at Concessional Rate Identification Number (IIN) shall be generated** against such information furnished:

Update of Information: can be done over customs common portal

Provided that

such information may be updated on the common portal,

in case of **a change in the details furnished in such Form:**

(3) Importer shall also submit [Continuity Bond (surety/security) + Undertaking to pay in case of default]

The importer who intends to avail the benefit of **a notification**

shall submit a continuity bond with such surety or security as deemed appropriate *by* the AC/DC as the case may be, *having jurisdiction over the premises* where the goods imported shall

- be put to use for manufacture of goods *or* for rendering output service or
- being put to use for a specified end use,

with an undertaking to pay

(a) in case of a notification that provides a duty exemption,

the amount

equal to

the difference between

the duty leviable on inputs⁴¹ but for the exemption and that already paid, if any, at the time of import,

along with interest,

at the rate fixed by notification issued u/Sec 28-AA of the Act, [i.e. 15% p.a.]

for the period

starting from

the date of import of the goods on which the exemption was availed and

ending with

the date of actual payment of the entire amount of the difference of duty that he is liable to pay.

(b) in all cases where the notification is other than one that provides an exemption benefit,

the amount

equal to

ASSESSABLE VALUE of the goods being imported.

Rule 5 : Procedure to be followed**(1) While filing B/E, importer shall mention (IIN) + (Continuity Bond No. and Details)**

The importer who intends to avail the benefit of **a notification**

shall be required to mention

the IIN (as referred in Rule 4(2)) and continuity bond number and details while filing the bill of entry.

(2) AC/DC (Customs Station of the Importation): shall allow benefit of E/N

The AC/DC, as the case may be, **at the Customs Station of the importation, shall allow the benefit of the notification** to the importer.

(3) Imported goods cleared: Bonds debited by AS + Details made available to Jurisdictional Customs Officer

Once a Bill of Entry is cleared for home consumption,

the bond submitted by the importer **gets debited automatically in the customs automated system**

and

the details shall be made available electronically to the Jurisdictional Custom Officer.

[*Jurisdictional Customs Officer = Refer Rule 3(h)]

41 **Unintended error:** Instead of word 'input', 'goods' shall be used

Rule 6 : Importer to maintain records.**(1) Maintenance of 'Stock Account' of imported goods****The importer**

shall maintain an account in such manner to clearly indicate,-

- (i) the quantity and value of **goods imported**;
- (ii) quantity and date of **receipt of the goods** imported in the relevant premises;
- (iii) quantity of such **goods consumed** including the quantity used domestically for manufacture, quantity exported, if any, to fulfil the intended purpose and quantity of goods sent to an end use recipient;
- (iv) quantity **of goods sent for job work**, nature of job work carried out;
- (v) quantity **of goods received after job work**;
- (vi) quantity of **goods re-exported**, if any, under rule 10; and
- (vii) **quantity remaining in the stock**, according to the bills of the entry

and

shall produce the said account as and when required by the **AC/DC of Customs**, as the case may be, **having jurisdiction over the premises or where the goods imported shall be put to use for manufacture of goods or for rendering output service.**

Non-receipt / Short Receipt of goods: Shall be immediately INTIMATED over common portal (Form IGCR-2)

Provided that

in case of **non-receipt or short receipt of goods imported in the relevant premises,**

the importer shall intimate such non-receipt or short receipt **immediately on the common portal in the Form IGCR-2** .

(2) Monthly STATEMENT – IGCR-3 (over portal): by 10th

The importer shall submit a Monthly STATEMENT, **on the common portal, in the form IGCR-3 by the 10th day of the following month.**

Exception: Details of goods consumed may be separately intimated in Form IGCR-3A (over portal): for immediate credit into the Bond (which will be auto-populated into Monthly Statement IGCR-3 for confirmation later on)

Provided that

the importer **may submit details of GOODS CONSUMED** in the **Form IGCR-3A at any point of time, for immediate recredit of the bond**

which shall become a part of the monthly statement of the subsequent month.

Rule 7 : Procedure for allowing imported goods for JOB WORK.**(1) Goods sent for Job-Work: Record shall be maintained + Mention in the Monthly Statement**

The importer shall

maintain a record of the goods sent for job-work during the month

and mention the same in the monthly statement [IGCR-3] specified in rule 6(2).

(2) Dispatch of goods for Job-Work: under [Tax Invoice + EWB in terms of GST law]

The importer shall send the goods to the premises of the job-worker

under an invoice or wherever applicable through an e-way bill, as specified in the CGST Act, 2017, mentioning the description and quantity of the goods.

(3) Goods sent for job-work shall be brought back in 6 months (from date of Job-work Challan)

The maximum period for which the goods can be sent to the job worker

shall be

six months [6 M]

from the date of an invoice or an e-way bill as referred to in sub-rule (2).

(4) Burden on importer to ensure goods sent for job-work are used as per his instructions

In case the importer is unable to establish that the goods sent for job work have been used as per the particulars mentioned under rule 4,

the Jurisdictional Customs Officer shall take necessary action against the importer under rules 11 and 12.

Author :

R-11	Recovery by Jurisdictional Customs Officer: (a) <u>in case of duty exemption notification</u> : Recovery of duty benefit allowed (alongwith Interest@15% p.a.) (b) <u>in case of other notification</u> : Recovery of AV of the imported goods
R-12	Penalty (upto Rs 2,00,000)

(5) Responsibilities / obligations of Job-Worker

The job worker shall

- (i) **maintain an account** of receipt of goods, manufacturing process undertaken thereon and the waste generated, if any, during such process;
- (ii) **produce the account details** before the Jurisdictional Customs Officer as and when required by the said officer;
- (iii) **after completion of the job work send the processed goods**
to the importer or
to another job worker as directed by the Importer for carrying out the remaining processes, if any,
under the cover of an invoice or an e-way bill.

Rule 8 : Procedure for allowing imported goods for UNIT TRANSFER.**(1) Goods sent for unit transfer: Record shall be maintained + Mention in the Monthly Statement**

The importer shall

maintain a record of the goods sent for unit transfer during the month

and mention the same in the monthly statement [IGCR-3] specified in rule 6 (2).

(2) Dispatch of goods for unit transfer: under [Tax Invoice + EWB in terms of GST law]

The importer shall send the goods

under an invoice or wherever applicable through an e-way bill as specified in the CGST Act, 2017, mentioning the description and quantity of the goods.

(3) Obligations of the importer in case of unit transfer

The importer shall in relation to transfer of goods to another unit,-

- (i) **maintain an account** of receipt of goods, manufacturing process undertaken thereon and the waste generated, if any, during such process;
- (ii) **produce the account details before the Jurisdictional Custom Officer** as and when required by the said officer; **and**
- (iii) **after completion of the said process, send the processed goods back to the premises of the importer** from where the goods were received or **to a job worker** for carrying out the remaining processes, if any, **under the cover of an invoice or an e-way bill.**

Rule 9 : Procedure for supplying imported goods to the End Use Recipient**(1) Goods sent to END USE RECIPIENT: Record shall be maintained + Mention in the Monthly Statement**

The importer shall	maintain a record of the goods supplied to the end use recipient during the month	and mention the same in the monthly statement [IGCR-3] specified in rule 6 (2).
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(2) Dispatch of goods to END USE RECIPIENT: under [Tax Invoice + EWB in terms of GST law]

The importer shall send the goods

under an invoice or wherever applicable through an e-way bill as specified in the CGST Act, 2017, mentioning the description and quantity of the goods.

(3) End Use Recipient's obligation in certain cases

In case of supply for replenishment or Export against supply⁴², the END USE RECIPIENT shall,-

- i. **maintain an account** of receipt of goods, manufacturing process undertaken thereon and the waste generated, if any, during such process;
- ii. **produce the account details** before the jurisdictional Customs Officer as and when required by the said officer;
- iii. **produce the relevant details to the importer for fulfilment of the benefit under the notification;**

Rule 10: Re-export or clearance of unutilized or defective goods.**(1) Goods importer availing exemption shall be utilized in terms of exemption**

[As to Unutilized or Defective imported goods:: importer has option either to re-export or clear for H/C]

The importer who has availed the benefit of a notification	shall use the goods imported	and	with respect to unutilized or defective goods so imported,
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⁴² **Supply for Export against supply** = Supply made to EUR (End Use Recipient) for purpose of making exports

Supply for replenishment = Supply made to EUR (End Use Recipient) for replenishment of stock (against duty-paid stock which he has already used in making exports)

in accordance with the conditions specified in the concerned notification **within the period**

the importer has **an option** to *either re-export such goods or clear the same for home consumption*

within the said period, namely

(i) **within the period specified in the notification;**

(ii) **within six months from the date of import, where the time period is not specified in the notification:**

Provided that,

the said period of six months can be further extended by the jurisdictional Commissioner for a period not exceeding three months, if sufficient reason is shown that the causes for not conforming to the time period were beyond the importer's control.

(2) Re-export of unutilized/defective goods: Details to be recorded in Monthly Statement

Any re-export of the unutilised or defective goods referred to in sub rule (1)

shall be recorded by the importer **in the monthly statement [IGCR-3]** by providing the details of necessary export documents:

[Such Re-export shall be allowed if export value >= import value]

Provided that

value of such goods for re-export

shall not be less than

the value of the said goods at the time of import.

[export value

> =

import value]

(3) Unutilized or Defective imported goods:: Domestic clearance on payment of differential duty (with interest @15% p.a.)

The importer who **intends to clear** the unutilized or defective goods **for home consumption** shall have an option of voluntarily payment of **the applicable duty along with interest** on the common portal

and **the particulars of such clearance and the duty payment** shall be recorded by the importer **in the monthly statement [IGCR-3]:**

(4) Import of CAPITAL GOODS + Utilization for specified purpose + Subsequent clearance in India: Differential Duty payable on DEPRECIATED VALUE (alongwith interest @ 15% p.a.)

The importer has **an option** to clear the **CAPITAL GOODS*** imported, after having been used for the specified purpose,

on payment of duty equal to

the difference between

the duty leviable on such goods but for the exemption availed

and that already paid, if any, at the time of importation,

along with interest, at the rate fixed by the notification issued u/Sec 28-AA of the Act [i.e. 15% p.a.],

*Capital Goods [R-3(b)] = Goods, the value of which is capitalized in the books of accounts of the importer.

on the **DEPRECIATED VALUE** allowed in straight line method, as specified below, namely : —

(i) for every quarter in the first year	@ 4%
(ii) for every quarter in the second year	@ 3%
(iii) for every quarter in the third year	@ 3%
(iv) for every quarter in the fourth and fifth year	@ 2.5%
(v) and thereafter for every quarter	@ 2%

Explanation. —

- (1) For the purpose of computing rate of depreciation for **any part of a quarter**, a full quarter shall be taken into account.
- (2) **The depreciation shall be allowed**
from the date when the imported capital goods have come into use for the purpose laid down in the notification
upto the date of its clearance.

(5) Unutilized or Defective imported Capital Goods:: Domestic clearance on payment of applicable duty (with interest @15% p.a.)

The importer shall have an option of voluntarily payment of **and the particulars of such clearance and the duty payment** shall be recorded by the importer **the applicable duty along with interest** on the common portal **in the monthly statement [IGCR-3]:**

Rule 11 Recovery of duty in CERTAIN CASES.

(1) Failure to utilize/ re-export / clearance on payment:: Jurisdictional AC/DC of Customs to take action on IMPORTER

In the event of any failure on the part of the importer to comply with the conditions specified in Rule 10(1)

or

where the payment referred to in Rule

10 (3) [Clearance of Inputs in India upon duty payment] **and**

10(4) [Clearance of CG in India upon duty payment]

is not paid or short paid

the AC/DC of Customs, as the case may be, having jurisdiction over the premises where the imported goods shall be put to use

for manufacture of goods **or**

for specified end use **or**

for rendering output service

shall take action *by invoking the bond* to initiate the recovery proceedings of an amount as under –

(a) **in case of a notification that provides a duty exemption,**

equal to

the difference between

the duty leviable on inputs but for the exemption and that already paid, if any, at the time of import,

along with interest, at the rate fixed by notification issued u/Sec 28-AA of the Act, [i.e. 15% p.a.]

for the period

starting from

the date of import of the goods on which the exemption was availed and

	ending with	<u>the date of actual payment of the entire amount of the difference of duty that he is liable to pay.</u>
(b)	in all cases where	the notification is other than one that provides an exemption benefit,
	equal to	ASSESSABLE VALUE of the goods being imported.

- (2) **As to goods sent on Job-work, Importer shall be responsible:: Jurisdictional AC/DC of Customs to take action on IMPORTER**
Notwithstanding anything specified in these rules in relation to removal and processing of imported goods for JOB WORK, the importer shall be responsible for ensuring that the said goods are used in accordance with the purposes provided in **the notification** and ***in the event of any failure,***
the "AC/DC of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for specified end use or for rendering output service" shall take action under these rules, *without prejudice to any other action which may be taken under the Act, rules or regulations made thereunder or under any other law for the time being in force.*

Rule 12 : Penalty

Contravention of provisions (including abetment) :: [Importer or Job-Worker] liable to penalty upto ₹ 2,00,000/-

The **importer or a job worker** who **contravenes any of the provisions of these rules** or **abets such contravention,**

shall be liable to a PENALTY

to an extent of the amount specified u/Sec 158(2)(ii) of the Customs Act [i.e. upto ₹ 2,00,000/-] without prejudice to any other action which may be taken under the Act, rules or regulations made thereunder or under any other law for the time being in force.

Rule 13 :

Reference anywhere of IGCR Rules, 2017= Shall now be taken as 'Reference to IGCR or SEU Rules, 2022

References in any rule, notification, circular, instruction, standing order, trade notice or other order pursuant to the **Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017** and any corresponding provisions thereof

shall be **construed as**

reference to the Customs(Import of Goods at Concessional Rate of Duty or for Specified End Use) Rules, 2022.

Foreign Trade Policy

	Governing provisions	Subject-matter	Amendment	Remarks																				
1.	Sec 5 of Foreign Trade (Development & Regulation) Act, 1992 r/w FTP 2015-2020	Extension of FTP 2015-20 (extended till 31 st March, 2023)	N/N 37/ 2015-20. (Dated 29 th Sep, 2022)	[Issued in exercise of powers given by Sec 5 of Foreign Trade (Development & Regulation) Act, 1992 read with FTP 2015-2020] FTP 2015-20 shall remain in force upto 30th Sep, 2022 upto 31st March, 2023 unless otherwise specified																				
2.	Exemption Notifications	Exemptions as to imports under AA (Advance Authorization), EPCG Authorization, EOU/EHTP/STP Units	Imports under Advance Authorization, EPCG Authorization, EOU/EHTP/STP/BTP Units - Exemption to 'IGST' and 'GST Compensation Cess' <ul style="list-style-type: none"> Earlier exemption granted was time bound and was valid till 30th June, 2022, Now, exemption has been given on permanent basis. <p>[Reference to time limit omitted in corresponding E/Ns - vide N/N 37/2022-Cus (dated 30th June, 2022)]</p> <table border="1"> <thead> <tr> <th colspan="2">Imports under Advance Authorization, EPCG Authorization, EOU/EHTP/STP/BTP Units</th> <th>Pre-Amendment</th> <th>Post-Amendment</th> </tr> </thead> <tbody> <tr> <td colspan="2">Exemption to IGST (& GST Compensation Cess, if any)</td> <td>Exemption Notifications were time bound [Govt kept on extending exemption]</td> <td>Exemption Notifications are no longer time bound. [Govt. no longer required to extend exemption]</td> </tr> <tr> <td>18/2015-Cus</td> <td>Exemption i.r.o. imports against AA</td> <td></td> <td></td> </tr> <tr> <td>16/2015-Cus</td> <td>Exemption i.r.o. imports against EPCG Authorization</td> <td></td> <td></td> </tr> <tr> <td>52/2003-Cus</td> <td>Exemption i.r.o. imports by EoU etc.</td> <td></td> <td></td> </tr> </tbody> </table>	Imports under Advance Authorization, EPCG Authorization, EOU/EHTP/STP/BTP Units		Pre-Amendment	Post-Amendment	Exemption to IGST (& GST Compensation Cess, if any)		Exemption Notifications were time bound [Govt kept on extending exemption]	Exemption Notifications are no longer time bound. [Govt. no longer required to extend exemption]	18/2015-Cus	Exemption i.r.o. imports against AA			16/2015-Cus	Exemption i.r.o. imports against EPCG Authorization			52/2003-Cus	Exemption i.r.o. imports by EoU etc.			
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किसी ने मुझसे पूछा :
क्या करते हैं आप ?



मैंने दिया ये जवाब :

सुन्दर सुर सजाने को साज बनाता हूँ
नौसिखिये परिंदों को बाज बनाता हूँ...

चुपचाप सुनता हूँ शिकायतें सबकी,
तब दुनिया बदलने की आवाज बनाता हूँ...

समंदर तो परखता है हौंसले कश्तियों के,
और मैं डूबती कश्तियों को जहाज बनाता हूँ...

बनाए चाहे चाँद पर कोई बुर्ज-ए-खलीफा,
अरे मैं तो कच्ची ईंटों से ही ताज बनाता हूँ...

नाज है मुझे अपने शिक्षक होने पर !!

प्रो. दीपक

”



THE BEST OF LUCK

Praying for you

Prof. Dippak

जिन्दगी को आसान नहीं
बस खुद को मजबूत बनाना पड़ता है।

“
Our deepest fear is not that we are inadequate. Our deepest fear is that we are POWERFUL BEYOND MEASURE. It is our light, not our darkness that most frightens us. We ask ourselves Who am I to be BRILLIANT, GORGEOUS, TALENTED, FABULOUS? Actually, who are you not to be? You are a child of God. Your playing small does not serve the world. There's nothing enlightened about shrinking so that other people won't feel insecure around you. We are all MEANT TO SHINE, as children do. We were born to make manifest the glory of God that is within us. It's not just in some of us; IT'S IN EVERYONE. and as we let our own light shine, We unconsciously give other people permission to do the same. As we're LIBERATED FROM OUR OWN FEAR, Our presence automatically liberates others.
”

Marianne Williamson



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