

## **CA Final Indirect Taxes Amendments for November 2022 Exam (Paper 8)**

### **Amendments as per Finance Act 2022 and Notifications and Circulars from 1.5.2022 to 31.10.2022**

#### **Concept of Supply**

**Circular No. 172/04/2022-GST**: Perquisites provided by employer to the employees as per contractual agreement

**Qs.** 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?

**Ans.** Schedule III to the CGST Act provides that "services by employee to the employer in the course of or in relation to his employment" will not be considered as supply of goods or services and hence GST is not applicable on services rendered by employee to employer provided they are in the course of or in relation to employment. Any perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are in lieu of the services provided by employee to the employer in relation to his employment. 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** when the same are provided in terms of the contract between the employer and employee.

#### **Charge of GST**

##### **Composition Scheme**

Composition Scheme will not apply if the person is a manufacturer of following notified goods (No restriction on trading of such goods)

- Ice cream and other edible ice, whether or not containing cocoa
- Pan masala
- Tobacco and manufactured tobacco substitutes
- Aerated Water
- Fly ash bricks; Fly ash aggregates; Fly ash blocks (w.e.f. 18.7.2022)**  
Fly ash bricks or fly ash aggregate with 90 per cent. or more fly ash content; Fly ash blocks
- Bricks of fossil meals or similar siliceous earths
- Building bricks
- Earthen or roofing tiles

#### **Registration**

In case the person is engaged in supply of following goods, the threshold limit of Rs. 40 lakhs would not apply

- Ice cream and other edible ice, whether or not containing cocoa.
- Pan masala
- Tobacco and manufactured tobacco substitutes
- Fly ash bricks; Fly ash aggregates; Fly ash blocks (w.e.f. 18.7.2022)**  
Fly ash bricks or fly ash aggregate with 90 per cent. or more fly ash content; Fly ash blocks
- Bricks of fossil meals or similar siliceous earths
- Building bricks
- Earthen or roofing tiles

**Rule 21A(4) (w.e.f. 5.7.2022)**

Where the registration has been suspended under rule 21A(2A) for contravention of the provisions contained in clause (b) or (c) of section 29(2) (i.e. returns not filed for specified period) and the registration has not already been cancelled by the proper officer under rule 22, the suspension of registration shall be deemed to be revoked upon furnishing of all the pending returns.

**CA Final Regular Video Lectures (by CA Kedar Junnarkar  
for May / Nov 2023 Exam (Google Drive Version)**

Videos	2 Views and 1 Year Validity	1.5 Views and 6 months Validity
CA Final DT / International Taxation Regular - Paper 7	9,000	8,000
CA Final IDT Regular - Paper 8	9,000	8,000
CA Final DT / International Taxation - Paper 7 and 6C	9,500	8,500
CA Final International Taxation – Paper 6C	6,000	5,000
CA Final DT and IDT Regular Combo (Paper 7 and 8)	12,500	11,500
CA Final DT / International Taxation & IDT Combo (Paper 7, 6C and 8)	13,000	12,000

**Note**

- 1) Video Lectures as well as Updated Books (e-books and physical books) will be provided.
- 2) Above Prices are for Google Drive Version. In case student wants Pendrive, additional cost of Pendrive, Processing would be charged.

**Payment of Tax****Section 49(10)/ Rule 87(14) (w.e.f. 5.7.2022)**

A registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under this Act, to the electronic cash ledger for

- (a) integrated tax, central tax, State tax, Union territory tax or cess or
- (b) **integrated tax or central tax of a distinct person as specified in section 25(4) or section 25(5)** in such Form GST PMT-09 and such transfer shall be deemed to be a refund from the electronic cash ledger under this Act.

No such transfer to distinct person shall be allowed if the said registered person has any unpaid liability in his electronic liability register.

**Rule 87: Electronic Cash Ledger (w.e.f. 5.7.2022)**

Deposit of Tax, interest, penalty, fee or any other amount by a taxable person can be made by:

- a) Internet Banking through authorised Banks
- b) Unified Payment Interface (UPI) from any bank (w.e.f. 5.7.2022)**
- c) Immediate Payment Services (IMPS) from any bank (w.e.f. 5.7.2022)**
- d) Credit / Debit cards through authorised Banks
- e) National Electronic Fund Transfer (NEFT) or Real Time Gross Settlement (RTGS)
- f) Over the Counter payment (OTC) through authorized banks for deposits up to Rs. 10,000 per challan per tax period, by cash, cheque or demand draft

Where the payment is made by way of NEFT or RTGS mode or **IMPS** or 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.

**Section 50(3) (retropective amendment w.e.f. 1.7.2017)**

Where the input tax credit has been **wrongly availed and utilised**, the registered person shall pay interest on such input tax credit wrongly availed and utilised, at such rate not exceeding 24% as may be notified by the Government, on the recommendations of the Council, and the interest shall be calculated, in such manner as may be prescribed.

**Rule 88B (retropective amendment w.e.f. 1.7.2017)**

- In case, where the supplies made during a tax period are declared by the registered person in the return for the said period and the said return is furnished after the due date as per section 39, except where such return is furnished after commencement of any proceedings under section 73 or 74 in respect of the said period, the interest on tax payable in respect of such supplies shall be calculated on the portion of tax which is paid by debiting the electronic cash ledger, for the period of delay in filing the said return beyond the due date, at such rate as may be notified u/s 50(1) i.e. 18% p.a.
- In all other cases, where interest is payable as per section 50(1), the interest shall be calculated on the amount of tax which remains unpaid, for the period starting from the date on which such tax was due to be paid till the date such tax is paid, at such rate as may be notified u/s 50(1) i.e. 18% p.a.
- In case, where interest is payable on the amount of input tax credit wrongly availed and utilised as per section 50(3), the interest shall be calculated on the amount of input tax credit wrongly availed and utilised, for the period starting from the date of utilisation of such wrongly availed input tax credit till the date of reversal of such credit or payment of tax in respect of such amount, at such rate as may be notified under section 50(3).
- Input tax credit wrongly availed shall be construed to have been utilised, when the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, and the extent of such utilisation of input tax credit shall be the amount by which the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed.
- Date of utilisation of such input tax credit shall be taken to be
  - a) the date, on which the return is due to be furnished under section 39 or the actual date of filing of the said return, whichever is earlier, if the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, on account of payment of tax through the said return; or
  - b) the date of debit in the electronic credit ledger when the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, in all other cases.

**Circular No. 172/04/2022-GST: Utilisation of the amounts available in the electronic credit ledger and the electronic cash ledger for payment of tax and other liabilities**

**Qs.** Whether the amount available in the electronic credit ledger can be used for making payment of any tax under the GST Laws?

**Ans.** Any payment towards output tax, whether self-assessed in the return or payable as a consequence of any proceeding instituted under the provisions of GST Laws, can be made by utilization of the amount available in the electronic credit ledger of a registered person. As output tax does not include tax payable under reverse charge mechanism, implying thereby that the electronic credit ledger cannot be used for making payment of any tax which is payable under reverse charge mechanism.

**Qs.** Whether the amount available in the electronic credit ledger can be used for making payment of any liability other than tax under the GST Laws?

**Ans.** As per section 49(4), the electronic credit ledger 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, electronic credit ledger cannot be used for payment of erroneous refund sanctioned to the taxpayer, where such refund was sanctioned in cash.

**Qs.** Whether the amount available in the electronic cash ledger can be used for making payment of any liability under the GST Laws?

**Ans.** As per section 49(3) of the CGST Act, the amount available in the electronic cash ledger may be used for making any payment towards tax, interest, penalty, fees or any other amount payable under the provisions of the GST Laws.

### **Tax Invoice, Debit and Credit Notes**

#### **Rule 46: Particulars on Tax Invoice (w.e.f. 5.7.2022)**

A declaration as below, that invoice is not required to be issued in the manner specified under rule 48(4), in all cases where an invoice is issued, other than in the manner so specified under the said 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 the said rule 48(4)

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

#### **E-Invoice (Limit changed w.e.f. 1.10.2022)**

This provision shall apply to Registered Person whose **Aggregate Turnover** in any preceding financial year from 2017-18 onwards **exceeds Rs. 10 crores** who shall prepare invoice and other prescribed documents in respect of supply of goods or services or both to a registered person or for Exports.

### **GST Return**

Filing of Annual Return is not required for FY 2017-18, 2018-19, 2019-20, 2020-21 and **2021-22** if the aggregate turnover of such year is upto Rs. 2 crores.

### **CA Final Fast Track Video Lectures by CA Kedar Junnarkar for May / Nov 2023 Exam (Google Drive Version)**

Videos	2 Views and 1 Year Validity	1.5 Views and 6 months Validity
CA Final DT / International Taxation Regular - Paper 7	7,000	6,000
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**Difference between Regular and Fast Track Classes**

	<b>Regular Video Lectures</b>	<b>Fast Track Video Lectures</b>
Coverage	100% Syllabus	100% Syllabus
Books	Simplified Book and Practice Book	Simplified Book and Practice Book
Discussion on Problems from Practice Book	Yes, Problems are discussed in Class	Problems are for self-study; they are not discussed
ICAI Case Studies for Paper 7 and 8	All are discussed in Class	Not discussed in Class
Case Laws in DT	Discussed in Class	Discussed in Class
Case Study for Paper 6C	35 Case Studies are discussed in Class	Not discussed in Class

**Input Tax Credit**

For the purposes of rule 42 and 43, the aggregate value of exempt supplies shall exclude: -

- the value of supply of Duty Credit Scrips specified in the notification No. 35/2017-Central Tax (Rate)

**Circular No. 172/04/2022-GST: Clarification on various issues of section 17(5) of the CGST Act**

**Qs.** Whether the proviso at the end of section 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)?

**Ans.** Proviso states that the input tax credit 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. It shall apply to is applicable to the whole of of sub-section (5)(b) of section 17 of the CGST Act i.e.

- a. food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft except when used for the purposes specified therein, life insurance and health insurance
- b. membership of a club, health and fitness centre and
- c. travel benefits extended to employees on vacation such as leave or home travel concession:

**Qs.** Whether the provisions of section 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?

**Ans.** 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.

**Imports and Exports under GST****Rule 96- Refund of integrated tax paid on goods or services exported out of India****Refund of IGST relating to goods**

- Shipping bill filed by an exporter of goods shall be deemed to be an application for refund of integrated tax 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 an export manifest or an export report covering the number and the date of shipping bills or bills of export and
  - b) the applicant has furnished a valid return in Form GSTR-3B

**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 integrated tax paid on the goods exported out of India shall be deemed to have been filed on such date when such mismatch in respect of the said shipping bill is rectified by the exporter (w.e.f. 1.7.2017)**

- c) the applicant has undergone Aadhaar authentication in the manner provided in rule 10B **(Rule 10B to apply w.e.f. 1.1.2022)**
- Details of the relevant export invoices 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 have been exported out of India.
  - Upon the receipt of the information regarding the furnishing of a valid return, the system designated by the Customs or the proper officer of Customs, shall process the claim of refund and it shall be electronically credited to the bank account of the applicant mentioned in his registration.
  - Withholding of Refund
    - a) If a request has been received from GST Commissioner of central tax, State tax or Union territory tax as per section 54(10)/(11) or
    - b) Customs Officer determines that the goods were exported in violation of Customs Act, 1962.
  - **Commissioner in the Board or an officer authorised by the Board, on the basis of data analysis and risk parameters, is of the opinion that verification of credentials of the exporter, including the availment of ITC by the exporter, is considered essential before grant of refund, in order to safeguard the interest of revenue (w.e.f. 1.7.2017)**
  - **Where refund is withheld in accordance with the provisions of clause (a) or clause (c) as above, such claim shall be transmitted to the proper officer of Central tax, State tax or Union territory tax 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. (w.e.f. 1.7.2017)**
  - **Where refund is withheld in accordance with the provisions of clause (b) and the proper officer of the Customs passes an order that the goods have been exported in violation of the provisions of the Customs Act, 1962, then, such claim shall be transmitted to the proper officer of Central tax, State tax or Union territory tax 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. (w.e.f. 1.7.2017)**
  - **The application for refund in Form GST RFD-01 transmitted electronically through the common portal shall be dealt in accordance with the provisions of rule 89. (w.e.f. 1.7.2017)**
  - Central Government may pay refund of the integrated tax to the **Government of Bhutan** on the exports to Bhutan for notified class of goods and the exporter shall not be paid any refund of the integrated tax.

## GST Exemptions

### GST Exemptions relating to Renting

1. Renting of residential dwelling for use as residence **except where the residential dwelling is rented to a registered person (w.e.f. 18.7.2022)**
2. ~~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 Rs. 1,000 per day or equivalent~~ **(Exemption withdrawn w.e.f. 18.7.2022 i.e. renting of hotel rooms shall be fully taxable)**

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Transportation by Air, embarking from or terminating in an airport located in North East India or Bagdogra in West Bengal **in economy class: Exempt (W.e.f. 18.7.2022, Exemption only for economy class)**

### Exemption relating to Agricultural Service

~~Services by way of storage or 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 or warehousing of cereals, pulses, fruits and vegetables (w.e.f. 18.7.2022)**

### Postal Services provided to Person other than Central or State Government, Union territory

Services by the Department of Posts by way of post card, inland letter, book post and ordinary post (envelopes weighing less than 10 grams) shall be exempt **(w.e.f. 18.7.2022)**

All other services by Department of Post shall be taxable. (No Reverse Charge)

### Withdrawal of Exemption (W.e.f. 18.7.2022, such services will be taxable)

1. Services by the Reserve Bank of India
2. Services provided by IRDAI (Insurance Regulatory and Development Authority of India) to insurers under IRDAI Act
3. by SEBI by protecting the interests of investors and to promote development of/to regulate the securities market
4. Services by way of licensing, registration and analysis or testing of food samples supplied by the Food Safety and Standards Authority of India (FSSAI) to Food Business Operators
5. Services by way of fumigation in a warehouse of agricultural produce
6. Services by way of slaughtering of animals
7. Services provided by **Cord Blood Banks** by way of preservation of stem cells or any other service in relation to such preservation
8. Service 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

### Following service will be taxable w.e.f. 18.7.2022

Services provided by a clinical establishment by way of providing room [other than Intensive Care Unit (ICU) / Critical Care Unit (CCU) / Intensive Cardiac Care Unit (ICCU) / Neo natal Intensive Care Unit (NICU)] having room charges exceeding Rs. 5,000 per day to a person receiving health care services

**Exemption for Tour Operator Service (w.e.f. 18.7.2022)**

- Tour operator service, which is performed partly in India and partly outside India, supplied by a tour operator to a foreign tourist, to the extent of the value of the tour operator service which is performed outside India shall be exempt
- The 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.
- 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.
- 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 tour operator service to a foreign tourist as follows

- 3 days in India, 2 days in Nepal  
Consideration Charged for the entire tour: Rs.1,00,000  
Exemption: Rs. 40,000 (1,00,000 x 2/5) or, Rs.50,000 (50% of Rs.1,00,000) whichever is less, i.e. Rs. 40,000 (i.e. Taxable value: Rs. 60,000)
- 2 days in India, 3 nights in Nepal  
Consideration Charged for the entire tour: Rs.1,00,000  
Exemption: Rs. 60,000 (Rs.1,00,000x 3/5) or Rs. 50,000(50% of Rs.1,00,000) whichever is less, i.e. Rs. 50,000 (i.e., Taxable value: Rs. 50,000)
- 2.5 days in India, 3 days in Nepal  
Consideration charged for the entire tour: Rs.1,00,000  
Exemption: Rs. 54,545 (1,00,000x 3/5.5) or Rs. 50,000 (50% of Rs.1,00,000) whichever is less, i.e., Rs. 50,000(i.e., Taxable value: Rs. 50,000)

**Following Service will be exempt (w.e.f. 18.7.2022)**

Service of training or coaching in

- By an individual in recreational activities relating to
  - Arts: Dance, Singing, Drawing, Painting, Sculpture Making etc.
  - Culture: Mehendi, Rangoli etc.
- Sports by charitable entities registered under section 12AA / 12AB of the Income-tax Act

**Goods Transport Agency Service**

Services of goods transport agency (**GTA**) in relation to transportation of goods (including used household goods for personal use) (**Changed w.e.f. 18.7.2022**)

<b>GTA exercises the option to itself pay GST on services supplied by it (Forward Charge) (Note 1)</b>	<b>GTA does not exercise the option to itself pay GST on the services supplied (Note 2)</b>
(1) Tax payable at 5% (ITC on goods and services not available to GTA) or (2) Tax payable at 12%	Recipient will pay tax at 5% on Reverse Charge

**Note:**

- 1) The option by GTA to itself pay GST on the services supplied by it during a Financial Year shall be exercised by making a declaration in Annexure V on or before the 15<sup>th</sup> March of the preceding Financial Year. (to be submitted before the jurisdictional GST Authority)  
The option for the Financial Year 2022-2023 shall be exercised on or before 16th August, 2022.

Invoice for supply of the service charging tax at the rates as applicable may be issued during the period from 18<sup>th</sup> July ,2022 to 16<sup>th</sup> August, 2022 before exercising the option for the financial year 2022-2023 but in such a case the supplier shall exercise the option to pay GST on its supplies on or before 16<sup>th</sup> August, 2022.

- 2) RCM shall not apply in case of GTA Service where
- the supplier has taken registration under the CGST Act, 2017 and exercised the option to pay tax on the services of GTA in relation to transport of goods supplied by him under forward charge and
  - the supplier has issued a tax invoice to the recipient charging Tax at the applicable rates and has made a declaration as prescribed in Annexure III on such invoice issued by him

**Reverse Charge:** Services by a **Goods Transport Agency (GTA)** **who has not paid tax at the rate of 12%** to

- any factory registered under/governed by the Factories Act, 1948
- 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
- any Co-operative Society established by or under any law for the time being in force
- any body corporate established, by or under any law for the time being in force
- any partnership firm whether registered or not under any law including association of persons;
- any casual taxable person registered under CGST Act or SGST Act or IGST Act or UTGST Act
- person registered under GST

**Exemption for GTA Service**

Services by GTA to an unregistered person, unregistered casual taxable person, other than 7 recipients specified above	Services by GTA to a) Department or Establishment of Central / State Government / UT b) local authority or (c) Governmental agencies which has taken registration only for deducting tax under section 51 and not for making a taxable supply of goods or services.
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GTA service provided to only an unregistered individual end consumer is exempt from GST.

**Note**

- 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.
- CTPs making **taxable supplies of handicraft goods** have been exempted from obtaining registration if aggregate turnover is below Rs. threshold limit.

**Person liable to pay tax in case of GTA Service**

Recipient is not amongst 7 persons	Recipient is amongst 7 persons	
	If GTA gives declaration	If GTA does not give declaration
Service is exempt	GTA will pay tax at 5% or 12% on Forward Charge	Recipient will pay tax at 5% on Reverse Charge

**Exemptions relating to Transportation of certain goods (Highlighted points deleted w.e.f. 18.7.2022)**

<p>Services provided by <b>GTA</b> by way of transport in a goods carriage</p> <p>a) <del>if consideration charged for transportation of goods on a consignment in single carriage does not exceed <b>Rs. 1,500</b></del></p> <p>b) <del>if consideration charged for transportation of all such goods for a single consignee does not exceed <b>Rs.750</b></del></p>	<p>Services by way of transportation by <b>rail or vessel</b> from one place in India to another of the following goods</p> <p>a) <del>railway equipments or materials</del></p>
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**Refund under GST****Rule 89**

Application for Refund in case of SEZ Unit and SEZ Developer shall be endorsed by the specified officer of the Zone. **Specified officer means a "specified officer" or an "authorised officer" as defined under rule 2 of the Special Economic Zone Rules, 2006. (w.e.f. 5.7.2022)**

**Application for Refund shall be accompanied by (changed w.e.f. 5.7.2022)**

Refund on Export of Goods <b>other than electricity</b>	Statement containing no. and date of shipping bills or bills of export and the number and the date of the relevant export invoices Since realization of consideration is not a condition, BRC / FIRC is not required. However, in case of non-realization of consideration in terms of FEMA, the exporter may be called upon to repay the refund claimed by him (Rule 96B).
Refund on Export of <b>Electricity</b>	<b>Statement containing the number and date of the export invoices, details of energy exported, tariff per unit for export of electricity as per agreement, along with the copy of statement of scheduled energy for exported electricity by Generation Plants issued by the Regional Power Committee Secretariat as a part of the Regional Energy Account (REA) under 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</b>

**Rule 86(4B): Electronic Credit Ledger (w.e.f. 5.7.2022)**

Where a registered person deposits the amount of erroneous refund sanctioned to him,

(a) under section 54(3) of the Act, or

(b) under rule 96(3), in contravention of rule 96(1)

along with interest and penalty, wherever applicable, through Form GST DRC-03, by debiting the electronic cash ledger, on his own or on being pointed out, an amount equivalent to the amount of erroneous refund deposited by the registered person shall be re-credited to the electronic credit ledger by the proper officer by an order made in Form GST PMT-03A.

**Circular No. 174/06/2022-GST: Prescribing manner of re-credit in electronic credit ledger using Form GST PMT-03A**

- In respect of the following categories of refund sanctioned erroneously, re-credit of amount in the electronic credit ledger can be done through Form GST PMT-03A, on deposit of such erroneous refund along with interest and penalty, wherever applicable, by the taxpayer:
  - a) Refund of IGST obtained in contravention of rule 96(10)
  - b) Refund of unutilised ITC on account of export of goods/services without payment of tax.
  - c) Refund of unutilised ITC on account of zero-rated supply of goods/services to SEZ developer/Unit without payment of tax.
  - d) Refund of unutilised ITC due to inverted tax structure

- 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 electronic 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.
- The proper officer, on being satisfied that the full amount of erroneous refund along with applicable interest, as per the provisions of section 50 of the CGST Act, and penalty, wherever applicable, has been paid by the said registered person in Form GST DRC-03 by way of debit in electronic cash ledger, he shall re-credit an amount in electronic 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 30 days from the date of receipt of request for re-credit of erroneous refund amount so deposited or from the date of payment of full amount of erroneous refund along with applicable interest, and penalty, wherever applicable, whichever is later.

**For the purpose of Refund of unutilized ITC for Zero Rated Supply (w.e.f. 5.7.2022)**

Value of goods exported out of India shall be taken as lower of

- a) the Free on Board (FOB) value declared in the Shipping Bill or Bill of Export form as per the Shipping Bill and Bill of Export (Forms) Regulations, 2017
- b) value declared in tax invoice or bill of supply

**For the purpose of Refund of unutilized ITC in case of Inverted Rate Structure (w.e.f. 5.7.2022)**

Maximum Refund =

$(\text{Turnover of inverted rated supply of goods and services}) \times \text{Net ITC} \div \text{Adjusted Total Turnover} - \text{tax payable on such inverted rated supply of goods and services} \times \text{Net ITC} / \text{ITC availed on inputs and input services}$

**Rule 95A of CGST Rules** relating to 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 is deleted (**deleted w.e.f. 1.7.2019**)

**Circular No. 172/04/2022-GST: Refund claimed by the recipients of supplies regarded as deemed export**

**Qs.** Whether the Input Tax Credit (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?

**Ans.** 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 electronic 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.

**Qs.** 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 unutilised ITC under rule 89(4) & rule 89 (5) of the CGST Rules, 2017?

**Ans.** 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 unutilised ITC on account of zero-rated supplies under rule 89(4) or on account of inverted rated structure under rule 89(5) of the CGST Rules, 2017.

**Circular no. 173/05/2022**

Refund of accumulated ITC in case of inverted rated structure under section 54(3) 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. 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 these provisions of Refund. There may however, be cases where though inputs and output goods are same but the output supplies are made under a concessional notification due to which the rate of tax on output supplies is less than the rate of tax on inputs. In such cases, as the rate of tax of output supply is less than the rate of tax on inputs at the same point of time due to supply of goods by the supplier under such concessional notification, the credit accumulated on account of the same is admissible for refund, other than the cases where output supply is either Nil rated or fully exempted, and also provided that supply of such goods or services are not notified by the Government for their exclusion from refund of accumulated ITC.

**Circular No. 175/07/2022-GST: Manner of filing refund of unutilized ITC on account of export of electricity**

- The applicant would be required to file the application for refund electronically in Form GST RFD-01, on the portal. In remark column of the application, the taxpayer would enter "Export of electricity- without payment of tax (accumulated ITC)". At this stage, the applicant is not required to make any debit from the electronic credit ledger.
- The applicant would be required to furnish/upload the details contained in Statement 3B (and not in statement 3) of Form GST RFD-01 (in pdf format), containing the number and date of the export invoices, details of energy exported, tariff per unit for export of electricity as per agreement.
- The applicant will also be required to upload the copy of statement of scheduled energy for electricity exported by the Generation Plants (in format attached as Annexure- I) 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 period for which refund has been claimed and the copy of the relevant agreement(s) detailing the tariff per unit for the electricity exported. The applicant will also give details of calculation of the refund amount in Statement -3A of Form GST RFD-01 by uploading the same in pdf format along with refund application in Form GST RFD-01.
- **Relevant date for filing of refund:** As per section 54(1) of the CGST Act, 2017, time period of two 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. Accordingly, it is hereby clarified that in case of export of electricity, 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

Regional Power Committee Secretariat under regulation 2(1)(nnn) of the CERC (Indian Electricity Grid Code) Regulations, 2010.

- **Processing of refund claim by proper officer:** Rule 89(4) provides for the formula for calculation of refund of unutilised ITC on account of zero-rated supplies which is reproduced as under:  
Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero rated supply of services) x Net ITC ÷ Adjusted Total Turnover  
Export of electricity being zero-rated supply, refund of unutilised ITC on account of export of electricity would also be calculated using the same formula.
- 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. It is clarified that quantum of Scheduled Energy exported, as reflected in the Regional Energy Account (REA) issued by Regional Power Committee (RPC) Secretariat for a particular month, will be deemed to be the quantity of electricity exported during the said month and will be used for calculating the value of zero-rated supply in case of export of electricity. Such monthly Regional Energy Account (REA) issued by Regional Power Committee (RPC) Secretariat, as uploaded on the websites of RPC Secretariat, can be downloaded by GST officers as well as the concerned electricity generator for the purpose of refund under Rule 89(4) of CGST Rules 2019. The calculation of the value of the exports of electricity during the month, can be done based on the quantity of scheduled electricity exported during the month by the exporter (as detailed in the REA for the month) and the tariff rate per unit (details of which will have to be provided by the concerned exporter based on agreed contracted rates).
- It is also mentioned that usually, the quantum of electricity exported as specified in the statement of scheduled energy exported and on invoice should be same. However, in certain cases, it might happen that the quantum of electricity exported as mentioned on invoice is different from the quantum of electricity exported mentioned on the statement of scheduled energy uploaded with REA on Regional Power Committee website. In such cases, turnover of export of electricity shall be calculated using the lower of the quantum of electricity exported mentioned on the statement of scheduled energy exported and that mentioned on the invoice issued on account of export of electricity.
- Adjusted Total Turnover shall be calculated as per the clause (E) of rule 89(4). However, as electricity has been wholly exempted from the levy of GST, therefore, as per the definition of adjusted total turnover provided at rule 89(4), the turnover of electricity supplied domestically would be excluded while calculating the adjusted total turnover. The proper officer shall invariably verify that no ITC has been availed on the inputs and inputs services utilised in making domestic supply of electricity.
- The proper officer shall calculate the admissible refund amount as per the formula provided under rule 89(4) and as per the clarification furnished above. Further, upon scrutiny of the application for completeness and eligibility, if the proper officer is satisfied that the whole or any part of the amount claimed is payable as refund, he shall request the applicant, in writing, if required, to debit the said amount from the electronic credit ledger through Form GST DRC-03. Once the proof of such debit is received by the proper officer, he shall proceed to issue the refund order in Form GST RFD-06 and the payment order in Form GST RFD- 05.

### Demand

#### **Circular No. 171/03/2022-GST: Clarification on various issues relating to applicability of demand and penalty provisions under the Central Goods and Services Tax Act, 2017 in respect of transactions involving fake invoices**

**Qs.** In case where a registered person "A" has issued tax invoice to another registered person "B" without any underlying supply of goods or services or both, whether such transaction will be covered as "supply" under section 7 of CGST Act and whether any demand and recovery can be made from 'A' in respect of the said

transaction under the provisions of section 73 or section 74 of CGST Act. Also, whether any penal action can be taken against registered person 'A' in such cases?

**Ans.** Since there is only been an issuance of tax invoice by the registered person 'A' to registered person 'B' without the underlying supply of goods or services or both, therefore, such an activity does not satisfy the criteria of "supply", as defined under section 7 of the CGST Act. As there is no supply by 'A' to 'B' in respect of such tax invoice in terms of the provisions of section 7 of CGST Act, no tax liability arises against 'A' for the said transaction, and accordingly, no demand and recovery is required to be made against 'A' under the provisions of section 73 or section 74 of CGST Act in respect of the same. Besides, no penal action under the provisions of section 73 or 74 is required to be taken against 'A' in respect of the said transaction. The registered person 'A' shall, however, be liable for penal action under section 122(1)(ii) of the CGST Act for issuing tax invoices without actual supply of goods or services or both.

**Qs.** A registered person "A" has issued tax invoice to another registered person "B" without any underlying supply of goods or services or both. 'B' avails input tax credit on the basis of the said tax invoice. B further issues invoice along with underlying supply of goods or services or both to his buyers and utilizes ITC availed on the basis of the above mentioned invoices issued by 'A', for payment of his tax liability in respect of his said outward supplies. Whether 'B' will be liable for the demand and recovery of the said ITC, along with penal action, under the provisions of section 73 or section 74 or any other provisions of the CGST Act.

**Ans.** Since the registered person 'B' has availed and utilized fraudulent ITC on the basis of the said tax invoice, without receiving the goods or services or both, in contravention of the provisions of section 16(2)(b) of CGST Act, he shall be liable for the demand and recovery of the said ITC, along with penal action, under the provisions of section 74 of the CGST Act, along with applicable interest under provisions of section 50 of the said Act. Further, as per provisions of section 75(13) of CGST Act, if penal action for fraudulent availment or utilization of ITC is taken against 'B' under section 74 of CGST Act, no penalty for the same act, i.e. for the said fraudulent availment or utilization of ITC, can be imposed on 'B' under any other provisions of CGST Act, including under section 122

**Qs.** A registered person 'A' has issued tax invoice to another registered person 'B' without any underlying supply of goods or services or both. 'B' avails input tax credit on the basis of the said tax invoice and further passes on the said input tax credit to another registered person 'C' by issuing invoices without underlying supply of goods or services or both. Whether 'B' will be liable for the demand and recovery and penal action, under the provisions of section 73 or section 74 or any other provisions of the CGST Act.

**Ans.** In this case, the input tax credit availed by 'B' in his electronic credit ledger on the basis of tax invoice issued by 'A', without actual receipt of goods or services or both, has been utilized by 'B' for passing on of input tax credit by issuing tax invoice to 'C' without any underlying supply of goods or services or both. As there was no supply of goods or services or both by 'B' to 'C' in respect of the said transaction, no tax was required to be paid by 'B' in respect of the same. The input tax credit availed by 'B' in his electronic credit ledger on the basis of tax invoice issued by 'A', without actual receipt of goods or services or both, is ineligible in terms of section 16 (2)(b) of the CGST Act. In this case, there was no supply of goods or services or both by 'B' to 'C' in respect of the said transaction and also no tax was required to be paid in respect of the said transaction. Therefore, in these specific cases, no demand and recovery of either input tax credit wrongly/fraudulently availed by 'B' in such case or tax liability in respect of the said outward transaction by 'B' to 'C' is required to be made from 'B' under the provisions of section 73 or section 74 of CGST Act. However, in such cases, 'B' shall be liable for penal action both under section 122(1)(ii) and section 122(1)(vii) of the CGST Act, for issuing invoices without any actual supply of goods and/or services as also for taking/utilizing input tax credit without actual receipt of goods and/or services.

The fundamental principles that have been delineated in the above scenarios may be adopted to decide the nature of demand and penal action to be taken against a person for such unscrupulous activity. Actual action to be taken against a person will depend upon the specific facts and circumstances of the case which may involve complex mixture of above scenarios or even may not be covered by any of the above scenarios. Any person who has retained the benefit of transactions specified under section 122(1A) of CGST Act, and at whose instance such transactions are conducted, shall also be liable for penal action under the provisions of the said sub-section. It may also be noted that in such cases of wrongful/ fraudulent availment or utilization of input tax credit, or in cases of issuance of invoices without supply of goods or services or both, leading to wrongful availment or utilization of input tax credit or refund of tax, provisions of section 132 of the CGST Act may also be invocable, subject to conditions specified therein, based on facts and circumstances of each case.

## Additional Amendments

### Concept of Supply

#### **Circular No. 178/10/2022: GST applicability on liquidated damages, compensation and penalty arising out of breach of contract or other provisions of law**

Agreeing to the obligation to refrain from an act	It 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. Also, 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	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	An industrial unit agrees to install equipment for zero emission/discharge at the behest of the RWA of neighbouring residential complex against consideration paid by such RWA, even though the emission/discharge from industrial unit was within permissible limits and there was no legal obligation upon individual unit to do so

A contract to do something or to abstain from doing something cannot be said to have taken place unless there are two parties, one of which expressly or impliedly agrees to do or abstain from doing something and the other agrees to pay consideration to the first party for doing or abstaining from such an act. There must be a necessary and sufficient nexus between the supply (i.e. agreement to do or to abstain from doing something) and the consideration.

#### **Liquidated Damages**

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. Such payments being merely flow of money are not a consideration for any supply and are not taxable. However, amounts paid for acceptance of late payment, early termination of lease or for pre-payment of loan or the amounts forfeited on cancellation of service by the customer as contemplated by the contract as part of commercial

terms agreed to by the parties, constitute consideration for the supply of a facility, namely, of acceptance of late payment, early termination of a lease agreement, of pre-payment of loan and of making arrangements for the intended supply by the tour operator respectively. Therefore, such payments, even though they may be referred to as fine or penalty, are actually payments that amount to consideration for supply, and are subject to GST, in cases where such supply is taxable.

#### **Compensation for cancellation of coal blocks**

There was no agreement between the prior allottees of coal blocks and the Government that the previous allottees shall agree to or tolerate cancellation of the coal blocks allocated to them if the Government pays compensation to them. No such promise or offer was made by the prior allottees to the Government. Therefore, the compensation paid for cancellation of coal blocks pursuant to the order of the Supreme Court in the above case was not taxable.

#### **Cheque dishonor fine/ penalty**

The fine or penalty that the supplier or a banker imposes, for dishonour of a cheque, is a penalty imposed not for tolerating the act or situation but a fine, or penalty imposed for not tolerating, penalizing and thereby deterring and discouraging such an act or situation. Therefore, cheque dishonor fine or penalty is not a consideration for any service and not taxable.

#### **Penalty imposed for violation of laws**

Penalties imposed for violation of laws cannot be regarded as consideration charged by Government or a Local Authority for tolerating violation of laws. They stipulate penalty not for tolerating violation but for not tolerating, penalizing and deterring such violations. These amounts are not leviable to GST.

#### **Forfeiture of salary or payment of bond amount in the event of the employee leaving the employment before the minimum agreed period**

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. Therefore, such amounts recovered by the employer are not taxable as consideration for the service of agreeing to tolerate an act or a situation.

#### **Late payment surcharge or fee**

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. 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.

#### **Fixed Capacity charges for Power**

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.

#### **Cancellation charges**

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. However, forfeiture of earnest money by a seller in case of breach of 'an agreement to sell' an immovable property by the buyer or such forfeiture by Government or local authority in the event of a successful bidder failing to act after winning the bid for allotment of natural resources, is a

mere flow of money, as the buyer or the successful bidder does not get anything in return for such forfeiture of earnest money. Such payments being merely flow of money are not a consideration for any supply and are not taxable.

## **Registration under GST**

### **Section 29 of CGST Act: Cancellation of Registration**

#### **Cancellation by the Officer (including from retrospective date) – changes made w.e.f. 1.10.2022**

1. Person paying tax under Composition Scheme has not furnished ~~returns for 3 consecutive tax periods~~ **the return for a financial year beyond three months from the due date of furnishing the said return** (Tax period means the period for which the return is required to be furnished i.e. Quarter)
2. Any other registered person has not furnished returns for a ~~continuous period of 6 months~~ **such continuous tax period as may be prescribed i.e. as per Rule 21**
  - i) **being a registered person required to file return under section 39(1) for each month or part thereof, has not furnished returns for a continuous period of 6 months**
  - j) **being a registered person required to file return for each quarter or part thereof, has not furnished returns for a continuous period of 2 tax periods i.e. 2 Quarters in this case**

### **Tax Invoice, Debit and Credit Notes**

Any registered person who issues a credit note in relation to a supply of goods or services or both shall declare details of such credit note in the return for month during which such credit note has been issued but not later than

- (a) **September 30<sup>th</sup> November** following the end of the financial year in which such supply was made **(changed w.e.f. 1.10.2022)** or
- (b) the date of furnishing of the relevant annual return, whichever is earlier, and the tax liability shall be adjusted.

### **Payment of GST**

#### **Section 49(12) (w.e.f. 1.10.2022)**

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 Integrated Goods and Services Tax Act, 2017 which may be discharged through the electronic credit ledger by a registered person or a class of registered persons, as may be prescribed.

**Rule 86B is prescribed for such purpose.**

#### **Rectification in Monthly Statement by ECO**

If the ECO discovers any discrepancy on his own not being the result of any scrutiny, inspection or enforcement proceedings, he has to rectify the statement. However, the limit for rectification is **earlier** of:

- a. **due date for filing statement for the month of September 30<sup>th</sup> November** following the end of the financial year OR
- b. Actual date of furnishing of relevant annual statement.

#### **Debit to Electronic Liability Register**

- a) all amounts payable towards tax, interest, late fee and any other amount as per return filed
- b) all amounts payable towards tax, interest, penalty and any other amount determined in a proceeding by an Assessing Authority or as ascertained by the taxable person

- c) ~~amount of tax and interest as a result of mismatch under section 42 / 43 / 50 (deleted w.e.f. 1.10.2022 as provisions of mismatch are not applicable now)~~
- d) any interest amount that may accrue from time to time

### Returns under GST

#### Section 37 of CGST Act: Furnishing details of Outward Supplies (GSTR-1) (Highlighted points w.e.f. 1.10.2022)

- The details of outward supplies of both goods and services are required to be furnished by every registered person including casual registered person except the following
 

ISD	N RTP	Composition Taxpayer	Deductor	Collector	OIDAR Supplier
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- Such person shall furnish, electronically **subject to such conditions and restrictions** and in such form and manner as may be prescribed, the details of outward supplies of goods or services or both effected during a tax period on or before the 10<sup>th</sup> day of the month succeeding the said tax period and such details **shall, subject to such conditions and restrictions, within such time and in such manner as may be prescribed, be communicated to the recipient of the said supplies.**
- The "Details of outward supplies" shall include details of Invoices / Debit and Credit Notes / Revised Invoices issued in relation to outward supplies made during any tax period.
- This statement shall be filed within **10 days** from the end of the tax period. Nil Statement can be filed from 1<sup>st</sup> day of the month following the month for which statement is to be filed.
- ~~It cannot be filed during the period from 11th day to 15th day of month succeeding the tax period.~~
- The Commissioner is empowered to notify any extension of due date of filing, for any class of persons. 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. **It is extended to 11<sup>th</sup>.**
- Such person shall, upon discovery of any error or omission therein, rectify such error or omission 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.
- No rectification of error or omission in respect of the details furnished shall be allowed after **furnishing of the return under section 39 for the month of September 30<sup>th</sup> November** following the end of the financial year to which such details pertain, or furnishing of the relevant annual return, whichever is earlier
- A registered person shall not be allowed to furnish it for a tax period, if the details of outward supplies for any of the previous tax periods has not been furnished by him.**
- Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow a registered person or a class of registered persons to furnish it, even if he has not furnished the details of outward supplies for one or more previous tax periods.**

#### Payment of GST (w.e.f. 1.10.2022)

Every registered person furnishing return shall pay to the Government, in such form and manner, and within such time, as may be prescribed

- an amount equal to the tax due taking into account inward and outward supplies of goods or services or both, input tax credit availed, tax payable and such other particulars during a month or
- 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.

**Section 39(5) of CGST Act / Rule 63 of CGST Rules: Non-Resident Taxable Persons**

Every registered NRTP shall, for every **calendar month** or part thereof, furnish a return in **Form GSTR-5**, electronically, within

- a) **13 days** after the end of a calendar month (**changed w.e.f. 1.10.2022**) or
- b) within 7 days after the last day of the period of registration whichever is earlier.

**Rectification of Omission / Incorrect Particulars****In Returns u/s 39(1) or (2) or (3) or (4) or (5)**

Time limit for Rectification: **earlier of**

- a) **Due Date of filing of return for September or second quarter 30<sup>th</sup> November** following the end of the financial year to which such details pertain (**w.e.f. 1.10.2022**)
- b) Actual date of filing of the relevant annual return

No revision is possible if omission is as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities i.e. assessee may not be able to pass on the ITC to the receiver.

**Restriction on Filing Returns**

- A registered person shall not be allowed to furnish any of the returns for a tax period if the return for any of the previous tax periods or **the details of outward supplies under section 37 i.e. Form GSTR-1 for the said tax period has not been furnished by him.** (**w.e.f. 1.10.2022**)
- **The Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions, allow a registered person or a class of registered persons to furnish the return, even if he has not furnished the returns for one or more previous tax periods or has not furnished the details of outward supplies under section 37 for the said tax period.** (**w.e.f. 1.10.2022**)

**Section 38 of CGST Act: Communication of details of inward supplies and input tax credit (w.e.f. 1.10.2022)**

- The details of outward supplies furnished by the registered persons under section 37 and of such other supplies as may be prescribed, and an **auto-generated statement** containing the details of input tax credit shall be **made available electronically to the recipients** of such supplies in such form and manner, within such time, and subject to such conditions and restrictions as may be prescribed.
- The auto-generated statement shall consist of
  - a) details of inward supplies in respect of which **Input Tax Credit** may be available to the recipient and
  - b) details of supplies in respect of which such **credit cannot be availed**, whether wholly or partly, by the recipient, on account of the details of the said supplies being furnished under section 37
    - i. by any registered person within such period of taking registration as may be prescribed or
    - ii. by any registered person, who has defaulted in payment of tax and where such default has continued for such period as may be prescribed or
    - iii. by any registered person, the output tax payable by whom in accordance with the statement of outward supplies furnished by him during such period, as may be prescribed, exceeds the output tax paid by him during the said period by such limit as may be prescribed or
    - iv. by any registered person who, during such period as may be prescribed, has availed credit of input tax of an amount that exceeds the credit that can be availed by him in accordance with clause (a), by such limit as may be prescribed or

- v. by any registered person, who has defaulted in discharging his tax liability in accordance with the provisions of section 49(12) i.e. as per Rule 86B subject to such conditions and restrictions as may be prescribed or
- vi. by such other class of persons as may be prescribed.

**Section 41: Availment of Input Tax Credit (w.e.f. 1.10.2022)**

- Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to avail the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited to his electronic credit ledger.
- The credit of input tax availed by a registered person 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.
- Where the said supplier makes payment of the tax payable in respect of the aforesaid supplies, the said registered person may re-avail the amount of credit reversed by him in such manner as may be prescribed.

**Section 47 of CGST Act:** Late fees levied for delay in filing Statement of Outward Supplies, Returns, Final Return, **TCS Return**

Lower of (a) Rs. 100 for every day during which such failure continues or (b) Rs. 5,000

**Section 48 of CGST Act: Goods and Services Tax Practitioners (GSTP)**

- A registered person may authorise an approved goods and services tax practitioner to furnish the details of outward supplies under section 37, ~~the details of inward supplies under section 38~~ and the return under section 39 or section 44 or section 45 and to perform such other functions. **(deleted w.e.f. 1.10.2022)**
- The responsibility for correctness of any particulars furnished in the return or other details filed by GSTP shall continue to rest with the registered person on whose behalf such return and details are furnished.

**Rule 60: Form and manner of ascertaining details of inward supplies**

An ~~Auto-Drafted~~ **Auto Generated Statement (changed w.e.f. 1.10.2022)** containing details of ITC shall be made available to the registered person in **Form GSTR-2B**, for every month, electronically through the common portal,

**Input Tax Credit**

**Rule 36(4) of CGST Rules: Condition to claim ITC**

Input Tax Credit shall be availed by a registered person in respect of invoices or debit notes the details of which are required to be furnished under section 37(1) only if

- a) the details of such invoices or debit notes have been furnished by the supplier in the statement of outward supplies in Form GSTR-1 or using the invoice furnishing facility and
- b) the details of **input tax credit in respect of** such invoices or debit notes have been communicated to the registered person in Form GSTR-2B under rule 60(7) **(w.e.f. 1.10.2022)**

**Time limit for availing ITC (Section 16(4))**

- A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after
  - a) the ~~due date of furnishing of the return under section 39 for the month of September 30<sup>th</sup> November~~ of following the end of financial year to which such invoice or debit note pertains (**changed w.e.f. 1.10.2022**)
  - b) furnishing of the relevant annual return, whichever is earlier.
- **Exception:** Time limit does not apply to claim for re-availing of credit that had been reversed earlier.

**Illustration:** Due date for filing return is 20<sup>th</sup> of the next month. Mr. A has not yet filed Annual Return for the financial year 2022-23 and 2023-24.

Document received	Date	Last date to claim ITC
Invoice no. 23	5.1.2023	20 <sup>th</sup> October 2023
Debit Note (pertaining to Invoice no. 23)	13.5.2023	20 <sup>th</sup> October 2024

**Circular No. 160/16/2021 (not relevant now)**

**Denial of Restricted Input Tax Credit (w.e.f. 1.10.2022)**

Input tax credit with respect to a supply can be availed only if such credit has not been restricted in the details communicated to the taxpayer under section 38 i.e. in Form GSTR-2B.

**Section 16(2): Payment for the invoice to be made within 180 days**

- Where a recipient fails to pay to the supplier of goods or services or both, the amount towards the value of supply along with tax payable thereon within **180 days** from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon.
- 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.

**Rule 37 of CGST Rules: Reversal of input tax credit in the case of non-payment of consideration (changed w.e.f. 1.10.2022)**

- A registered person, who has availed of input tax credit on any inward supply of goods or services or both, but fails to pay to the supplier thereof, the amount towards the value of such supply along with the tax payable thereon, within the time limit specified in section 16(2) i.e. 180 days, shall pay an amount equal to the input tax credit 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 the issue of the invoice.
- Where the said registered person subsequently makes the payment of the amount towards the value of such supply along with tax payable thereon to the supplier thereof, he shall be entitled to re-avail the input tax credit.

**Exceptions for Section 16(2) and Rule 37:** This condition of payment of value of supply plus tax within 180 days does not apply to:

- a) Supplies on which tax is payable under reverse charge
- b) Deemed supplies without consideration as specified in Schedule I of the said Act
- c) The value of supplies on account of any amount added as per section 15(2)(b) i.e. any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both

In case of (b) and (c), the value of supply is deemed to have been paid.

**Section 17(4) / Rule 38: Banking Company or Financial Institution or NBFC engaged in supplying services by way of accepting deposits, extending loans or advances**

Option 1	Option 2
Rule 42 / 43 (Interest or discount on Loans or Advances will be considered as Exempt Supply)	<ul style="list-style-type: none"> <li>Avail of, every month, an amount equal to 50% of the eligible ITC on inputs, capital goods and input services in that month and the rest shall lapse. <b>Balance amount of input tax credit shall be reversed in FORM GSTR-3B (w.e.f. 1.10.2022)</b></li> <li>The restriction of 50% shall not apply to the tax paid on supplies made by one registered person to another registered person having the same PAN.</li> <li>Such amount shall be credited to the electronic credit ledger.</li> <li>It shall not avail the credit of               <ol style="list-style-type: none"> <li>tax paid on inputs and input services that are used for non-business purposes</li> <li>credit attributable to the supplies specified in section 17(5) i.e. Blocked Credit</li> </ol> </li> </ul>

**Rule 42 of CGST Rules: Methodology of apportionment of credit on Inputs and Input Services and reversal thereof**

**Step 1: Compute Common Credit**

Total input tax involved on Inputs & Input Services in a tax period	<b>T</b>
Less: Input tax on inputs & input services that are intended to be used exclusively for non-business purposes	<b>(T1)</b>
Less: Input tax on inputs & input services that are intended to be used exclusively for exempt supplies	<b>(T2)</b>
Less: Input tax on inputs & input services which are ineligible for credit [blocked credits]	<b>(T3)</b>
ITC credited to Electronic Credit Ledger	<b>C1</b>
Less: ITC on inputs & input services that are intended to be used exclusively for taxable supplies including zero rated supplies	<b>(T4)</b>
Common ITC available for apportionment	<b>C2</b>

T1, T2, T3 and T4 will be determined and declared by the registered person **at the invoice level in GSTR-2 and** at summary level in Form GSTR-3B. **(deleted w.e.f. 1.10.2022)**

**GST Exemptions**

**Circular No. 177/09/2022**

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	The amount or fee charged from prospective students for entrance or admission, or for issuance of eligibility certificate to them in the process of their entrance/admission as well as the fee charged for issuance of migration certificates by educational institutions to the leaving or ex-students is <b>covered by exemption</b>
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Whether exemption covers services associated with transit cargo both <b>to and from</b> Nepal and Bhutan?	Exemption covers services associated with transit cargo both to and from Nepal and Bhutan. 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 <b>covered by the exemption</b>
Applicability of GST on sanitation and conservancy services supplied to Army and other Central and State Government departments	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 <b>not eligible for exemption</b>
Whether location charges or preferential location charges (PLC) collected in addition to the lease premium for long term lease of land constitute part of lease premium or of upfront amount charged for long term lease of land and are eligible for the same tax treatment?	Location charges or preferential location charges (PLC) paid upfront in addition to the lease premium for long term lease of land constitute part of upfront amount charged for long term lease of land and are eligible for the same tax treatment, and thus <b>eligible for exemption</b>
Applicability of GST on payment of honorarium to the Guest Anchors	Services provided by the guest anchors in lieu of honorarium <b>attract GST liability</b> . However, guest anchors whose aggregate turnover in a financial year does not exceed Rs 20 lakhs or Rs 10 lakhs shall not be liable to take registration and pay GST.
Whether the additional toll fees collected in the form of higher toll charges from vehicles not having fastag is exempt from GST	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 <b>same treatment as given to toll charges</b>
Applicability of GST on services in form of Assisted Reproductive Technology (ART) / In vitro fertilization (IVF)	The abnormality/disease/ailment of infertility is treated using ART procedure such as IVF. Services by way of IVF are also covered under the definition of health care services for the purpose of above <b>exemption</b> notification.
Whether sale of land after levelling, laying down of drainage lines etc., is taxable under GST?	As per SI no. (5) of Schedule III of the Central Goods and Services Tax Act, 2017, 'sale of land' is neither a supply of goods nor a supply of services, therefore, sale of land does not attract GST. 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. Sale of such developed land is also sale of land and does not attract GST. However, any service provided for development of land, like levelling, laying of drainage lines (as may be received by developers) <b>shall attract GST</b> at applicable rate.
Situations in which corporate recipients are liable to pay GST on renting of motor vehicles designed to carry passengers	Where the body corporate hires the motor vehicle (for transport of employees etc.) for a period of time, during which the motor vehicle shall be at the disposal of the body corporate, the body corporate <b>shall be liable to pay GST</b> on the same under RCM. It may be seen that reverse charge thus would apply on act of renting of vehicles by body corporate and in such a case, it is for the body corporate to use in the manner as it likes subject to

	<p>agreement with the person providing vehicle on rent. However, where the body corporate avails the passenger transport service for specific journeys or voyages and does not take vehicle on rent for any particular period of time, the body corporate shall not be liable to pay GST on the same under RCM.</p>
<p>Whether hiring of vehicles by firms for transportation of their employees to and from work is exempt as transport of passengers by non-air conditioned contract carriage?</p>	<p>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 defines how and when the vehicles will be operated, determining schedules, routes and other operational considerations. The said exemption would apply to passenger transportation services by non-air conditioned contract carriages falling under Heading 9964 where according to explanatory notes, transportation takes place over pre-determined route on a pre-determined schedule. The exemption <b>shall not be applicable</b> where contract carriage is hired for a period of time, during which the contract carriage is at the disposal of the service recipient and the recipient is thus free to decide the manner of usage (route and schedule) subject to conditions of agreement entered into</p>
<p>Applicability of GST on tickets of private ferry used for passenger transportation</p>	<p>This <b>exemption would apply</b> 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. The expression 'public transport' 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>

### Refund of GST

#### **Section 54(1)**

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 **2 years from the relevant date**.

Case	Relevant Date
Zero-rated supply of goods or services or both to SEZ developer or SEZ unit where a refund of tax paid is available in respect of such supplies themselves or the inputs or input services used in such supplies	Due date for furnishing of return under section 39 in respect of such supplies (w.e.f. 1.10.2022)

#### How to claim Refund

Case	Application to be filed online on Common Portal
Refund of balance in Electronic Cash Ledger	Claim in Return <b>in Form GST RFD-01(w.e.f. 1.10.2022)</b>

#### Withholding of Refund

#### **Section 54(10): Refund of unutilized ITC (Zero rated Supply or Inverted Rated Supply)**

- If such refund is due to a registered person who has defaulted in furnishing return or who is required to pay tax, interest or penalty, which has not been stayed by court, Tribunal or Appellate Authority by specified date (Last date to file appeal), officer may
  - a) withhold refund due until he has furnished the return or paid the tax, interest or penalty
  - b) deduct from refund due, any tax, interest, penalty which he is liable to pay but which remains unpaid.
- **W.e.f. 1.10.2022, this provision applies to all types of refunds.**

### **Section 54(2) / 55 of CGST Act: Refund in certain cases**

Following persons may make an application for such refund of tax paid by it on inward supplies of goods or services or both before the expiry of **2 years from the last day of the quarter in which such supply was received.** (changed w.e.f. 1.10.2022)

- a) A specialised agency of the United Nations Organisation or
- b) any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947
- c) Consulate or Embassy of foreign countries or
- d) any other person or class of persons, as notified under section 55, entitled to a refund

### **Customs**

**Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 are replaced by Customs (Import of Goods at Concessional Rate of Duty or for Specified End Use) Rules, 2022 (w.e.f. 9.9.2022)**

### **Customs (Import of Goods at Concessional Rate of Duty or for Specified End Use) Rules, 2022 (w.e.f. 9.9.2022)**

#### **Rule 2: Application**

These rules shall apply where

- a) a notification provides for the observance of these rules.
- b) an importer intends to avail the benefit of any notification and such benefit is dependent upon the use of the goods imported being covered by that notification for the manufacture of any commodity or provision of output service or being put to a specified end use.

#### **Rule 3: Definitions**

- Capital goods means goods, the value of which is capitalised in the books of account of the importer.
- Customs Automated System means the Indian Customs Electronic Data Interchange System
- Date of import means the date of the order made by the proper officer under section 47, permitting clearance of the goods.
- Information means the information provided by the importer who intends to avail the benefit of a notification.
- Jurisdictional Custom Officer means an officer of Customs of a rank equivalent to the rank of Superintendent or 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 Importer Exporter Code issued by Directorate General of Foreign Trade in other cases

- 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 and the term Manufacturer shall be construed accordingly.
- Output service means supply of service excluding after-sales service, utilizing imported goods.
- Notification includes any notification issued under section 25(1) and section 11 of the Act.
- 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.

#### **Rule 4: Importer to give one-time prior information**

- The importer shall provide one-time prior information on the common portal, in **Form IGCR-1** containing the following particulars, namely:
  - a) the name and address of the importer and his job worker, if any
  - b) the goods produced or process undertaken at the manufacturing facility of the importer or his job worker, if any, or both
  - c) 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
  - d) particulars of the notification applicable on such import
  - e) nature of output service rendered utilising the goods imported
  - f) particulars of premises intended to be used in case of unit transfer
  - g) details of the end use recipient in cases where goods imported are supplied for specified end use
  - h) the intended ports of import.
- On acceptance of the information, an **Import of Goods at Concessional Rate of Duty (IGCR) Identification Number (IIN)** shall be generated against such information. Such information may be updated on the common portal in case of a change in the details furnished in Form IGCR-1.
- 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 Deputy or Assistant Commissioner of Customs 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 inputs but for the exemption and that already paid, if any, at the time of import, along with interest, at 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 the assessable value of the goods being imported.

#### **Rule 5: Procedure to be followed**

- The importer who intends to avail the benefit of a notification shall be required to mention the IIN and continuity bond number and details while filing the Bill of Entry.
- The Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs at the custom station of importation shall allow the benefit of the notification to the importer.
- Where 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 Customs Officer

#### **Rule 6: Importer to maintain records**

Records	Monthly Statement
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The importer shall maintain an account so as to clearly indicate -

- a. quantity and value of goods imported
- b. quantity and date of receipt of the goods imported in the relevant premises
- c. 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
- d. quantity of goods sent for job work and the nature of job work carried out
- e. quantity of goods received after job work
- f. quantity of goods re-exported, if any, under rule 10
- g. quantity remaining in stock, according to bills of entry

and shall produce the said account as and when required by the Deputy or Assistant Commissioner of Customs having jurisdiction over the premises or where the goods imported shall be put to use for manufacture of goods or for rendering output service.

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**.

The importer shall submit a monthly statement on the common portal in the **Form IGCR-3** by the **tenth day** of the following month.

The importer may submit details of goods consumed in the Form IGCR-3A at any point of time, for immediate re-credit 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**

- Job work means any treatment, process or manufacture, consistent with the notification undertaken by a person on goods belonging to the importer **except gold, jewellery and articles thereof, and other precious metals or stones** and the term "job worker" shall be construed accordingly.
- The importer shall maintain a record of the goods sent for job work during the month and mention the same in the monthly statement referred to in Rule 6.
- The importer shall send the goods to the premises of the job worker under an invoice or wherever applicable, through an electronic-way bill, as specified in the CGST Act, 2017, mentioning the description and quantity of the goods.
- The maximum period for which the goods can be sent to the job worker shall be **6 months** from the date of invoice or electronic way bill.
- 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 rule 11 and 12.
- The job worker shall
  - a. maintain an account of receipt of goods, manufacturing process undertaken thereon and the waste generated, if any, during such process
  - b. produce the account details before the jurisdictional Customs Officer as and when required by the said officer
  - c. 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 electronic way bill.

#### **Rule 8: Procedure for allowing imported goods for unit transfer**

- The importer shall maintain a record of the goods sent for unit transfer during the month and mention the same in the monthly statement.
- The importer shall send the goods under an invoice or wherever applicable, through an electronic-way bill, as specified in the CGST Act, 2017 mentioning the description and quantity of the goods.

- The importer shall in relation to transfer of goods to another unit
  - a. maintain an account of receipt of goods, manufacturing process undertaken thereon and the waste generated, if any, during such process
  - b. produce the account details before the jurisdictional Customs Officer as and when required by the said officer
  - c. 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 electronic way bill.

**Rule 9: Procedure for supplying imported goods to the end use recipient**

- 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.
- The importer shall send the goods under an invoice or wherever applicable, through an electronic way bill, as specified in the CGST Act, 2017 mentioning the description and quantity of the goods.
- In case of supply for replenishment or Export against supply, the end use recipient shall
  - a) maintain an account of receipt of goods, manufacturing process undertaken thereon and the waste generated, if any, during such process
  - b) produce the account details before the jurisdictional Customs Officer as and when required by the said officer
  - c) produce the relevant details to the importer for fulfilment of the benefit under the notification.

**Rule 10: Re-export or clearance of unutilised or defective goods**

- The importer who has availed the benefit of a notification shall use the goods imported in accordance with the conditions mentioned in the concerned notification within the period and with respect to unutilised or defective goods, so imported, the importer shall have an option to either re-export or clear the same for home consumption, within the said period:
  - a) within the period specified in the notification
  - b) within six months from the date of import, where the time period is not specified in the notification  
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. (Rule 10(1))
- Any re-export of the unutilised or defective goods shall be recorded by the importer in the monthly statement by providing the details of necessary export documents. The value of such goods for re-export shall not be less than the value of the said goods at the time of import. (Rule 10(2))
- The importer who intends to clear unutilised or defective goods for home consumption shall have an option of voluntary payment of 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. (Rule 10(3))
- The importer shall have an option to clear the imported capital goods, after having been used for the specified purpose, on payment of duty equal to the difference between the duty leviable and that already paid, if any, at the time of importation, along with interest at 15% p.a. on the depreciated value allowed in straight line method:

First year	Second and Third year	Fourth and fifth year	Sixth year onwards
4% per quarter or part thereof	3% per quarter or part thereof	2.5% per quarter or part thereof	2% per quarter or part thereof

For the purpose of computing rate of depreciation under this rule for any part of a quarter, a full quarter shall be taken into account.

The depreciation shall be allowed from the date when the imported capital goods have come into use for the purpose as laid down in the notification upto the date of its clearance. (Rule 10(4))

- The importer shall have the option of voluntary payment of the duty along with interest, through the common portal and the particulars of such clearance and the duty payment shall be recorded by the importer in the monthly statement. (Rule 10(5))

### **Rule 11: Recovery of duty in certain case**

- In the event of any failure on the part of the importer to comply with the conditions mentioned in rule 10(1) or where the payment referred in rule 10(3) and 10(4) is not paid or short paid, the Deputy or Assistant Commissioner of Customs having jurisdiction over the premises 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 such goods but for the exemption and that already paid, if any, at the time of importation, along with interest at 15% p.a. for the period starting from the date of import of such 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 cases where the notification is other than one that provides an exemption benefit, an amount equal to the assessable value of the goods being imported.
- Notwithstanding anything contained in these rules in relation to removal and processing of imported goods for jobwork, 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 failure to do so, the Deputy or Assistant Commissioner of Customs shall take action in accordance with 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**

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 under clause (ii) of section 158(2) i.e. **Rs. 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.

## **Foreign Trade Policy**

FTP 2015-2020 is extended till 31.3.2023. It will apply to May 2023 Exam.

### **Important Amendment in FTP regarding exports and imports**

Invoicing, payment and settlement of exports and imports is also permissible in INR under RBI's A.P. (DIR Series) Circular No. 10 dated 11<sup>th</sup> July 2022. Accordingly, settlement of trade transactions in INR may also take place through the Special Rupee Vostro Accounts opened by AD banks in India as permitted under Regulation 7(1) of Foreign Exchange Management (Deposits) Regulations, 2016 as per following procedure:

- (a) Indian importers undertaking imports through this mechanism shall make payment in INR which shall be credited into the Special Rupee Vostro Accounts of the corresponding bank of the partner country, against the invoices for the supply of goods or services from the overseas seller / supplier.
- (b) Indian exporters, undertaking exports of goods and services through this mechanism, shall be paid the export proceeds in INR from the balances in the designated Special Vostro Account of the corresponding bank of the partner country.