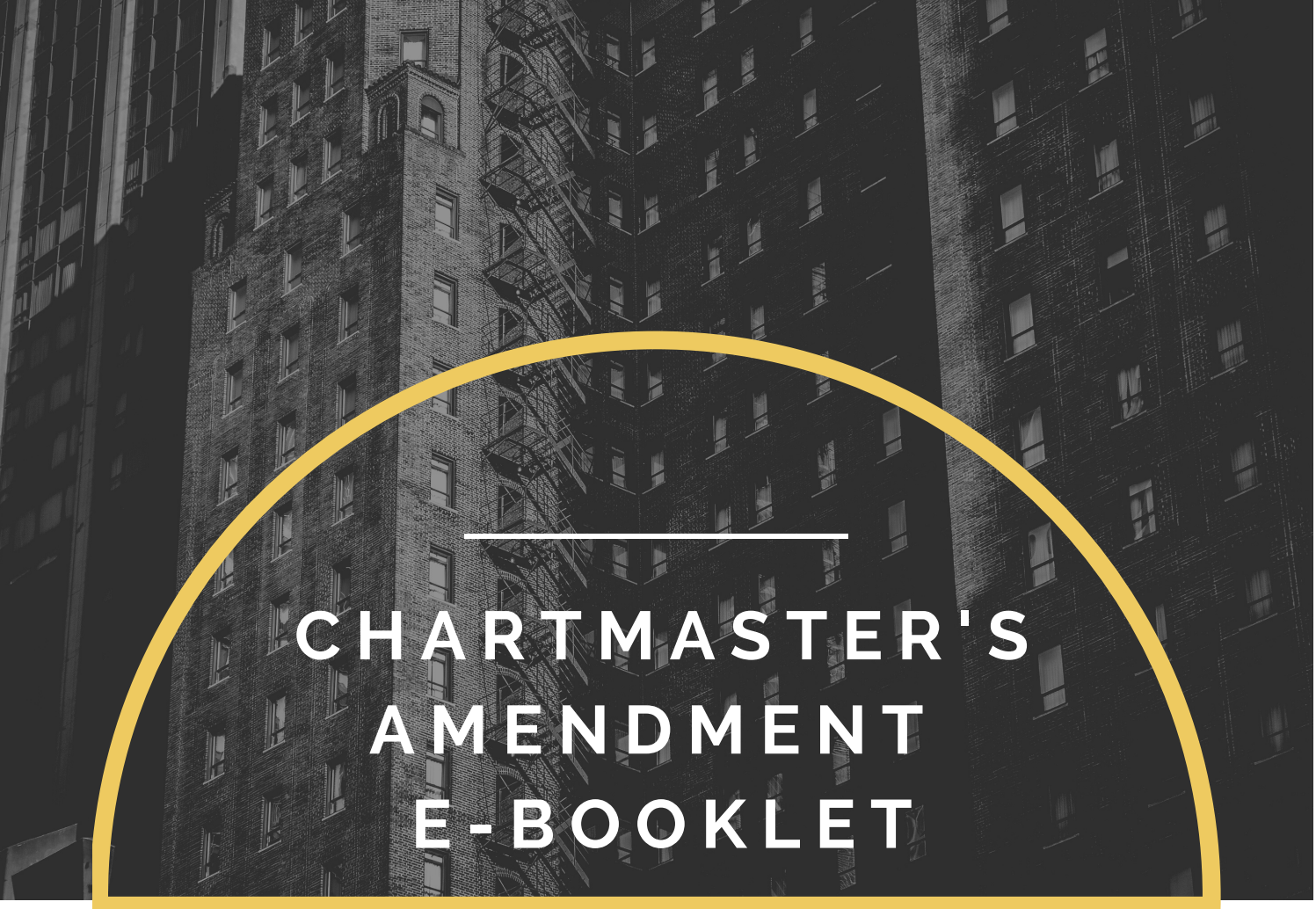


CHARTMASTER'S AMENDMENT E-BOOKLET

Statutory updates For May 2020

GST | CUSTOMS | FTP

Including Crux of amendments for best understanding & summary revision

By CA RAMESH SONI

Amendments, Circulars & Notifications

Supply

Service by way of grant of alcoholic liquor license is neither a supply of goods nor a supply of service

Notification No. 25/2019 CT (R) dated 30.09.2019/ N/No. 24/2019 IT (R) dated 30.09.2019
In terms of section 7(2) of the CGST Act, the Government has notified the following activity or transaction undertaken by the State Governments in which they are engaged as public authorities, to be treated neither as a supply of goods nor a supply of service, namely: -

"Service by way of grant of alcoholic liquor license, against consideration in the form of license fee or application fee or by whatever name it is called."

Clarification: Circular No. 121/40/2019 GST dated 11.10.2019
Circular has clarified that the above special dispensation applies only to supply of service by way of grant of liquor licenses by the State Governments as an agreement between the Centre and States and has no applicability or precedence value in relation to grant of other licenses and privileges for a fee in other situations, where GST is payable.

It may be noted that services provided by the Government to business entities including by way of grant of privileges, licences, mining rights, natural resources such as spectrum etc. against payment of consideration in the form of fee, royalty etc. are taxable under GST. Tax is required to be paid by the business entities on such services under reverse charge.

Crux of story:
Supply of service by way of grant of Alcoholic liquor license by the SG is out of scope of supply, any other services by government by way of grant of mining right, natural resources against fees or royalty are taxable under GST.

Clarification in respect of goods sent/ taken out of India for exhibition or on consignment basis for export promotion [Circular No. 108/27/2019 GST dated 18.07.2019]

Various representations have been received from the trade and industry regarding procedure to be followed in respect of goods sent/taken out of India for exhibition or on consignment basis for export promotion. Such goods sent/taken out of India crystallize into exports, wholly or partly, only after a gap of certain period from the date they were physically sent/taken out of India.

As per section 7 of the CGST Act, for any activity or transaction to be considered a supply, it must satisfy twin tests namely-
(i) it should be for a consideration by a person; and
(ii) it should be in the course or furtherance of business.

The exceptions to the above are the activities enumerated in Schedule I of the CGST Act which are treated as supply even if made without consideration. Further, section 2(21) of the IGST Act defines "supply", wherein it is clearly stated that it shall have the same meaning as assigned to it in section 7 of the CGST Act.

Section 16 of the IGST Act deals with "Zero rated supply". The provisions contained in the said section read as under:

16(1): "zero rated supply" means any of the following supplies of goods or services or both, namely: –

(a) export of goods or services or both; or

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

Therefore, it can be concluded that only such "supplies" which are either "export" or are "supply to SEZ unit / developer" would qualify as zero-rated supply.

Clarification:

It is, accordingly, clarified that the activity of sending/ taking the goods out of India for exhibition or on consignment basis for export promotion, except when such activity satisfies the tests laid down in Schedule I of the CGST Act, **do not constitute supply as the said activity does not fall within the scope of section 7 of the CGST Act as there is no consideration at that point in time. Since such activity is not a supply, the same cannot be considered as "Zero rated supply" as per the provisions contained in section 16 of the IGST Act.**

Crux of story:
Taking goods out of India for exhibition or on consignment basis for export promotion, do not constitute supply as there is no consideration at that point in time.
Further since such activity is not a supply, it cannot be considered as "Zero rated supply".

Issuance of delivery challan/tax invoice (in respect of goods sent/ taken out of India for exhibition or on consignment basis for export promotion)

Since the activity of sending/taking specified goods out of India is not a supply, doubts have been raised by the trade and industry on issues relating to maintenance of records, issuance of delivery challan/tax invoice etc. These issues have been examined and the clarification on each of these points is as under: —

SN.	Issue	Clarification
1.	Whether any records are required to be maintained by registered person for sending/taking specified goods out of India? **(Part of Accounts and Records)**	The registered person dealing in specified goods shall maintain a record of such goods as per the format at Annexure to this Circular. (**Author's comment:** Annexure not relevant for exams, hence not included – kindly refer circular for annexure) **Crux of story: Records as per the format in annexure (Annexure NA for Exam)**
2.	What is the documentation required for sending/taking the specified goods out of India? **(Part of Tax Invoice Chapter)**	(a) As clarified above, the activity of sending/taking specified goods out of India **is not a supply.** (b) The said activity is in the nature of **"sale on approval basis"** wherein the goods are sent/taken outside India for the approval of the person located abroad and it is only when the said goods are approved that the actual supply from the exporter located in India to the importer located abroad takes place. The activity of sending/taking specified goods is covered under the provisions of section 31(7) of the CGST Act read with rule 55 of CGST Rules.

SN.	Issue	Clarification
		(c) The specified goods shall be accompanied with a delivery challan issued in accordance with the provisions contained in rule 55. (d) As clarified above, the activity of sending/taking specified goods out of India is not a zero-rated supply. That being the case, execution of a bond or LUT, as required u/s 16 of the IGST Act, is not required. **Crux of story:** • **It is not supply; tax invoice not required** • **It is sale on approval and goods can be moved along with delivery challan under rule 55.**
3.	When is the supply of specified goods sent /taken out of India said to take place?	(a) The specified goods sent/taken out of India are required to be either sold or brought back within the stipulated period of six months from the date of removal as per the provisions contained in sub-section (7) of section 31 of the CGST Act. (b) The supply would be deemed to have taken place, on the expiry of six months from the date of removal, if the specified goods are neither sold abroad nor brought back within the said period. (c) If the specified goods are sold abroad, fully or partially, within the specified period of six months, the supply is effected, in respect of quantity so sold, on the date of such sale. **Crux of story:** • **When buyer accepts or sale takes place – it's a Supply and tax Invoice to be raised.** • **If buyer doesn't accept and goods come back in 6 months – it is not a supply so no tax invoice.** • **If buyer doesn't accept and goods doesn't come back in 6 months – deemed supply on expiry of 6 months and tax invoice to be raised.**
4.	Whether invoice is required to be issued when the specified goods sent/taken out of India are not brought back, either fully or partially, within the stipulated period? **(Part of Tax Invoice Chapter)**	(a) **When the specified goods sent/taken out of India have been sold fully or partially**, within the stipulated period of six months, as laid down in section 31(7), **the sender shall issue a tax invoice** in respect of such quantity of specified goods which has been sold abroad, in accordance with the provisions contained in section 12 and section 31 read with rule 46 of the CGST Rules. (b) When the specified goods sent/taken out of India have neither been sold nor brought back, either fully or partially, within the stipulated period of six months, as laid down in section 31(7), the sender shall issue a tax invoice on the date of expiry of six months from the date of removal, in respect of such quantity of specified goods which have neither been sold nor brought back, in accordance with the provisions contained in section 12 and section 31 read with rule 46 of the CGST Rules.

SN.	Issue	Clarification
		Crux of story: (Refer crux in third point)
5.	Whether the refund claims can be preferred in respect of specified goods sent/taken out of India but not brought back? **(Part of: Refunds)**	(a) As clarified in para 5 above, the activity of sending/taking specified goods out of India is not a zero-rated supply. That being the case, the sender of goods cannot prefer any refund claim when the specified goods are sent/ taken out of India. (b) It has further been clarified in answer to question no. 3 above that the supply would be deemed to have taken place: (i) on the date of expiry of six months from the date of removal, if the specified goods are neither sold nor brought back within the said period; or (ii) on the date of sale, in respect of such quantity of specified goods which have been sold abroad within the specified period of six months. (c) **It is clarified accordingly** that the sender can prefer refund claim even when the specified goods were sent/ taken out of India without execution of a bond or LUT, if he is otherwise eligible for refund as per the provisions contained in sub-section (3) of section 54 the CGST Act read with sub-rule (4) of rule 89 of the CGST Rules, in respect of zero rated supply of goods after he has issued the tax invoice on the dates as has been clarified in answer to the question no. 4 above. It is further clarified that refund claim cannot be preferred under rule 96 of CGST Rules as supply is taking place at a time after the goods have already been sent/taken out of India earlier.
		Crux of story: • **On sending the Goods, it was not ZRS, hence no question of execution of LUT/Bond.** • **Still the supply is eligible for Zero rating and eligible for refund u/s 54(3) r/w rule 89(4) i.e. refund of accumulated ITC.** • **However, option of refund under Rule 96 i.e. refund of IGST on goods exported shall not be available to taxpayer.**

The above position is explained by way of illustrations below:

Illustrations:

(i) **M/s ABC sends 100 units of specified goods out of India. The activity of merely sending/taking such specified goods out of India is not a supply.**

- No tax invoice is required to be issued in this case, but the specified goods shall be accompanied with a delivery challan issued in accordance with the provisions contained in rule 55 of the CGST Rules.
- In case the entire quantity of specified goods is brought back within the stipulated period of six months from the date of removal, no tax invoice is required to be issued as no supply has taken place in such a case.

- In case, however, the entire quantity of specified goods is neither sold nor brought back within six months from the date of removal, a tax invoice would be required to be issued for entire 100 units of specified goods in accordance with the provisions contained in section 12 and section 31 read with rule 46 within the time period stipulated under section 31(7) of the CGST Act.

(ii) **M/s ABC sends 100 units of specified goods out of India. The activity of sending/taking such specified goods out of India is not a supply.**

- No tax invoice is required to be issued in this case, but the specified goods shall be accompanied with a delivery challan issued in accordance with the provisions contained in rule 55 of the CGST Rules.
- If 10 units of specified goods are sold abroad say after one month of sending/taking out and another 50 units are sold say after two months of sending/taking out, a tax invoice would be required to be issued for 10 units and 50 units, as the case may be, at the time of each of such sale in accordance with the provisions contained in section 12 and section 31 of the CGST Act read with rule 46 of the CGST Rules.
- If the remaining 40 units are not brought back within the stipulated period of six months from the date of removal, a tax invoice would be required to be issued for 40 units in accordance with the provisions contained in section 12 and section 31 of the CGST Act read with rule 46 of the CGST Rules.
- Further, M/s ABC may claim refund of accumulated input tax credit in accordance with the provisions contained in sub-section (3) of section 54 of the CGST Act read with sub-rule (4) of rule 89 of the CGST Rules in respect of zero-rated supply of 60 units.

Customs

Clarification regarding applicability of Notification No. 45/2017 Cus dated 30.06.2017 on goods which were exported earlier for exhibition purpose/consignment basis [Circular No. 21/2019 Cus dated 24.07.2019]

Notification No. 45/2017 Customs dated 30 June 2017 provides exemption from so much of the duty of customs leviable thereon which is specified in the First Schedule to the Customs Tariff Act, 1975, and the whole of the integrated tax, compensation cess leviable thereon respectively under sub-section (7) and (9) of section 3 of the said Customs Tariff Act on certain kinds of goods , i.e. goods exported under claim for drawback, under claim for refund of IGST paid on export, under duty exemption schemes etc. CBIC has clarified the applicability of exemptions mentioned in Notification No. 45/2017-Customs dated 30.06.2017, specifically the situation where goods are exported under bond without payment of integrated tax, to re-import of goods which had been earlier exported either for participation in exhibition or on consignment basis.

It has clarified vide Circular No. 108/27/2019 GST dated 18.07.201912 that the activity of sending / taking the specified goods (i.e. goods sent / taken out of India for exhibition or on consignment basis for export promotion except the activities satisfying the tests laid down in Schedule I of the CGST Act, 2017) out of India do not constitute supply within the scope of Section 7 of the CGST Act as there is no consideration at that point in time. Since such activity is not a supply, the same cannot be considered as 'zero rated supply' as per the provisions contained in Section 16 of the IGST Act, 2017. Also, there is no requirement of filing any LUT/bond as required under section 16 of IGST Act, 2017 for such activity of taking specified goods out of India.

Therefore, no integrated tax is required to be paid for specified goods at the time of taking these out of India, the activity being not a supply, hence the situation of Notification No. 45/2017-Customs dated

30.06.2017 (goods exported under bond without payment of integrated tax) requiring payment of integrated tax at the time of re-import of specified goods in such cases is not applicable.
It is clarified that such cases will fall more appropriately under residuary entry 13 of the said Notification and thus the exemption is available.

Further, this clarification is also applicable to cases where exports have been made to related or distinct persons or to principals or agents, as the case may be, for participation in exhibition or on consignment basis, but, such goods exported are returned after participation in exhibition or the goods are returned by such consignees without approval or acceptance, as the case may be, the basic requirement of 'supply' as defined cannot be said to be met as there has been no acceptance of the goods by the consignees. Hence, re import of such goods after return from such exhibition or from such consignees will be covered under residual entry of the Notification No. 45/2017 dated 30.06.2017, provided re-import happens before six months from the date of delivery challan.

Levy of GST on the service of display of name or placing of name plates of the donor in the premises of charitable organisations receiving donation or gifts from individual donors [Circular No. 116/35/2019 GST dated 11.10.2019]

Representations have been received seeking clarification

- whether GST is applicable on donations or gifts received from individual donors by charitable organisations involved in advancement of religion, spirituality or yoga
- which is acknowledged by them by placing name plates in the name of the individual donor.

Individual donors provide financial help or any other support in the form of donation or gift to institutions such as religious institutions, charitable organisations, schools, hospitals, orphanages, old age homes etc. The recipient institutions place a name plate or similar such acknowledgement in their premises to express the gratitude. When the name of the donor is displayed in recipient institution premises, in such a manner, which can be said to be an expression of gratitude and public recognition of donor's act of philanthropy(generosity) and is not aimed at giving publicity to the donor in such manner that it would be an advertising or promotion of his business, **then it can be said that there is no supply of service for a consideration (in the form of donation).**
There is no obligation (quid pro quo) on part of recipient of the donation or gift to do anything (supply a service). Therefore, there is no GST liability on such consideration.

Some examples of cases where there would be no taxable supply are as follows: -

(i) "Good wishes from Mr. Rajesh" printed underneath a digital blackboard donated by Mr. Rajesh to a charitable Yoga institution.
(ii) "Donated by Smt. Malati Devi in the memory of her father" written on the door or floor of a room or any part of a temple complex which was constructed from such donation.

In each of these examples, it may be noticed that there is no reference or mention of any business activity of the donor which otherwise would have got advertised. Thus, where all the three conditions are satisfied namely

- the gift or donation is made to a charitable organization,
- the payment has the character of gift or donation and
- the purpose is philanthropic (i.e., it leads to no commercial gain) and not advertisement,
- **GST is not leviable.**

Crux of Story:

1. **If three tests satisfied** (donation to charitable organisation, payment has character of donation and no commercial gain) – **Activity will not fall within scope of supply hence no GST.**
2. **All other cases** – Where the name plate is basically for promoting business of donor – **Activity will fall in supply and GST is leviable**

Registration

Bank Account details may be furnished after obtaining registration certificate [New rule 10A inserted and rule 21 of the CGST Rules amended] [Notification No. 31/2019 CT dated 28.06.2019]

While applying for registration on GST portal, a person is required to furnish the details of his bank account. This requirement has now been relaxed to a limited extent, by inserting a new rule 10A to the CGST Rules. In pursuance to the same, the registered person is allowed to furnish information with respect to details of bank account, or any other information, as may be required on the common portal in order to comply with any other provision, soon after obtaining certificate of registration and a GSTIN, but not later than 45 days from the date of grant of registration or the date on which the return required under section 39 is due to be furnished, whichever is earlier.

This relaxation is not available for those who have been granted registration as TDS deductor/ TCS collector under rule 12 or who have obtained suo-motu registration under rule 16.

In other words, a registered person has an option to give his bank account details after obtaining registration, within 45 days from the date of grant of registration or the due date of furnishing return, whichever is earlier.

However, if a person violates the provisions of rule 10A, his GST registration is liable to be cancelled [Rule 21].

Crux of story:

1. **Maximum time limit to furnish bank account details: Earlier of:**
   (a) 45 days from the date of grant of registration
   (b) the date on which the return required under section 39 is due to be furnished
2. **Non-furnishing of bank account details:** PO may cancel registration (section 29(2) r/w rule 21.
3. **Relaxation of furnishing bank account post registration not available** to TDS deductor/TCS collector and the person whose registration was done by Po suo-moto (i.e. they should furnish a/c details at the time of registration).

Manner of furnishing the details of State/UT in application for registration by a TDS deductor in a State/UT where he doesn't have a physical presence [Rule 12(1A) of the CGST Rules] [Notification No. 33/2019 CT dated 18.07.2019]

Hitherto, there was specific provision for furnishing details of State/ UT in the application for registration by a TCS collector in a State where he doesn't have a physical presence, prescribed under rule 12(1A).

Rule 12(1A) has been amended to extend to said provisions to a TDS deductor also.

Resultantly, when a person is applying for registration to deduct TDS in a State/UT where he does not have a physical presence, he shall mention name of said State/UT in Part A of prescribed application form for registration.

Further, the name of the State/UT in which his principal place of business is located is to be mentioned in Part B of the application form. States/UTs mentioned in Part A and Part B of the application form may be different.

Crux of story:
Now after amendment in rule 12, if TDS deductor is required to take registration in a state/UT where he doesn't have physical presence, they may mention in

1. **Part A of Form GST REG 07:** State/UT name where the registration is sought
2. **Part B of Form GST REG 07:** State/UT name where the the principal place of business is located.

Earlier this facility was available only to TCS collector, now made available to TCS deductors as well.

Meaning of not making taxable supply during suspension of registration clarified. Registered person required to issue revised tax invoice and file first return for supplies during suspension period [Rule 21A of the CGST Rules] [Notification No. 49/2019 CT dated 09.10.2019]

Rule 21A provides that once a registered person has applied for cancellation of registration or the proper officer seeks to cancel his registration, his registration shall remain suspended during pendency of the proceedings relating to cancellation of registration filed. Such person shall not make any taxable supply during the period of suspension and shall not be required to file any return [Rule 21A (3)].
An explanation has been inserted to this sub-rule (3) to rule 21A clarifying that the expression "**shall not make any taxable supply**" shall mean that the registered person **shall not issue a tax invoice** and, accordingly, not charge tax on supplies made by him during the period of suspension.
Further, a new sub-rule (5) has been inserted in said rule to provide that where any order having the effect of revocation of suspension of registration has been passed, the provisions of section 31(3)(a) [revised tax invoices] and section 40 [first return] in respect of the supplies made during the period of suspension and the procedure specified therein shall apply.

Crux of story:
Rule 21A relating to suspension of registration has been amended to provide that the meaning of expression "shall not make taxable supply" shall mean registered person shall not issue a tax Invoice.
Hence it is clarified that supply can be made during suspension however tax cannot be charged/collected by issuing Tax Invoice.
Also, if order of revocation of suspension of registration is passed then the person shall be treated as newly registered person and he can collect the tax by issuing revised tax Invoice (u/s 31(3)(a)) and also file first return (section 40).

Exemptions from GST

Amendments relating to exemptions to supply of specified services

Notification No. 12/2017 CT (R) dated 28.06.2017 (hereinafter referred to as "exemption notification") which grants exemption from CGST to intra-State supply of specified services, has been amended vide Notification No. 13/2019 CT (R) dated 31.07.2019 and Notification No. 21/2019 CT (R) dated 30.9.2019, as under-

Entry No	Description of services (Prior to amendment)	Description of services (Post amendment)	Remarks, if any
Entry 7 amended	Services provided by the CGS/SG/UT/LA to a business entity with Aggregate turnover **upto Rs 20 lakhs (Rs 10 lakhs in special category states) in the preceeding FY**	Services provided by the CG/SG/UT/LA to a business entity with an aggregate turnover of up to **such amount in the preceding FY as makes it eligible for exemption from registration under the CGST Act, 2017.**	Exemption available under these entries to a business entity is restricted provided said business entity is not eligible for registration in the PFY. Accordingly, the threshold limit provided under these entries was aligned with the threshold limit for registration provided earlier [Rs. 20/10 lakhs – SCS]. Consequent to amendment in the threshold limit for registration prescribed for different States/UTs, said entries have also been amended suitably so as to provide exemption to a business entity with an ATO up to such amount in the PFY as makes it eligible for exemption from registration.
Entry 45 amended	Services provided by- (a) an arbitral tribunal to (i) any person other than a business entity or (ii) a business entity with an aggregate turnover **up to Rs. 20 lakhs (Rs. 10 lakhs in the case of SCS in the preceding FY**; (iii) CG/SG/UT/LA/governmental authority/government entity	Services provided by- (a) an arbitral tribunal to (i) any person other than a business entity or (ii) a business entity with an aggregate turnover **up to such amount in the preceding FY as makes it eligible for exemption from registration under the CGST Act, 2017**; (iii) CG/SG/UT/LA/governmental authority/ government entity	
	(b) a partnership firm of advocates or an individual as an advocate other than a senior advocate, by way of legal services to- (i) an advocate or partnership firm of advocates providing legal services; (ii) any person other than a business entity; or (iii) **a business entity with an ATO up 20/**	(b) a partnership firm of advocates or an individual as an advocate other than a senior advocate, by way of legal services to- (i) an advocate or partnership firm of advocates providing legal services; (ii) any person other than a business entity; or (iii) **a business entity with an ATO up to such amount in the PFY as**	**Crux of story:** • **Business entity (BE) with ATO(PFY) up to such amount as makes it exempt from registration – Exempt, NO GST.** • **Business entity with ATO(PFY) Exceeding registration limits – No exemption, GST payable.**

Entry No	Description of services (Prior to amendment)	Description of services (Post amendment)	Remarks, if any
	10 lakhs (in case of SCS) in PFY (iv) CG/SG/UT/LA/governmental authority/ government entity	**makes it eligible for exemption from registration under the CGST act;** or (iv) CG/SG/UT/LA/governmental authority/ government entity	
	(c) a senior advocate by way of legal services to- (i) any person other than a business entity; or (ii) **a business entity with an ATO up 20 lakhs/ 10 lakhs (in case of SCS)** or (iii) the CG/SG/UT/LA/Governmental Authority or Government Entity.	(c) a senior advocate by way of legal services to- (i) any person other than a business entity; or (ii) **a business entity with an ATO up to such amount in the preceding financial year as makes it eligible for exemption from registration under the CGST act;** or (iii) the CG/SG/UT/LA/ Governmental Authority or Government Entity.	
Entry 14 Amended	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 Rs. 1,000 per day** or equivalent.	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.	Earlier, accommodation services were exempt only where value of supply (VOS) per unit per day was less than Rs. 1,000/-, **Amendment,** exemption has also been extended in a case where VOS per unit per day is Rs. 1,000/- i.e., **Crux of story: Accommodation services are taxable only where VOS per unit per day exceeds Rs. 1,000/-.**
Entry 19A Amended	Services by way of transportation of goods by an aircraft from customs station of clearance in India to a place outside India upto **30.09.19.**	Services by way of transportation of goods by an aircraft from customs station of clearance in India to a place outside India upto **30.09.2020.**	The exemption which was earlier available upto 30.09.2019 has now been **extended upto 30.09.2020.**
Entry 19B Amended	Services by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India upto **30.09.19.**	Services by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India upto **30.09.2020.**	The exemption which was earlier available upto 30.09.2019 has now been **extended upto 30.09.2020.**

Entry No	Description of services (Prior to amendment)	Description of services (Post amendment)	Remarks, if any
Entry 22 Amended	Services by way of giving on hire – (a) to a state transport undertaking (STU), a motor vehicle meant to carry more than 12 passengers; or (b) to a goods transport agency, a means of transportation of goods. (c) motor vehicle for transport of students, faculty and staff, to a person providing services of transportation of students, faculty and staff to an educational institution providing services by way of pre-school education and education upto higher secondary school or equivalent, have also been exempted from CGST	Services by way of giving on hire (a) to a state transport undertaking, a motor vehicle meant to carry more than 12 passengers; or **(aa) to a local authority, an Electrically operated vehicle meant to carry more than twelve passengers; or** **Explanation. —For the purposes of this entry, "Electrically operated vehicle" means vehicle falling under Chapter 87 in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) which is run solely on electrical energy derived from an external source or from one or more electrical batteries fitted to such road vehicle.** (b) ……. Same (c) ……. Same	With a view to encourage the extensive usage of environment friendly electric vehicles, **GST exemption has been extended to hiring of electric buses by the local authorities.**

Other Amendments or New Entries in Exemption

Entry No. 9AA. Services provided by and to FIFA & its subsidiaries for FIFA U-17

Services provided by and to Fédération Internationale de Football Association (FIFA) and its subsidiaries directly or indirectly related to any of the events under FIFA U-17 Women's World Cup 2020 to be hosted in India.

Provided that Director (Sports), Ministry of Youth Affairs and Sports certifies that the services are directly or indirectly related to any of the events under FIFA U-17 Women's World Cup 2020.

Crux of story: Supply of services (certified) directly or indirectly to FIFA or by FIFA exempted.

Entry No. 82A: FIFA

Services by way of right to admission to the events organised under FIFA U-17 Women's World Cup 2020.

Crux of story: Entry ticket to FIFA world CUP 2020 also exempted

Entry No. 24B: Warehousing services

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.

Crux of story: Minor forest produce was already exempted vide entry 24A, now storage and warehousing of additional products exempted vide entry no 24B

Entry No. 29B: Life insurance services – CAPF

Services of life insurance provided or agreed to be provided by the Central Armed Police Forces (under Ministry of Home Affairs) Group Insurance Funds to their members under the Group Insurance Schemes of the concerned Central Armed Police Force.

Crux of story: Life insurance services provided to members of Army, Navy, Air force & costal guard under group insurance fund was exempted, now the same has been exempted for CAPF also.

Entry No. 35: General Insurance Business

Services of general insurance business provided under following schemes –

(a) **Hut** Insurance Scheme
(b) **Cattle** Insurance under Swarna jaynti Gram Swarozgar Yojna (earlier known as Integrated Rural Development Programme)
(c) Scheme for Insurance of **Tribals**
(d) Janata **Personal** Accident Policy and **Gramin Accident** Policy
(e) Group Personal **Accident Policy for Self-Employed Women**
(f) Agricultural **Pumpset and Failed Well** Insurance
(g) premia collected on **export credit** insurance;
(h) Restructured **Weather Based Crop** Insurance Scheme (RWCIS) or the Modified National Agricultural Insurance Scheme, approved by the GOI & implemented by the Ministry of Agriculture;
(i) Jan **Arogya** Bima Policy;
(j) Pradhan Mantri **Fasal BimaYojana** (PMFBY) (Rashtriya Krishi Bima Yojana);
(k) Pilot Scheme on **Seed Crop** Insurance;
(l) Central Sector Scheme on **Cattle Insurance**;
(m) **Universal Health Insurance** Scheme;
(n) Rashtriya Swasthya Bima Yojana;
(o) **Coconut Palm Insurance** Scheme;
(p) Pradhan Mantri Suraksha BimaYojna;
(q) Niramaya Health Insurance Scheme implemented by the Trust constituted under the provisions of the National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999.
(r) **Bangla Shasya Bima (new addition)**

Crux of story: General insurance services under Bangla Shasya Bima has been exempted.

Clarification regarding applicability of GST on delayed payment charges in case of late payment of Equated Monthly Instalments (EMI) [Circular No. 102/21/2019-GST dated 28.06.2019]

Various representations have been received from the trade and industry regarding applicability of GST on delayed payment charges in case of late payment of Equated Monthly Instalments (EMI). An EMI is a fixed amount paid by a borrower to a lender at a specified date every calendar month. EMIs are used to pay off both interest and principal every month, so that over a specified period, the loan is fully paid off along with interest. In cases where the EMI is not paid at the scheduled time, there is a levy of additional/penal interest on account of delay in payment of EMI.

Issue:
Whether GST is applicable on additional / penal interest on the overdue loan?
Whether such penal interest would be exempt under Entry 27 of exemption notification or it would be taxable treating it as consideration for liquidated damages [amounting to a separate taxable supply of services under GST covered under entry 5(e) of Schedule II of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the CGST Act) i.e. "agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act"].?

Clarification: As per the provisions of section 15(2)(d) of the CGST Act, the value of supply shall include interest or late fee or penalty for delayed payment of any consideration for any supply. Entry 27 of exemption notification, inter alia, exempts the services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services). Here, interest means interest payable in any manner in respect of any moneys borrowed/debt incurred (including a deposit, claim or other similar right or obligation), but does not include any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilised.

There are two transaction options involving EMI that are prevalent in the trade. In view of the provisions of law discussed in preceding para, these two options, along with the GST applicability on them, have been explained with the help of illustrations as under –

Illustration – 1: X sells a mobile phone to Y. The cost of mobile phone is Rs. 40,000/-. However, X gives Y an option to pay in installments, Rs. 11,000/- every month before 10th day of the following month, over next four months (Rs. 11,000/- × 4 = Rs. 44,000/-). As per the contract, if there is any delay in payment by Y beyond the scheduled date, Y would be liable to pay additional/ penal interest amounting to Rs. 500/- per month for the delay.
In some instances, X is charging Y Rs. 40,000/- for the mobile and is separately issuing another invoice for providing the services of extending loans to Y, the consideration for which is the interest of 2.5% per month and an additional/ penal interest amounting to Rs. 500/- per month for each delay in payment.
In this case, the amount of penal interest is to be included in the value of supply [in terms of section 15(2)(d)]. The transaction between X and Y is for supply of taxable goods i.e. mobile phone. Accordingly, the penal interest would be taxable as it would be included in the value of the mobile, irrespective of the manner of invoicing

Illustration – 2: X sells a mobile phone to Y. The cost of mobile phone is Rs 40,000/-. Y has the option to avail a loan at interest of 2.5% per month for purchasing the mobile from M/s. ABC Ltd. The terms of the loan from M/s. ABC Ltd. allows Y a period of four months to repay the loan and an additional/ penal interest @ 1.25% per month for any delay in payment.

Here, the additional/ penal interest is charged for a transaction between Y and M/s. ABC Ltd., and the same is getting covered under exemption Entry 27. Consequently, in this case the 'penal interest' charged thereon on a transaction between Y and M/s. ABC Ltd. would not be subject to GST as the same would be covered under said exemption entry. However, any service fee/ charge or any other charges, if any, are levied by M/s. ABC Ltd. in respect of the transaction related to extending deposits, loans or advances does not qualify to be interest as defined in exemption notification, and accordingly will not be exempt.

Moreover, the value of supply of mobile by X to Y would be Rs. 40,000/- for the purpose of levy of GST.

It is further clarified that the transaction of levy of additional/penal interest does not fall within the ambit of entry 5(e) of Schedule II of the CGST Act i.e. "agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act", as this levy of additional/penal interest satisfies the definition of "interest" as contained in notification No. 12/2017- Central Tax (Rate) dated 28.6.2017.

It is further clarified that any service fee/charge or any other charges that are levied by M/s ABC Ltd. in respect of the transaction related to extending deposits, loans or advances does not qualify to be interest as defined in notification No. 12/2017- Central Tax (Rate) dated 28.6.2017, and accordingly will not be exempt.

Crux of story:

1. **If seller himself gives EMI – Additional/penal interest will form part of VOS u/s 15(2)(d) of CGST act.**
2. **If third party (finance company) gives loan – Such interest (including penal interest) exempt under entry 27 of exemption notification 12/2017**

Clarification on issues related to GST on monthly subscription/ contribution charged by a Residential Welfare Association from its members [Circular No. 109/28/2019 GST dated 22.07.2019]

A number of issues have been raised regarding the GST payable on the amount charged by a Residential Welfare Association for providing services and goods for the common use of its members in a housing society or a residential complex. The same have been examined and are being clarified below.

Issue	Clarification
Are the maintenance charges paid by residents to the Resident Welfare Association (RWA) in a housing society exempt from GST and if yes, is there an upper limit on the amount of such charges for the exemption to be available?	Supply of service by RWA (unincorporated body or a non- profit entity registered under any law) to its own members by way of reimbursement of charges or share of contribution up to an amount of Rs. 7,500/- per month per member for providing services and goods for the common use of its members in a housing society or a residential complex are exempt from GST.
	Crux: SOS by RWA to its members for contribution up to Rs. 7,500 per month per member are exempt.

<table>
<tr><th>Issue</th><th>Clarification</th></tr>
<tr><td>A RWA has aggregate turnover of Rs. 20 lakhs or less in a FY. Is it required to take registration and pay GST on maintenance charges if the amount of such charges is more than Rs. 7500/- per month per member?</td><td>No. If aggregate turnover of an RWA does not exceed Rs.20 Lakh in a FY, it shall not be required to take registration and pay GST even if the amount of maintenance charges exceeds Rs. 7,500/- per month per member.
RWA shall be required to pay GST on monthly subscription/ contribution charged from its members, only if such subscription is more than Rs. 7,500/- per month per member and the annual aggregate turnover of RWA by way of supplying of services and goods is also Rs. 20 lakhs or more.
<table>
<tr><th>Annual turnover of RWA</th><th>Monthly maintenance charge</th><th>Whether exempt?</th></tr>
<tr><td rowspan="2">More than Rs. 20 lakhs (RP)</td><td>More than Rs. 7,500/-</td><td>No (taxable)</td></tr>
<tr><td>Rs. 7,500/- or less</td><td>Yes (Exempt)</td></tr>
<tr><td rowspan="2">Rs. 20 lakhs or less (URP)</td><td>More than Rs.7,500/-</td><td>Yes (Exempt)</td></tr>
<tr><td>Rs. 7500/- or less</td><td>Yes (Exempt)</td></tr>
</table></td></tr>
<tr><td>Is the RWA entitled to take ITC of GST paid on input and services used by it for making supplies to its members and use such ITC for discharge of GST liability on such supplies where the amount charged for such supplies is more than Rs. 7,500/- per month per member?</td><td>RWAs are entitled to take ITC of GST paid by them on capital goods (generators, water pumps, lawn furniture etc.), goods (taps, pipes, other sanitary/hardware fillings etc.) and input services such as repair and maintenance services.
Crux: Yes, if registered. ITC is available of Inputs, IS & CGs.</td></tr>
<tr><td>Where a person owns 2 or more flats in the housing society/residential complex, whether the ceiling of Rs. 7,500/- per month per member on the maintenance for the exemption to be available shall be applied per residential apartment or per person?</td><td>As per general business sense, a person who owns 2 or more residential apartments in a housing society/residential complex shall normally be a member of the RWA for each residential apartment owned by him separately. The ceiling of Rs. 7,500/- per month per member shall be applied separately for each residential apartment owned by him.
For example, if a person owns 2 residential apartments in a residential complex and pays Rs. 15,000/- per month as maintenance charges towards maintenance of each apartment to the RWA (Rs. 7,500/- per month in respect of each residential apartment), the exemption from GST shall be available to each apartment.
Crux: The ceiling of Rs. 7,500/- per month per member shall be applied separately for each residential apartment owned by him.</td></tr>
</table>

Issue	Clarification
How should the RWA calculate GST payable where the maintenance charges exceed Rs. 7500/- per month per member? Is the GST payable only on the amount exceeding Rs. 7500/- or on the entire amount of maintenance charges?	The exemption from GST on maintenance charges charged by a RWA from residents is available only if such charges do not exceed Rs. 7500/- per month per member. In case the charges exceed Rs. 7500/- per month per member, the entire amount is taxable. For example, if the maintenance charges are Rs. 9000/- per month per member, GST @18% shall be payable on the entire amount of Rs. 9000/- and not on [Rs. 9000 - Rs. 7500] = Rs. 1500/-.
	Crux: If amount exceeds 7500, GST shall be payable on the entire amount

Clarification on applicability of GST exemption to the DG Shipping approved maritime courses conducted by Maritime Training Institutes of India

A representation has been received regarding applicability of GST exemption to the Directorate General of Shipping approved maritime courses conducted by the Maritime Training Institutes of India. The same has been examined and following is clarified

Under Entry 66 of the exemption notification, services provided by educational institutions to its students, faculty and staff are exempt only when such institution falls under the definition of educational institution provided under the exemption notification. Educational institution has been defined to mean, inter alia, an institution providing services by way of education as a part of a curriculum for obtaining a qualification/degree recognized by law.

In this regard, it has been clarified that Maritime Training Institutes and their training courses are approved by the Director General of Shipping which are duly recognised under the provisions of the Merchant Shipping Act, 1958 read with the Merchant Shipping (standards of training, certification and watch-keeping for Seafarers) Rules, 2014. Therefore, Maritime Training Institutes are educational institutions under GST Law and the courses conducted by them are exempt from levy of GST subject to fulfilment of other conditions specified under entry 66 of the exemption notification

Crux of story: Maritime institutes are educational institutions under GST Law and the courses conducted by them are exempt from levy of GST

Clarification on the effective date of insertion of explanation in notification [Circular No. 120/39/2019 GST dated 11.10.2019]

Section 11(3) of CGST Act provides that the Government may insert an explanation in any notification issued under section 11, for the purpose of clarifying its scope or applicability, at any time within 1 year of issue of the notification and every such explanation shall have effect as if it had always been the part of the first such notification.

It is hereby clarified that the explanation having been inserted under section 11(3) of the CGST Act, is effective from the inception of the entry in notification and not from the date from which the notification (that inserted said explanation) becomes effective.

For example, the principal Notification No. 11/2017 CT (R) dated 28.06.2017 came into force with effect from 1.07.2017. Thereafter, a new entry - Entry no. 3(vi) is inserted w.e.f. 21.09.2017. Subsequently,

an explanation is also inserted with respect to entry no. 3(vi) on 26.07.2018. Although the effective date mentioned in the notification which inserted said explanation is 27.07.2018, said explanation will be effective from the inception of entry in notification i.e. 21.09.2017 and not 27.07.2018.

Crux of story:
If Explanation inserted in notification at any time within 1 year of issue of the notification: it will have retrospective effect.

Charge of GST

Amendments in reverse charge notifications

Payment of tax under reverse charge made optional in case of supply of services by an author by way of transfer/permitting the use or enjoyment of a copyright relating to original literary work to a publisher

Earlier, tax on supply of services by an author, music composer, photographer, artist by way of transfer or permitting the use or enjoyment of a copyright relating to original literary, dramatic, musical or artistic works, was payable under reverse charge by publisher, music company, producer. This entry has been substituted as under-

Sl. No.	Category of supply of services	Supplier of service	Recipient of service
9	Supply of services by ~~**an Author**~~, music composer, photographer, artist or the like by way of transfer or permitting the use or enjoyment of a copyright covered under clause (a) of sub- section (1) of section 13 of the Copyright Act, 1957 relating to original dramatic, musical or artistic works to a music company, producer or the like.	~~**Author**~~ or Music composer, photographer, artist, or the like	~~**Publisher**~~, Music company, producer or the like, located in the taxable territory

New entry has been inserted for transfer of copyright by an author to publisher.

Sl. No.	Category of supply of services	Supplier of service	Recipient of service
9A	Supply of services by an author by way of transfer or permitting the use or enjoyment of a copyright covered under clause (a) of sub - section (1) of section 13 of the Copyright Act, 1957 relating to original literary works to a publisher	Author	Publisher located in the taxable territory

However, an author can choose to pay tax under forward charge if-

(i) **he has taken registration under the CGST Act and filed a declaration**, in the form Annexure I, that he exercises the option to pay CGST on the said service under forward charge in accordance with section 9(1) of the CGST Act and to comply with all the provisions as they apply to a person liable for paying the tax in relation to the supply of any goods and/or services and that he shall not withdraw the said option within a period of 1 year from the date of exercising such option;

(ii) **Author makes a declaration** as prescribed in Annexure II **on the invoice** issued by him in form **GST Inv–I** to the publisher.

Crux of story: Authors have now been put in a separate entry 9A and given an option to pay tax under FCM.
If Author Choses to pay tax under FCM: he shall:
1. **File declaration in Form Annexure I with Jurisdictional CGST/SGST commissioner that he is opting to pay tax under FCM.**
2. **Make declaration as prescribed in Annexure II on the invoice issued by him in form GST INV-I to the publisher.**

New services under reverse charge mechanism

Sl. No.	Category of supply of services	Supplier of service	Recipient of service
15	Services provided by way of renting of a motor vehicle provided to a body corporate	Any person other than a body corporate, who is paying CGST @ 2.5% on renting of motor vehicles with input tax credit only of input service in the same line of business	Any body corporate located in the taxable territory

Crux of Story: RCM applicable only if:
Supplier: Non-body corporate and opted for 5% GST rate
Recipient: Body corporate (taxable territory)
ITC: No ITC allowed to supplier except ITC of input service in same line of business.

Sl. No.	Category of supply of services	Supplier of service	Recipient of service
16	Services of lending of securities under Securities Lending Scheme, 1997 ("Scheme") of Securities and Exchange Board of India, as amended	Lender i.e., a person who deposits the securities registered in his name or in the name of any other person duly authorised on his behalf with an approved intermediary for the purpose of lending under the Scheme of SEBI	Borrower i.e., a person who borrows the securities under the Scheme through an approved intermediary of SEBI

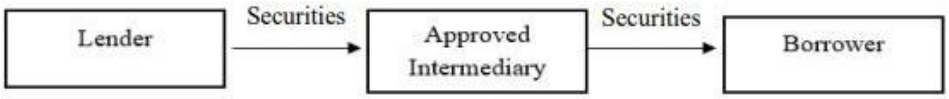
Clarification regarding taxability of supply of securities under Securities Lending Scheme, 1997 [Circular No. 119/38/2019 GST dated 11.10.2019]

Trade has requested clarification on whether the supply of securities under Securities Lending Scheme, 1997 ("Scheme") by the lender is taxable under GST.

Securities and Exchange Board of India (SEBI) has prescribed the Securities Lending Scheme, 1997 for the purpose of facilitating lending and borrowing of securities. Under the Scheme, lender of securities lends to a borrower through an approved intermediary to a borrower under an agreement for a specified period with the condition that the borrower will return equivalent securities of the same type or class at the end of the specified period along with the corporate benefits accruing on the securities borrowed. The transaction takes place through an electronic screen-based order matching mechanism

provided by the recognised stock exchange in India. There is anonymity between the lender and borrower since there is no direct agreement between them.

The lenders earn lending fee for lending their securities to the borrowers. The security lending mechanism is depicted in the diagram below: -



In the above chart:

(i) Lender is a person who deposits the securities registered in his name or in the name of any other person duly authorised on his behalf with an approved intermediary for the purpose of lending under the scheme.

(ii) Borrower is a person who borrows the securities under the scheme through an approved intermediary.

(iii) Approved intermediary is a person duly registered by the SEBI under the guidelines/scheme through whom the lender will deposit the securities for lending and the borrower will borrow the securities;

It may be noted for the purpose of GST Act, "securities" shall have the same meaning as assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 [Section 2(101) of CGST Act].

The definition of services as per Section 2(102) of the CGST Act, is extracted as below:

"services" means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;

Explanation. –For the removal of doubts, it is hereby clarified that the expression "services" includes facilitating or arranging transactions in securities;

Securities as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 are not covered in the definition of goods under section 2(52) and services under section 2(102) of the CGST Act. **Therefore, a transaction in securities which involves disposal of securities is not a supply in GST and hence not taxable.**

The explanation added to the definition of services w.e.f. 01.02.2019 i.e., "includes facilitating or arranging transactions in securities" is only clarificatory in nature and does not have any bearing on the taxability of the services under discussion (lending of securities) in past since 01.07.2017 but relates to facilitating or arranging transactions in securities.

The activity of lending of securities is not a transaction in securities as it does not involve disposal of securities. The Scheme under the Securities Lending Scheme, 1997 doesn't treat lending of securities as disposal of securities and therefore is not excluded from the definition of services.

The lender temporarily lends the securities held by him to a borrower and charges lending fee for the same from the borrower. The borrower of securities can further sell or buy these securities and is required to return the lended securities after stipulated period of time. The lending fee charged from the borrowers of securities has the character of consideration and this activity is taxable in GST since 01.07.2017.

Apart from above, the activities of the intermediaries facilitating lending and borrowing of securities for commission or fee are also taxable separately.

The supply of lending of securities under the scheme is classifiable under heading 997119 and is leviable to GST@18% under Sl. No. 15(vii) of Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017 as amended from time to time.

For the past period i.e. from 01.07.2017 to 30.09.2019, GST is payable under forward charge by the lender and request may be made by the lender (supplier) to SEBI to disclose the information about borrower for discharging GST under forward charge. The nature of tax payable shall be IGST. However, if the service provider has already paid CGST/SGST/UTGST treating the supply as an intra-state supply, such lenders shall not be required to pay IGST again in lieu of such GST payments already made.

With effect from 1st October 2019, the borrower of securities shall be liable to discharge GST under reverse charge mechanism. The nature of GST to be paid shall be IGST under reverse charge mechanism.

Crux of story:
1. Transaction of securities where there is disposal of securities is not supply and not taxable
2. Supply of services by lending securities – GST applicable @ 18%
3. Position upto 30th September 2019: FCM applicable and lender liable to pay tax
4. Position from 1st October 2019: RCM applicable and borrower liable to pay tax
5. Nature of Supply: Always treat as interstate and always IGST shall be payable.

Clarification on issue of GST on airport levies [Circular No. 115/34/2019 GST dated 11.10.2019]

Various representations have been received seeking clarification on **issues relating to GST on airport levies and to clarify that airport levies do not form part of the value of services provided by the airlines and consequently no GST should be charged by airlines on airport levies**.
In order to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby clarifies the issues in the succeeding paras.

Passenger service fee (PSF) is charged under rule 88 of Aircraft Rules, 1937 according to which the airport licensee may collect PSF from embarking passengers at such rates as specified by the Central Government. According to the rule the airport licensee shall utilize the said fee for infrastructure and facilitation of the passengers.

User development fee (UDF) is levied under rule 89 of the Aircraft rules 1937 which provides that the licensee may levy and collect, at a major airport, the User Development Fee at such rate as may be determined under clause (b) of sub-section (1) of section 13 of the Airports Economic Regulatory Authority of India Act, 2008. Though the rule does not prescribe the specific purpose of levy and whether it is to be charged from the airlines or the passengers, however, it is seen from section 2(n) of Airports Economic Regulatory Authority of India Act, 2008, that the authority which manages the airport is eligible to levy and charge UDF from the embarking passengers at any airport.

Further, Director General of Civil Aviation has clarified vide Order No. AIC Sl. No. 5/2010 dated 13.09.2010 that in order to avoid inconvenience to passengers and for smooth and orderly air

transport/airport operations, the UDF shall be collected from the passengers by the airlines at the time of issue of air ticket and the same shall be remitted to Airports Authority of India in the line system/procedure in vogue. For this, collection charges of Rs. 5/- shall be receivable by the airlines from AAI, which shall not to be passed on to the passengers in any manner.

The above facts clearly indicate that PSF and UDF are charged by airport operators for providing the services to passengers.

Section 2(31) of the CGST Act states that "consideration" in relation to the supply of goods or services or both includes any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person. Thus, PSF and UDF charged by airport operators are consideration for providing services to passengers.

Thus, services provided by an airport operator to passengers against consideration in the form of UDF and PSF are liable to GST. UDF was also liable to service tax.

The airport operators shall pay GST on the PSF and UDF collected by them from the passengers through the airlines. Since, the airport operators are collecting PSF and UDF inclusive of GST, there is no question of their not paying GST collected by them to the Government.

The collection charges paid by airport operator to airlines are a consideration for the services provided by the airlines to the airport operator and airlines shall be liable to pay GST on the same under forward charge. ITC of the same will be available with the airport operator.

Valuation (Value of Supply)

Airlines may act as a pure agent for the supply of airport services in accordance with rule 33 of the CGST rules. Rule 33 of the CGST rules provides that the expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply, if all the following conditions are satisfied, namely, —

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

"Pure agent" has been defined to mean a person who—

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

Accordingly, the airline acting as pure agent of the passenger should separately indicate actual amount of PSF and UDF and GST payable on such PSF and UDF by the airport licensee, in the invoice issued by airlines to its passengers. The airline shall not take ITC of GST payable or paid on PSF and UDF. The airline would only recover the actual PSF and UDF and GST payable on such PSF and UDF by the airline

operator. The amount so recovered will be excluded from the value of supplies made by the airline to its passengers. In other words, the airline shall not be liable to pay GST on the PSF and UDF (for airport services provided by airport licensee), provided the airline satisfies the conditions prescribed for a pure agent under Rule 33 of the CGST Rules. The registered passengers, who are the ultimate recipient of the airport services, may take ITC of GST paid on PSF and UDF on the basis of pure agent's invoice issued by the airline to them.

Crux of story:

1. **PSF – Passenger service fees** is fees charged by airport authority for services provided at airport.
2. **UDF - User development fees** are charged for airport development by airport authority.
3. Both PSF and UDF are levied by airport authority by collected through airlines
4. **PSF and UDF charged by airport operators (airport authority):** are consideration for providing services to passengers and leviable to GST
5. **Airport authority shall pay GST on the PSF and UDF collected by them** from the passengers through the airlines.
6. **Airport authority are collecting PSF and UDF inclusive of GST** hence GST to be paid by them to government.
7. **The collection charges paid by airport operator(authority) to airlines (acting as pure collection agent)** are a consideration for the services provided by the airlines to the airport operator and airlines shall be liable to pay GST on the same under forward charge. ITC of the same will be available with the airport operator.
8. **Airline acting as pure agent of the passenger should separately indicate actual amount of PSF and UDF and GST payable** on such PSF and UDF by the airport licensee, **in the invoice issued by airlines to its passengers.** The airline shall not take ITC of GST payable or paid on PSF and UDF. The airline would only recover the actual PSF and UDF and GST payable on such PSF and UDF by the airline operator. The amount so recovered will be excluded from the value of supplies made by the airline to its passengers. In other words, the airline shall not be liable to pay GST on the PSF and UDF (for airport services provided by airport licensee), provided the airline satisfies the conditions prescribed for a pure agent under Rule 33 of the CGST Rules. The registered passengers, who are the ultimate recipient of the airport services, may take ITC of GST paid on PSF and UDF on the basis of pure agent's invoice issued by the airline to them.

Composition Levy and Concessional Tax payment Scheme

Manufacturer of aerated water & supplier of aerated water cannot opt to pay tax under composition levy and Notification No. 2/2019 CT (R) dated 07.03.2019 respectively

As per section 10(2)(e) of CGST Act read with Notification No. 14/2019 CT dated 07.03.2019, a manufacturer of following goods cannot opt for composition scheme:

Tariff item, sub-heading, heading or Chapter	Description
2105 00 00	Ice cream and other edible ice, whether or not containing cocoa
2106 90 20	Pan Masala
24	All goods i.e. Tobacco and manufactured tobacco substitutes

Further, as per Notification No. 2/2019 CT(R) dated 07.03.2019, a registered person making supplies of the above goods is also not eligible to pay concessional tax under the said notification.

With effect from 01.10.2019, Notification No. 14/2019 CT dated 07.03.2019 and Notification No. 2/2019 CT (R) dated 07.03.2019 have been amended to include aerated water (Tariff item 2202 1010) in the above list of negative goods.

Thus, now a manufacturer of aerated water (Tariff item 2202 1010) will also not be eligible to opt for composition scheme. Likewise, a supplier of aerated water (Tariff item 2202 1010) will also not be eligible to pay concessional tax under Notification No. 2/2019 CT (R) dated 07.03.2019.

Crux of story: With effect from 01.10.2019

1. **Manufacturers of Aerated water are in eligible for composition scheme**
2. **Suppliers of Aerated water are ineligible under concession tax payment scheme under notification 2/2019 – CT(Rates)**

Tax Invoice, Credit and Debit Notes

Special provisions pertaining to tax invoice for services by way of admission to exhibition of cinematograph films in multiplex screens [Rule 46 and 54 of the CGST Rules] [Notification No. 33/2019 CT dated 18.07.2019]

A registered person has an option to issue consolidated tax invoice for supplies at the close of each day where the value of goods or services supplies is less than Rs. 200; recipient is unregistered and does not require tax invoice [in terms of section 31(3)(b) of the CGST Act read with fourth proviso to rule 46 of the CGST Rules]. With effect from 01.09.2019, fourth proviso to rule 46 has been amended to disallow this option to a supplier engaged in making supply of services by way of admission to exhibition of cinematograph films in multiplex screens.

Further, with effect from 01.09.2019, a new sub-rule (4A) has been inserted in rule 54. Accordingly, a registered person who is supplying services by way of admission to exhibition of cinematograph films in multiplex screens shall be required to issue an electronic ticket. The said electronic ticket is deemed to be a tax invoice, even if such ticket does not contain the details of the recipient of service but contains the other information as mentioned under rule 46.
Moreover, supplier of such services in a screen other than multiplex screens also has been given an option to follow above procedure.

Crux of story:

1. **A RP who is supplying services by way of admission to exhibition of cinematograph films in multiplex screens shall(mandatory) be required to issue an electronic ticket (deemed tax invoice).**
2. **A RP who is supplying services by way of admission to exhibition of cinematograph films in single screen may opt to issue an electronic ticket. (optional)**
3. **Multiplex screens cinema hall cannot issue consolidated tax invoice at the end of the day and are required to issue tax invoice for every transaction even if value is less than Rs 200.**
4. **Single screen cinema halls may issue consolidated revised tax invoice.**

E-Way Bill

Validity of e-way bill in case of multimodal shipment in which at least one leg involves transport by ship [Rule 138(10) of the CGST Rules] [Notification No. 31/2019 CT dated 28.06.2019]

Rule 138(10) of CGST Rules provides validity period of e-way bill for over dimensional cargo and for cases other than over dimensional cargo. The sub-rule (10) of rule 138 has been amended to also provide the validity period of e-way bill for multimodal shipment in which at least one leg involves transport by ship.

Thus, amended sub- rule (10) lays down as under-

Sl. No.	Distance within country	Validity period from relevant date
1.	Upto 100 km	One day in cases other than Over Dimensional Cargo **or multimodal shipment in which at least one leg involves transport by ship**
2.	For every 100 km or part thereof thereafter	One additional day in cases other than Over Dimensional Cargo **or multimodal shipment in which at least one leg involves transport by ship**
3.	Upto 20 km	One day in case of Over Dimensional Cargo or **multimodal shipment in which at least one leg involves transport by ship**
4.	For every 20 km. or part thereof thereafter	One additional day in case of Over Dimensional Cargo **or multimodal shipment in which at least one leg involves transport by ship**

Crux of story:
Multimodal transportation means: Transportation of goods in a single contract and performed through various modes of transport like sea, rail, road or air.
Hence one e-way bill can be generated and used in case of a multimodal shipment in which part B can be updated as per the modes of transportation.

Second Amendment in rule 138

The sub-rule (10) has been further amended to lay down that the validity of the e-way bill can be extended **within** eight hours from the time of its expiry.

Crux of story:
The option to extend EWB is available before 8 hours and after 8 hours of expiry of the validity.
Example: Ram generated an EWB on 1st January which is about to expire on 3rd January midnight. He can extend the validity after 4 PM on 3rd January or before 8AM on 4th January.

Input Tax Credit

Restriction on availment of input tax credit (ITC) in respect of invoices/debit notes not uploaded by the suppliers in their GSTR-1s [New sub-rule (4) inserted in rule 36 of the CGST Rules] [Notification No. 49/2019 CT dated 09.10.2019]

Section 16(2) of the CGST Act provides certain conditions for availing ITC wherein one of the conditions is that the taxpayer must be in possession of the tax invoice or other tax paying document in respect of which he is claiming the ITC. Rule 36 of CGST Rules lays down the documents and other conditions basis which the registered person can claim ITC.

With effect from 09.10.2019, a new sub-rule (4) has been introduced in rule 36 to specify the quantum of ITC that can be claimed against the invoices/debit notes uploaded and invoices/debit notes not uploaded, by the supplier. As per sub-rule (4) of rule 36, ITC to be availed by a registered person in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers in GSTR-1, cannot exceed 20% of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers in GSTR-1.

This can be further understood as under-

Case	Amount of ITC to be claimed by recipient
Where invoice/debit note has been uploaded by the supplier in his GTSR-1	Full ITC, if all other conditions of availing ITC are fulfilled
Where invoice/debit note has not been uploaded by supplier in his GTSR-1	20% of the eligible ITC available in respect of the uploaded invoices/debit notes. However, the ITC so claimed should not exceed the actual eligible ITC available in respect of the invoices not uploaded.

Illustration 1

Mr. Vijay, a registered supplier, receives 100 invoices (for inward supply of goods/ services) involving GST of Rs. 10 lakhs, from various suppliers during the month of October 20XX.

Compute the ITC that can be claimed by Mr. Vijay in his GSTR-3B for the month of October 20XX to be filed by 20th November 20XX in the following independent cases assuming that GST of Rs. 10 lakhs is otherwise eligible for ITC:

Case I

Out of 100 invoices, 80 invoices involving GST of Rs. 6 lakhs have been uploaded by the suppliers in their respective GSTR-1s filed on the prescribed due date therefor.

Case II

Out of 100 invoices, 75 invoices involving GST of Rs. 8.5 lakh have been uploaded by the suppliers in their respective GSTR-1s filed on the prescribed due date therefor.

Answer

As per sub-rule (4) of rule 36, ITC to be availed by a registered person in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers in GSTR-1, cannot exceed 20% of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers in GSTR-1.

Case I

ITC to be claimed by Mr. Vijay in his GSTR-3B for the month of October 20XX to be filed by 20th November 20XX will be computed as under-

Invoices	Amount of ITC involved in the invoices (Rs.)	Amount of ITC that can be availed (Rs.)
In respect of 80 invoices uploaded in GSTR-1	6 lakhs	6 lakhs [Refer Note 1 below]
In respect of 20 invoices not uploaded in GSTR-1	4 lakhs	Rs. 1.2 lakh [Refer Note 2 below]
Total	**10 lakhs**	**7.2 lakh**

Notes:

(1) In respect of invoices uploaded by the suppliers in their GSTR-1, full ITC can be availed.

(2) The ITC in respect of invoices not uploaded has to be restricted to 20% of eligible ITC in respect of invoices uploaded in GSTR-1. Thus, in respect of 20 invoices not uploaded in GSTR-1s, the ITC has been restricted to Rs. 1.2 lakh [20% of Rs. 6 lakhs].

Case II

ITC to be claimed by Mr. Vijay in his GSTR-3B for the month of October 20XX to be filed by 20th November 20XX will be computed as under-

Invoices	Amount of ITC involved in the invoices (Rs.)	Amount of ITC that can be availed (Rs.)
In respect of 75 invoices uploaded in GSTR-1	8.5 lakh	8.5 lakh [Refer Note 1 below]
In respect of 25 invoices not uploaded in GSTR-1	1.5 lakh	Rs. 1.5 lakh [Refer Note 2 below]
Total	**10 lakhs**	**10 lakhs**

Notes:

(3) In respect of invoices uploaded by the suppliers in their GSTR-1, full ITC can be availed.

(4) The ITC in respect of invoices not uploaded has to be restricted to 20% of eligible ITC in respect of invoices uploaded in GSTR-1. However, since in this case, the actual ITC [Rs. 1.5 lakh] in respect of 25 invoices not uploaded in GSTR-1 does not exceed 20% of the eligible ITC in respect of invoices uploaded in GSTR-1s [Rs. 1.7 lakh (20% of Rs. 8.5 lakh)], actual amount of ITC can be availed.

Crux of story:

1. **Restriction imposed on claiming ITC with respect to undeclared invoices by supplier**
2. **Admissible ITC will be 120% of tax invoice/debit notes reported in GSTR 1 by suppliers, restricted to total eligible ITC.**
3. **It is always the responsibility of taxpayer to restrict himself.**
4. **Restriction to be calculated on overall basis and not supplier wise.**
5. **The restriction is not applicable to- IGST paid on imports, documents issued under RCM, Credit received from ISD for which details are not be furnished in GSTR 1.**
6. **Any credit denied i.e. restricted as per provision of 36(4) can be availed later when the invoices are uploaded by supplier.**

Payment of Tax

Amendments in rule 87 of the CGST Rules prescribing provisions relating to electronic cash ledger [Notification No. 31/2019 CT dated 28.06.2019]

(i) The second proviso to sub-rule (2) which gave an option to a person supplying OIDAR services from a place outside India to a non-taxable online recipient, to generate challan through the Board's payment system namely, Electronic Accounting System in Excise and Service Tax has been omitted.
(ii) Sub-rule (9) provided that any amount deducted under section 51 or collected under section 52 and claimed in Form GSTR-02 by the registered taxable person from whom the said amount was deducted or, as the case may be, collected shall be credited to his electronic cash ledger in accordance with the provisions of rule 87.

The words, letters and figures "in Form GSTR-02" and words and figures "in accordance with the provisions of rule 87" have been omitted from sub-rule (9).

Crux of Story:
1. **Amendment in rule 87(2):** Earlier the GST law had allowed OIDAR to make payment through EASIEST, now the second proviso to rule 87(2) has been omitted and hence OIDAR cannot make payment through EASIEST and hence they are required to make payment through common portal only.
2. **Amendment in rule 87(9):** Since the idea of GSTR 2 has been scrapped by the government and new returns are to be implemented, rule 87(9) has been amended to omit the word GSTR 2. Whenever TDS/TCS is deposited with government and deductor/collector files a return, the TDS/TCS amount is made available to the RP in a separate tab through which he can claim the credit in his E-cash ledger.

Returns

Person supplying online information technology and database access retrieval [OIDAR] services not required to furnish annual return and reconciliation statement [Notification No. 30/2019 CT dated 28.06.2019]

Section 44(1) of the CGST Act read with rule 80(1) of the CGST Rules requires every registered person, other than an Input Service Distributor, a person paying tax under section 51 or section 52 of the CGST Act, a casual taxable person and a non-resident taxable person, to furnish an annual return. Further, sections 35(3) & 44(2) of the CGST Act read with rule 80(3) of the CGST Rules require every registered person, whose aggregate turnover during a financial year exceeds Rs. 2 crores, to get his accounts audited, and furnish the annual return along with a copy of audited annual accounts and a reconciliation statement.

The Government has notified the persons compulsorily registered under section 24(xi) of the CGST Act read with rule 14 of CGST Rules supplying OIDAR services from a place outside India to a person in India, other than a registered person, **as the class of registered persons who shall not be required to furnish -**

(i) the annual return under section 44(1) of the CGST Act read with rule 80(1) of the CGST Rules, and
(ii) the reconciliation statement under section 44(2) of the CGST Act r/w rule 80(3) of the CGST Rules

Crux of story: OIDAR supplier shall not be required to furnish Annual return and reconciliation statement.

Details of tax deducted and tax collected to be made available to the deductee and collectee respectively on the common portal after filing of GSTR-7 and GSTR-8 respectively [Rule 66(2) of the CGST Rules] [Notification No. 31/2019 CT dated 28.06.2019]

Whenever taxable goods and/or services are supplied to a department of the Central/ State Government or other specified persons, the recipient is required to deduct tax under section 51 of the CGST Act.
Earlier, the details of tax deducted furnished by the deductor in GSTR-7 was made available to each supplier in Part C of Form GSTR-2A / Form GSTR-4A (in case of registered person opting for composition levy) on the common portal after the due date of filing of Form GSTR-7 [Rule 66(2) of the CGST Rules]. The deductee could include the details of TDS reflecting in Part C of GSTR-2A in his Form GSTR-2 by accepting the same. However since, GSTR-2 has been kept in abeyance, this provision has been amended.
Sub-rule (2) of rule 66 has been amended to lay down that the details of TDS furnished by the deductor in GSTR-7 shall be made available electronically to each of the deductees on the common portal after filing of Form GSTR-7 for claiming the amount of tax deducted in his electronic cash ledger after validation.

Similarly, the details of TCS furnished by operator in GSTR-8 were made available to each supplier in Part C of Form GSTR-2A on the common portal after the due date of filing of Form GSTR-8 under rule 67(2) of the CGST Rules.

Sub-rule (2) of rule 67 has been amended to provide that the details of TCS furnished by the deductor in GSTR-8 is made available electronically to each of the deductees on the common portal after filing of Form GSTR-8 for claiming the amount of tax collected in his electronic cash ledger after validation.

Crux of the story:
Since the idea of GSTR 2 has been scrapped by the government and new returns are to be implemented, Whenever TDS/TCS is deposited with government and deductor/collector files a return, the TDS/TCS amount is made available to the RP in a separate tab through which he can claim the credit in his E-cash ledger.

Form GSTR-3B to be treated as a return furnished under section 39 of the CGST Act [Rule 61(5) of the CGST Rules] [Notification No. 49/2019 CT dated 09.10.2019]

Section 39(1) of the CGST Act prescribes a monthly return in Form GSTR-3 for every registered person, other than input service distributor, a non-resident taxable person, a composition taxpayer, person deducting tax at source, person collecting tax at source i.e., an electronic commerce operator and supplier of OIDAR services. However, filing of GSTR-3 has been deferred by the GST Council.
Rule 61(5) of CGST Rules provided that where the time limit for furnishing of details in Form GSTR-1 under section 37 has been extended and the circumstances so warrant, the Commissioner may, by notification, specify the manner and conditions subject to which the return shall be furnished in Form GSTR-3B. The said rule has been amended retrospectively with effect from 01.07.2017, to specify that the return in Form GSTR-3B is the return under section 39(1) and that where a return in GSTR-3B is furnished by a person then such person shall not be required to furnish the return in Form GSTR-3.

Crux of the story:
Rule 61(5) has been amended retrospectively with effect from 01.07.2017, to specify that the return in Form GSTR-3B is the return under section 39(1) and that where a return in GSTR-3B is furnished by a person then such person shall not be required to furnish the return in Form GSTR-3.

Filing of annual return under section 44(1) of the CGST Act for F.Y. 2017-18 and 2018-19 made optional for small taxpayers whose aggregate turnover is less than Rs 2 crores and who have not filed the said return before the due date [Notification No. 47/2019 CT dated 09.10.2019]

Filing of annual return (GSTR- 9) under section 44(1) of CGST Act read with rule 80(1) of CGST Rules, in respect of financial years 2017-18 and 2018-19, has been made voluntary for the registered persons whose turnover is less than Rs. 2 crore and who have not furnished the said annual return before the due date. The annual return shall be deemed to be furnished on the due date if it has not been furnished before the due date.

Crux of the story: Annual return has been made optional for small taxpayers whose ATO is less than Rs 2 crores and who have not filed the said return before the due date

Demand and Recovery

Tax, interest and penalty payable to be intimated by the proper officer before issuance of show cause notice [Notification No. 49/2019 CT dated 09.10.2019]

Where tax has not been paid, short paid or erroneously refunded or input tax credit has been wrongly availed or utilized, the proper officer may issue a show cause notice to the registered person in terms of sections 73 or 74 of the CGST Act, as the case may be.
With effect from 09.10.2019, the proper officer shall, before serving of such a notice, communicate the details of any tax, interest and penalty as ascertained by him, in the prescribed form, to the person chargeable with tax, interest and penalty under section 73 or section 74. Further, where such person has made partial payment of amount communicated to him or desires to file any submission against the proposed liability, he may make such submission in the prescribed form. Taxpayer will be able to take advantage of nil or reduced penalty under sections 73(5) and 74(5) of the CGST Act.
Where any person makes payment of tax, interest, penalty or any other amount due in accordance with the provisions of the Act whether on his own ascertainment or, as communicated by the proper officer as mentioned above, he shall inform the proper officer of such payment and the proper officer shall issue an acknowledgement, accepting the payment made by the said person.

Crux of story:
New form GST DRC - 01A has been notified
Part A of GST DRC 01A: to be used by PO for communication of details of tax interest and penalties (proposed liability) to the taxpayer before issuance of SCN in GST DRC 01.
Part B of GST DRC 01A: to be used by taxpayer for communication of partial payment to PO or for filing of submission against proposed liability.

Place of Supply

Place of supply of research and development services related to pharmaceutical sector

In order to prevent double taxation or non-taxation of supply of any service, section 13(13) of IGST Act empowers the Government to notify any service for which the place of supply shall be the place of effective use and enjoyment of service.

In this regard, with effect from 01.10.2019, the following research and development services related to pharmaceutical sector [as specified in columns (2) and (3) from Sl. No. 1 to 10 of the table given below] when supplied by a person located in taxable territory to a person located in the non-taxable territory, have been notified as the services for which the place of supply shall be the place of effective use and enjoyment of a service [as specified in column (4) of the table given below]:

Sl. No.	Nature of supply	General description of supply	Place of supply
(1)	(2)	(3)	(4)
1.	Integrated discovery and development	**This process involves discovery and development of molecules by pharmaceutical sector for medicinal use.** The steps include designing of compound, evaluation of the drug metabolism, biological activity, manufacture of target compounds, stability study and long-term toxicology impact.	When R & D services related to pharmaceutical sector as specified in columns (2) and (3) from Sl. No. 1 to 10 of this table are supplied by • a person located in taxable territory **to** • a person located in the non-taxable territory, - **the POS shall be the location of the recipient of services subject to fulfillment of the following conditions**: - (i) Supply of services from the taxable territory is provided as per a contract between the service provider located in taxable territory and service recipient located in non-taxable territory. (ii) Such supply of services fulfills all other conditions in the definition of export of services,
2.	Integrated development		
3.	Evaluation of the efficacy of new chemical/ biological entities in animal models of disease	**This is in vivo research (i.e. within the animal) and involves development of customized animal model diseases and administration of novel chemical in doses to animals** to evaluate the gene and protein expression in response to disease. In nutshell, this process tries to discover if a novel chemical entity that can reduce or modify the severity of diseases. The novel chemical is supplied by the service recipient located in non-taxable territory.	
4.	Evaluation of biological activity of novel chemical/ biological entities in in-vitro assays	**This is in vitro research (i.e. outside the animal).** An assay is first developed and then the novel chemical is supplied by the service recipient located in non- taxable territory and is evaluated in the assay under optimized conditions.	
5.	Drug metabolism and pharmacokinetics of new chemical entities	**This process involves investigation whether a new compound synthesized by supplier can be developed as new drug to treat human diseases** in respect of solubility, stability in body fluids, stability in liver tissue and its toxic effect on body tissues. Promising compounds are further evaluated in animal	

Sl. No.	Nature of supply	General description of supply	Place of supply
		experiments using rat and mice.	except the condition that place of supply is outside India.
6.	Safety Assessment/ Toxicology	Safety assessment involves evaluation of new chemical entities in laboratory research animal models to support filing of investigational new drug and new drug application. Toxicology team analyses the potential toxicity of a drug to enable fast and effective drug development.	
7.	Stability Studies	**Stability studies are conducted to support formulation, development, safety and efficacy of a new drug.** It is also done to ascertain the quality and shelf life of the drug in their intended packaging configuration.	
8.	Bio-equivalence and Bioavailability Studies	**Bio-equivalence is a term in pharmacokinetics used to assess the expected in vivo biological equivalence of two proprietary preparations of a drug.** If two products are said to be bioequivalent it means that they would be expected to be, for all intents and purposes, the same. Bioavailability is a measurement of the rate and extent to which a therapeutically active chemical is absorbed from a drug product into the systemic circulation and becomes available at the site of action.	
9.	Clinical trials	**The drugs that are developed for human consumption would undergo human testing to confirm its utility** and safety before being registered for marketing. The clinical trials help in collection of information related to drugs profile in human body such as absorption, distribution, metabolism, excretion and interaction. It allows choice of safe dosage	
10.	Bio analytical studies	**Bio analysis is a sub-discipline of analytical chemistry covering the quantitative measurement of drugs and their metabolites,** and biological molecules in unnatural locations or concentrations and macromolecules, proteins, DNA, large molecule drugs and metabolites in biological systems.	

Crux of story:
CG using the power u/s 13(13) notifies POS in case of services of R&D relating to pharmaceutical sector is the location of the recipient (i.e. the place the service is effectively used and enjoyed).
Condition:
- **Services are provided as per the contract**
- **Supply fulfils all conditions specified in definition of export of services.**

Clarification regarding determination of place of supply in certain cases [Circular No. 103/22/2019 GST dated 28.06.2019]

CBIC has clarified certain issues relating to determination of place of supply in following cases-

(i) Services provided by Ports - place of supply in respect of various cargo handling services provided by ports to clients
(ii) Services rendered on goods temporarily imported in India - place of supply in case of services rendered on unpolished diamonds received from abroad, which are exported after cutting, polishing etc.

The issue and the clarification in each of the case is given below-

Issue: Various services are being provided by the port authorities to its clients in relation to cargo handling. Some of such services are in respect of arrival of wagons at port, haulage of wagons inside port area up-to place of unloading, siding of wagons inside the port, unloading of wagons, movement of unloaded cargo to plot and staking hereof, movement of unloaded cargo to berth, shipment/loading on vessel etc.

Whether the place of supply for such services would be determined in terms of the provisions contained in section 12(2) or section 13(2) of the IGST Act, as the case may be, or the same shall be determined in terms of the provisions contained in section 12(3) of the IGST Act?

Clarification: It is hereby clarified that such services are ancillary to or related to cargo handling services and are not related to immovable property. Accordingly, the place of supply of such services will be determined as per the provisions contained in section 12(2) or section 13(2) of the IGST Act, as the case may be, depending upon the terms of the contract between the supplier and recipient of such services.

Crux: POS in relation to SOS provided by the port authorities to its clients in relation to cargo handling shall be determined applying general or residual method.

Issue: What would be the place of supply in case of supply of various services on unpolished diamonds such as cutting and polishing activity which have been temporarily imported into India and are not put to any use in India?

Clarification: Place of supply in case of performance-based services is to be determined as per the provisions contained in section 13(3)(a) of the IGST Act and generally the place of services is where the services are actually performed. **But an exception has been carved out in case of services supplied in respect of goods which are temporarily imported into India for repairs or for any other treatment or process and are exported after such repairs or treatment or process**

without being put to any use in India, other than that which is required for such repairs or treatment or process. In case of cutting and polishing activity on unpolished diamonds which are temporarily imported into India are not put to any use in India, the place of supply would be determined as per the provisions contained in section 13(2) of the IGST Act.

Crux of story: POS in relation to cutting and polishing activity on diamonds temporarily imported shall be determined using section 13(2) i.e. residuary category.
POS = Location of recipient which is outside India.
Section 13(3) is not applicable since goods are temporarily imported for treatment or process without being put to any use in India

Clarification regarding determination of place of supply in case of software/ design services related to Electronics Semi-conductor and Design Manufacturing (ESDM) industry [Circular No. 118/37/2019 GST dated 11.10.2019]

Issue: How should the place of supply be determined in case of supply of software/design services by a supplier located in taxable territory to a service recipient located in non-taxable territory by using the sample hardware kits provided by the service recipient?

Clarification: A number of companies that are part of the growing Electronics Semiconductor and Design Manufacturing (ESDM) industry in India are engaged in the process of developing software and designing integrated circuits electronically for customers located overseas. The client/ customer electronically provides Indian development and design companies with design requirements and Intellectual Property blocks ("IP blocks", reusable units of software logic and design layouts that can be combined to form newer designs). Based on these, the Indian company digitally integrates the various IP blocks to develop the software and the silicon or hardware design. These designs are communicated abroad (in industry standard electronic formats) either to the customer or (on behest of the customer) a manufacturing facility for the manufacture of hardware based on such designs.

In addition, the software developed is also integrated upon or customized to this hardware. On some occasions, samples of such prototype hardware are then provided back to the Indian development and design companies to test and validate the software and design that has been developed to ensure that it is error free.

The question arose whether provision of hardware prototypes and samples and testing thereon lends these services the character of performance-based services in respect of "goods required to be made physically available by the recipient to the provider".

It is observed that in contracts where service provider is involved in a composite supply of software development and design for integrated circuits electronically, testing of software on sample prototype hardware is often an ancillary supply, whereas, chip design/software development is the principal supply of the service provider. The service provider is not involved in software testing alone as a separate service. The testing of software/design is aimed at improving the quality of software/design and is an ancillary activity. The entire activity needs to be viewed as one supply and accordingly treated for the purposes of taxation. Artificial vivisection of the contract of a composite supply is not provided in law. These cases are fact based and each case should be examined for the nature of supply contracted. Therefore, it is clarified that the place of supply of software/design by supplier located in taxable territory to service recipient located in non-taxable territory by using sample prototype hardware / test kits in a composite supply, where such testing is an ancillary supply, is the location of the service

recipient as per section 13(2) of the IGST Act. Provisions of section 13(3)(a) of IGST Act do not apply separately for determining the place of supply for ancillary supply in such cases.

Crux of the story:

POS in case of supply of software/design services by a supplier (in TT) to a service recipient (in NTT) by using the sample hardware kits provided by the service recipient

- **Software development & design for integrated circuits electronically along with testing of software on sample prototype hardware is a composite supply.**
- **Software development & design for integrated circuits is the Principal supply**
- **Testing of software on sample prototype hardware is an ancillary supply**
- **Since it is a composite supply, it shall be treated as supply of principal supply i.e. software development & Design for circuits.**
- **POS shall be the location of the service recipient as per section 13(2) of the IGST Act.**
- **Provisions of section 13(3)(a) of IGST Act do not apply separately for determining the place of supply for ancillary supply in such cases.**

Refunds

Proper officer to issue payment order instead of payment advice for refunds [Notification No. 31/2019 CT dated 28.06.2019 and Notification No. 49/2019 CT dated 9.10.2019]

Proper officer will now issue payment order instead of payment advice for refunds under GST with effect from 24.09.2019. To give effect to this amendment, with effect from 24.09.2019, rule 91(3), rule 92(4), rule 92(5), rule 94 of the CGST Rules have been suitably amended and rule 91(4) and rule 92(4A) have been newly inserted.

Refund allowed to retail outlets established in the departure area of an international airport [Notification No. 31/2019 CT dated 28.06.2019, Notification No. 11/2019 CT (R) dated 29.06.2019 and Notification No. 10/2019 IT (R) dated 29.06.2019 read with Circular No. 106/25/2019 -GST dated 29.06.2019]

With effect from 01.07.2019, supply of goods by a retail outlet established in the departure area of an international airport, beyond the immigration counters, to an outgoing international tourist, is exempted from IGST8.

These retail outlets making tax free supply of indigenous goods to an outgoing international tourist [also referred as eligible passenger] are entitled to claim refund 9 of applicable CGST+SGST/UTGST or IGST paid on inward supply of such goods. Therefore, retail outlets will supply such indigenous goods without collecting any taxes from the eligible passenger and may apply for refund.

The refund shall be subject to the following conditions, as specified in newly inserted rule 95A of the CGST Rules:

(1) Who is eligible for refund?

Retail outlet, registered under GST and holding a valid GSTIN, established in departure area of an international airport, beyond the immigration counters, supplying indigenous goods to an outgoing international tourist who is leaving India shall be eligible to claim refund of tax paid by it on inward supply of such goods.

(2)Application for refund

Retail outlet shall furnish the application for refund claim in prescribed form on a monthly/quarterly basis along with self-certified compiled information of invoices issued for the supply made during the month or the quarter, as the case may be, along with concerned purchase invoice.

(3)Conditions for claiming refund

The refund of tax paid by the said retail outlet shall be available if –

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

The provisions of rule 92 shall, mutatis mutandis, apply for the sanction and payment of refund under this rule.

Types of retail outlets at international airports are:

(i) **Duty Free Shops (DFS):** are point of sale for goods sourced from a warehoused licensed under Section 58A of the Customs Act, 1962 and duty paid indigenous goods and

(ii) **Duty Paid Shops (DPS):** retailing duty paid indigenous goods.

All indigenous goods would have to be procured by such DFS/DPS on payment of applicable GST when procured from the domestic market. It is clarified that the refund to be granted to retail outlets is not on account of the accumulated input tax credit, but refund is based on the invoices of the inward supplies of indigenous goods received by them. Since the supply made by such retail outlets is exempt, they will not be eligible for ITC of taxes paid on such inward supplies and the same will have to be reversed in accordance the relevant provisions. Further, no refund of tax paid on input services, if any, will be granted to the retail outlets.

The "outgoing international tourist" (also referred as "eligible passengers") shall mean a person not normally resident in India, who enters India for a stay of not more than 6 months for legitimate non - immigrant purposes.

Specialized agencies notified under section 55 of CGST Act entitled to refund of IGST paid on import of goods [Circular No. 23/2019 Cus. dated 01.08.2019]

Section 55 of the CGST Act provides refund of taxes paid on the notified supplies of goods and/or services by notified specialized agencies like United Nations or a specified international organisation. Section 3(7) of Customs Tariff Act, 1975 provides for a parity between the integrated tax rate attracted on imported goods and the integrated tax applicable on the domestic supplies of goods. Therefore, on this principle of parity, specialized agencies ought to get the refund of the IGST paid on imported goods.

Crux: Specialized agencies shall be entitled to claim refund of IGST paid on goods imported (on the principle of parity)

Miscellaneous provisions

Rule 128: Examination of application by the Standing Committee and Screening Committee

(1) The Standing Committee shall, within a period of two months from the date of the receipt of a written application [1]**or within such extended period not exceeding a further period of one month for reasons to be recorded in writing as may be allowed by the Authority,** in such form and manner as may be specified by it, from an interested party or from a Commissioner or any other person, examine the accuracy and adequacy of the evidence provided in the application to determine whether there is prima facie evidence to support the claim of the applicant that the benefit of reduction in the rate of tax on any supply of goods or services or the benefit of input tax credit has not been passed on to the recipient by way of commensurate reduction in prices.

(2) All applications from interested parties on issues of local nature [2]**or those forwarded by the Standing Committee** shall first be examined by the State level Screening Committee and the Screening committee shall [3]**within two months from the date of receipt of a written application, or within such extended period not exceeding a further period of one month for reasons to be recorded in writing as may be allowed by the Authority,** the Screening Committee shall, upon being satisfied that the supplier has contravened the provisions of section 171, forward the application with its recommendations to the Standing Committee for further action.

Crux: Screening of applications by Standing or Screening committee shall be done within a period of 2 months, the said period of 2 months can now be extended by a further period of 1 month by Authority.

Rule 129: Initiation and conduct of proceedings

(1) Where the Standing Committee is satisfied that there is a prima facie evidence to show that the supplier has not passed on the benefit of reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices, it shall refer the matter to the Director General of Anti-profiteering for a detailed investigation.

(2) The Director General of Anti-profiteering shall conduct investigation and collect evidence necessary to determine whether the benefit of reduction in the rate of tax on any supply of goods or services or the benefit of input tax credit has been passed on to the recipient by way of commensurate reduction in prices.

(3) The Director General of Anti-profiteering shall, before initiation of the investigation, issue a notice to the interested parties containing, inter alia, information on the following, namely: —
(a) the description of the goods or services in respect of which the proceedings have been initiated;
(b) summary of the statement of facts on which the allegations are based; and

[1] Inserted by the Central Goods and Services Tax (Fourth Amendment) Rules, 2019, w.e.f. 28-6-2019.
[2] Inserted by the Central Goods and Services Tax (Fourth Amendment) Rules, 2019, w.e.f. 28-6-2019.
[3] Inserted by the Central Goods and Services Tax (Fourth Amendment) Rules, 2019, w.e.f. 28-6-2019.

(c) the time limit allowed to the interested parties and other persons who may have information related to the proceedings for furnishing their reply.

(4) The Director General of Anti-profiteering may also issue notices to such other persons as deemed fit for a fair enquiry into the matter.

(5) The Director General of Anti-profiteering shall make available the evidence presented to it by one interested party to the other interested parties, participating in the proceedings.

(6) The Director General of Anti-profiteering shall complete the investigation within a period of **six months** of the receipt of the reference from the Standing Committee or within such extended period not exceeding a further period of three months for reasons to be recorded in writing as may be allowed by the Authority and, upon completion of the investigation, furnish to the Authority, a report of its findings along with the relevant records.

Amendment: The Director general of Anti-Profiteering had to complete the investigation within a period of 3 months of the receipt of the reference from the Standing Committee. Now the said period of 3 months has been extended to 6 months.

Rule 132: Power to summon persons to give evidence and produce documents

(1) The [4]**authority,** Director General of Anti-profiteering, or an officer authorised by him in this behalf, shall be deemed to be the proper officer to exercise the power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing under section 70 and shall have power in any inquiry in the same manner, as provided in the case of a civil court under the provisions of the Code of Civil Procedure, 1908 (5 of 1908).

(2) Every such inquiry referred to in sub-rule (1) shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860).

Amendment: Authority (DGAP) has also been empowered to summon any person.

Rule 133: Order of the Authority

(1) The Authority shall, within a period of ~~**three**~~ [5]**six** months from the date of the receipt of the report from the [6]**Director General of Anti-profiteering** determine whether a registered person has passed on the benefit of the reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices.

(2) An opportunity of hearing shall be granted to the interested parties by the Authority where any request is received in writing from such interested parties.

[4] Inserted by the Central Goods and Services Tax (Fourth Amendment) Rules, 2019, w.e.f. 28-6-2019.
[5] Central Goods and Services Tax (Fourth Amendment) Rules, 2019, w.e.f. 28-6-2019.
[6] Substituted for "Director General of Safeguard" by the Central Goods and Services Tax (Seventh Amendment) Rules, 2018, w.r.e.f. 12-6-2018.

[7](2A) The Authority may seek the clarification, if any, from the Director General of Anti Profiteering on the report submitted under sub-rule (6) of rule 129 during the process of determination under sub-rule (1).]

(3) Where the Authority determines that a registered person has not passed on the benefit of the reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices, the Authority may order—

(a) reduction in prices;

(b) return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest at the rate of eighteen per cent from the date of collection of the higher amount till the date of the return of such amount or recovery of the amount including interest not returned, as the case may be;

(c) the deposit of an amount equivalent to fifty per cent of the amount determined under the above clause **along with interest at the rate of eighteen per cent. from the date of collection of the higher amount till the date of deposit of such amount** in the Fund constituted under section 57 and the remaining fifty per cent of the amount in the Fund constituted under section 57 of the Goods and Services Tax Act, 2017 of the concerned State, where the eligible person does not claim return of the amount or is not identifiable;

(d) imposition of penalty as specified under the Act; and

(e) cancellation of registration under the Act.

Explanation. —For the purpose of this sub-rule, the expression, "concerned State" means the State or [8]**Union Territory** in respect of which the Authority passes an order.

(4) If the report of the [9]**Director General of Anti-profiteering** referred to in sub-rule (6) of rule 129 recommends that there is contravention or even non-contravention of the provisions of section 171 or these rules, but the Authority is of the opinion that further investigation or inquiry is called for in the matter, it may, for reasons to be recorded in writing, refer the matter to the **Director General of Anti-profiteering** to cause further investigation or inquiry in accordance with the provisions of the Act and these rules.

(5)

(a)[10]Notwithstanding anything contained in sub-rule (4), where upon receipt of the report of the Director General of Anti-profiteering referred to in sub-rule (6) of rule 129, the Authority has reasons to believe that there has been contravention of the provisions of section 171 in respect of goods or services or both other than those covered in the said report, it may, for reasons to be recorded in writing, within the time limit specified in sub-rule (1), direct the Director General of Anti-profiteering to cause investigation or inquiry with regard to such other goods or services or both, in accordance with the provisions of the Act and these rules.

(b)The investigation or enquiry under clause (a) shall be deemed to be a new investigation or enquiry and all the provisions of rule 129 shall mutatis mutandis apply to such investigation or enquiry.

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[7] Inserted by the Central Goods and Services Tax (Fourth Amendment) Rules, 2019, w.e.f. 28-6-2019.

[8] Inserted by the Central Goods and Services Tax (Fourth Amendment) Rules, 2019, w.e.f. 28-6-2019

[9] Substituted for "Director General of Safeguard" by the Central Goods and Services Tax (Seventh Amendment) Rules, 2018, w.r.e.f. 12-6-2018.

[10] Inserted by the Central Goods and Services Tax (Fourth Amendment) Rules, 2019, w.e.f. 28-6-2019.

Crux of story:

1. **Time limit for passing the order by the Authority increased from 3 months to 6 months**
2. **Authority may seek clarification from DGAP on his report**
3. **Profiteered amount to be deposited in Consumer Welfare Fund along with interest @ 18% p.a.**
4. **Upon receipt of report of DGAP, NAPA has reason to believe that there has been a contravention of section 171 in respect of goods or services or both other than those covered in the said report, it may, for reasons to be recorded in writing, within the time limit of 6 months, direct the DGAP to cause investigation or inquiry with regard to such other goods or services or both. Such investigation or enquiry shall be deemed to be a new investigation or enquiry and all the provisions of rule 129 shall mutatis mutandis apply to such investigation or enquiry.**

Rule 137: Tenure of Authority

The Authority shall cease to exist after the expiry of [11]**four years** from the date on which the Chairman enters upon his office unless the Council recommends otherwise.

Amendment: As per rule 137, the Authority (NAPA) ceases to exist after the expiry of 2 years from the date on which the Chairman enters upon his office unless the GST Council recommends otherwise. Rule 137 has been amended to increase the said period of 2 years to 4 years.

Foreign trade policy - Amendment

Refund of drawback of basic customs duty paid on inputs for deemed exports also allowed on "All Industry Rate" basis [Notification No. 28/2015-2020 dated 31.10.2019]

Earlier, the refund of drawback in the form of Basic Customs duty of the inputs used in manufacture and supply under the deemed exports category was given on brand rate basis upon submission of documents evidencing actual payment of basic custom duties.
However, DGFT vide Notification No. 28/2015-20 dated 31st October 2019 has amended the said provision and provided that refund of drawback on the inputs used in manufacture and supply under the deemed exports category can be claimed on 'All Industry Rate' of Duty Drawback Schedule notified by Department of Revenue from time to time provided no CENVAT credit has been availed by supplier of goods on excisable inputs or on 'Brand rate basis' upon submission of documents evidencing actual payment of basic custom duties.

Crux: With this amendment, the refund of drawback of duty paid on inputs is also allowed on All Industry Rate basis.

[11] Substituted for "two years" by the Central Goods and Services Tax (Fifth Amendment) Rules, 2019, w.e.f. 18-7-2019.

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