



# AMENDMENT BOOKLET

2022

CA-FINAL May, 2022 Attempt

Recent CBIC Circular / Clarification  
Not Covered by ICAI



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

**Prof. Dippak**

## चलना हमारा काम है

गति प्रबल पैरों में भरी  
फिर क्यों रूँ दूर दर खड़ा  
जब आज मेरे सामने  
है रास्ता इतना पड़ा  
जब तक न मंजिल पा सकूँ,  
तब तक मुझे न विराम है, चलना हमारा काम है।

कुछ कह लिया, कुछ सुन लिया  
कुछ बोझ अपना बँट गया  
अच्छा हुआ, तुम मिल गईं  
कुछ रास्ता ही कट गया  
क्या राह में परिचय कहुँ, राही हमारा नाम है,  
चलना हमारा काम है।

जीवन अपूर्ण लिए हुए  
पाता कभी खोता कभी  
आशा निराशा से घिरा,  
हँसता कभी रोता कभी  
गति-मति न हो अवरूद्ध, इसका ध्यान आठो याम है,  
चलना हमारा काम है।

इस विशद विश्व-प्रहार में  
किसको नहीं बहना पड़ा  
सुख-दुख हमारी की तरह,  
किसको नहीं सहना पड़ा  
फिर व्यर्थ क्यों कहता फिरूँ, मुझ पर विधाता वाम है,  
चलना हमारा काम है।

मैं पूर्णता की खोज में  
दूर-दूर भटकता ही रहा  
प्रत्येक पग पर कुछ न कुछ  
रोड़ा अटकता ही रहा  
निराशा क्यों मुझे? जीवन इसी का नाम है,  
चलना हमारा काम है।

## IT'S A SINGLE LIFE

IT'S A SINGLE LIFE,  
YOU HAVE GOT TO LIVE.  
THERE'S A LOT TO TAKE  
AND A LOT TO GIVE.

WISE MEN WELL SAID,  
DON'T MAKE IT LONG.  
JUST MAKE IT WORTHY,  
ALL ALONG!!

TRY ALL THE THINGS,  
YOU ASPIRE TO DO.  
AT THE END DON'T HAVE,  
A REGRETFUL YOU!

THE WORLD IS A STAGE.  
ASSHAKESPEARE SAID.  
GO, FIND YOUR ROLE,  
AND BUILD YOUR IMAGE

LOOKING TO WHICH,  
YOU TAKE A SIGH;  
FULL OF CONTENTMENT,  
THEN MAKE YOUR FLY









OFF THIS WORLD  
OFF THIS STAGE;  
MAKING AN EXIT,  
SAVOURING EVERY BIT

IT'S A SINGLE LIFE  
YOUHAVE GOT TO LIVE  
MAKE IT BILSSFUL  
AND TAKE A LEAVE





Most renowned  
and experienced  
**GST Faculty** in India.

**Prof. Dippak** (DG Sir)

-  DG Sir has Teaching Experience of 20 years.
-  Ranker in the Foundation and Intermediate level of Chartered Accountancy course.
-  Graduated from Delhi University with top position in his College. DG Sir, is Academically excellent and blessed with aw analysis skills.
-  Qualified CA – single attempt pass at all stages (became CA at age of 21)
-  Awarded "Raja Ramnickcher Award" and "Smt. Vandana Suryanarayana Award" by The Institute of Chartered Accountants of India (ICAI) for his remarkable performance n the subject of Indirect Taxation at CA (Final) stage for scoring highest marks therein.
-  Vast experience in the field of **INDIRECT TAXATION**
-  Authored books on GST for the students pursuing Chartered Accountancy.
-  Contributor of articles in legal journals/ law magazines.

## All India Rank 1







**Suryansh Aggarwal**

I secured 81 marks in Indirect Taxation and a major credit goes to DG sir. The best thing about your classes is that we cover everything in extreme detail, yet it never feels as if the content is going out of hands. The frequent repetitions in the classes helps in staying on track while dwelling into the depth of various concepts. The entire GST act looked like one integrated topic and the links across the books that you highlighted during the classes increase made it very easy to revise the entire syllabus in a short span of time. The summary charts helped in better retention of a lot of topics and concepts.

The favourite part about the classes was the amendment series on YouTube. The amendment booklet was very comprehensive and we didn't have to refer multiple materials for the preparation.

There is no shortcut to success. The entire syllabus needs to be covered in extreme detail in order to secure good marks and also the content should stay within your control for revision in the last 1.5 days. And DG sir ensures exactly this.





**AIR 1**  
**Suryansh Aggarwal**  
**81**  
Marks

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9971575755, 011-43023336

“

SUCCESS IS NO ACCIDENT.  
It is hard work, perseverance,  
learning, studying, sacrifice  
and most of all,  
love of what you are doing

Pele

”

“

Unsuccessful people  
make decisions based  
on their current situations.  
Successful people  
make decisions based  
on where they want to be

”

“

Life is 10%  
what happens  
and 90% of  
how you react  
to it

”


“


Believe you  
can and you're  
halfway there.

Theodore Roosevelt

”

## All India Highest Marks in IDT






**Rahul Goyal**


As it is said, success is no accident, it is hard work, perseverance, learning, sacrifice and most important love of what you are doing. Scoring 88 in IDT is like a dream come true and the man who made me live my dream is Dippak Gupta Sir (DG Sir).

The way he teaches with minute detailing makes the subject easy to understand not only for exams purpose but practically too. Study Material prepared by Sir using different colors is very attractive and covers all the scattered provisions of the Act at one place which helps in gripping the subject. Amendment Classes made it sure that we were able to revise the whole concept thoroughly. Also, arrangement of Exemption modules on Sector basis helped to link and learn various exemptions. MCQ's Book covers all the ICAI's MCQ at one place. This helped me to see the subject in a holistic view.

Another Facet of the success is my Principal-cum-Mentor, CA Piyush Goyal Sir. Under his guidance I got a vast practical exposure of the Subject. He guided and nourished me at every step of my articleship and always motivated me to work efficiently. He is the one who gave me an opportunity to polish myself intensely in practical training of GST and made the subject more interesting.

With my experience I can conclude that understanding the law in detail is the most important thing to study any subject. GST is the future of our growing Nation and being in the profession of Chartered Accountant, we have a huge responsibility to shoulder the economy. I am blessed to have mentors like Dippak Gupta Sir (DG Sir) and Piyush Goyal Sir to support me in my professional journey. I thank both of them to make it possible for me to achieve this milestone.





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# QUESTION BANK



- Study Material
- Exam Papers
- Practice Questions
- RTP, MTP



**Updated Answers**  
(updated as per law on 30<sup>th</sup> April, 2021)



**Simplified Presentation**  
(Easily understandable)



**Systematically Arranged**  
(Questions arranged topic wise)



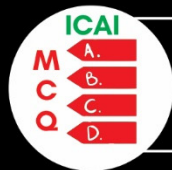
**Supported by Author's Notes**  
(Guidance tool firmly establishing inter linking of provisions applied)



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<https://www.instamojo.com/divyagyanacademy/>

# MCQs BOOKLET



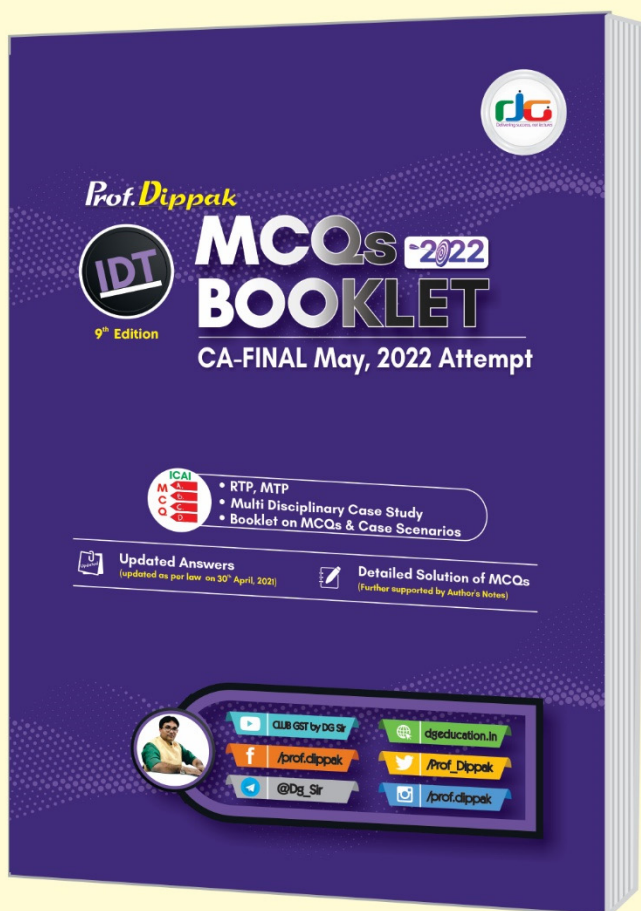
- RTP, MTP
- Multi Disciplinary Case Study
- Booklet on MCQs & Case Scenarios



**Updated Answers**  
(updated as per law on 30<sup>th</sup> April, 2021)



**Detailed Solution of MCQs**  
(Further supported by Author's Notes)



BOOK YOUR ORDER :

<https://www.instamojo.com/divygyanacademy/>



## CA-Final May 2022

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**GST - Volume I Amendments****1: SUPPLY**

1. **Supply of Goods vs Supply of Services: Supply of already manufactured ice-cream by Ice-cream parlors shall be treated as 'Supply of Goods'** [CIRCULAR NO.: 164/20/2021-GST (Dated: 06<sup>th</sup> October, 2021)]

**CIRCULAR NO.: 164/20/2021-GST** [Dated: 06<sup>th</sup> October, 2021]

**Supply of ice cream by ICE CREAM PARLORS:**

<i>Issue</i>	Clarification regarding <b>the supplies provided in an ICE CREAM OUTLET</b>
<i>Discussion</i>	Ice cream parlors sell already manufactured ice- cream <b>and they do not have a character of a restaurant.</b> <b>Ice-cream parlors do not engage in any form of cooking at any stage, whereas, restaurant service involves the aspect of cooking/preparing during the course of providing service.</b> Thus, supply of ice- cream parlor stands on a different footing than restaurant service. <b>Their activity entails supply of ice cream as goods (a manufactured item) and not as a service, even if certain ingredients of service are present.</b>
<i>Clarification</i>	Accordingly, as recommended by the Council, it is clarified that ... <i>where ice cream parlors sell already manufactured ice- cream and do not cook/prepare ice- cream for consumption like a restaurant, it is supply of ice cream as goods and not as a service, even if the supply has certain ingredients of service.</i> Accordingly, it is clarified that ice cream sold by a parlor or any similar outlet would attract <b>GST at the rate of 18%.</b>

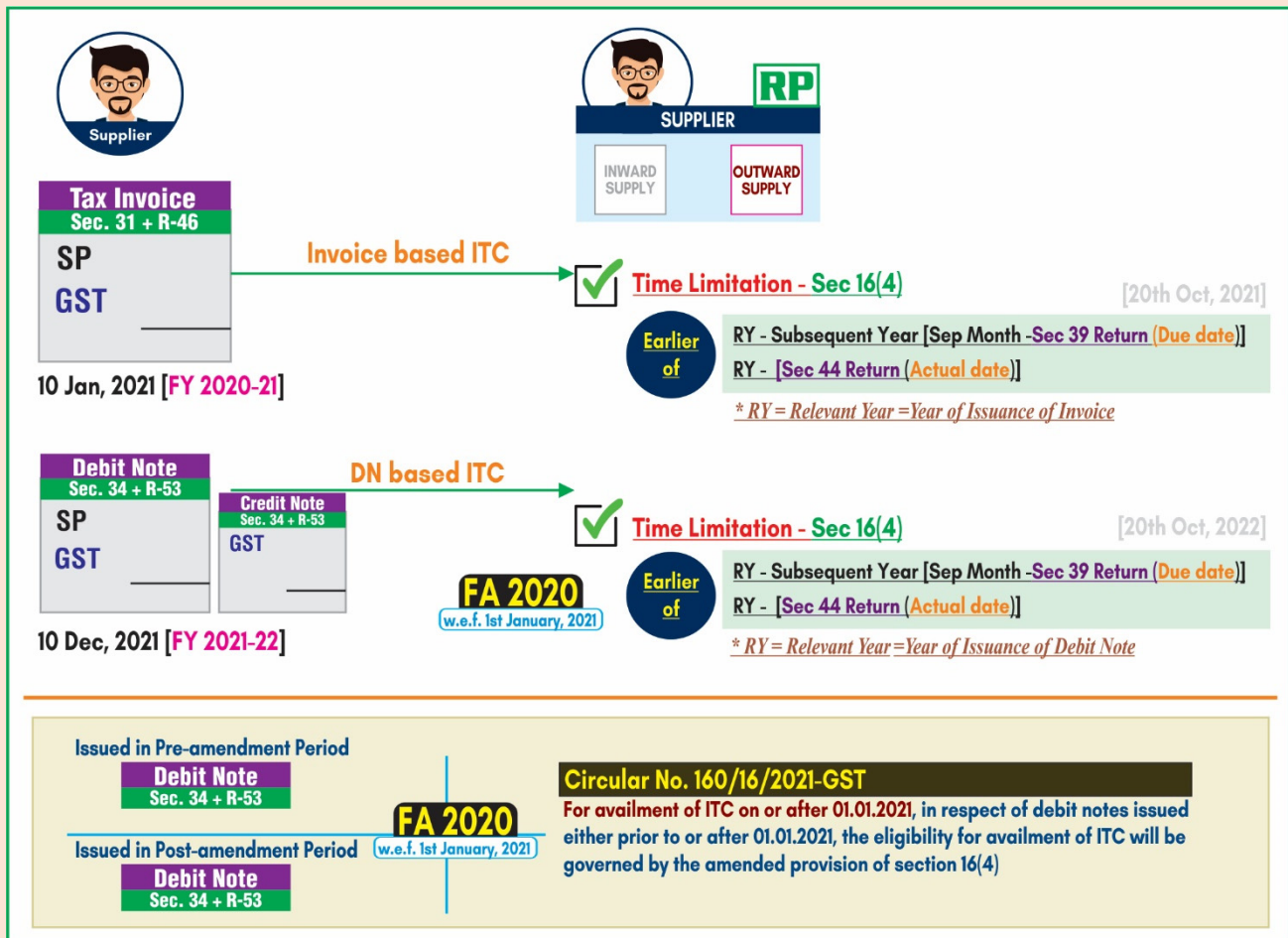




## 2 : INPUT TAX CREDIT

1. **ITC availment based on DEBIT NOTE (post-amendment by FA, 2020 which has linked time limitation to year of issuance of Debit Note):** CBIC has issued circular clarifying that on/after 1st Jan, 2021, for availment of 'ITC based on DN' (the date of applicability of amendment), amended provisions shall be applicable irrespective of date of issue of DN. [CBIC issued Circular No. 160 /16/2021-GST (dated 20<sup>th</sup> Sep, 2021)]

### Amendment in Simplified Form



Circular No. 160/16/2021-GST

Dated: 20<sup>th</sup> Sep, 2019

Subject: DN based ITC

#### Issue

**Section 16 (4), as amended with effect from 01.01.2021**, provides that a RP shall not be entitled to take ITC in respect of any invoice or debit note for supply of goods or services or both after

- ... the due date of furnishing of the return u/Sec 39 for the month of September following the end of financial year to which such invoice or debit note pertains or
- ... furnishing of the relevant annual return, whichever is earlier.

#### Doubts have been raised seeking following clarification:

1. Which of the following dates are relevant to determine the 'financial year' for the purpose of section 16(4):
  - (a) date of issuance of debit note, or
  - (b) date of issuance of underlying invoice.
2. Whether any availment of ITC, on or after 01.01.2021, in respect of debit notes issued either prior to or after 01.01.2021, will be governed by the provisions of the amended section 16(4), or the amended provision will be applicable only in respect of the debit notes issued after 01.01.2021?



**Clarification**

With effect from 01.01.2021, Sec 16(4) of the CGST Act, 2017 was amended vide the FA, 2020, so as to delink the date of issuance of debit note from the date of issuance of the underlying invoice for purposes of availing ITC.

It is clarified that:

1. **w.e.f. 01.01.2021**, in case of debit notes, **the date of issuance of debit note** (not the date of underlying invoice) **shall determine the Relevant Financial Year for the purpose of section 16(4) of the CGST Act.**
2. The availment of ITC on debit notes in respect of amended provision shall be applicable from 01.01.2021. **Accordingly, for availment of ITC on or after 01.01.2021, in respect of debit notes issued either prior to or after 01.01.2021, the eligibility for availment of ITC will be governed by the amended provision of section 16(4),** whereas any ITC availed prior to 01.01.2021, in respect of debit notes, shall be governed under the provisions of section 16(4), as it existed before the said amendment on 01.01.2021.

**Illustration 1. [Time Limitation – Invoice Based ITC vs DN based ITC]**

**A debit note dated 07.07.2021 is issued** in respect of the original invoice dated 16.03.2021.

[Invoice = 16<sup>th</sup> March, 2021 (FY 2020-21)  
Debit Note = 7<sup>th</sup> July, 2021 (FY 2021-22) ]

- **ITC availment based on Invoice (March, 2021 – FY 2020-21):** As the invoice pertains to F.Y. 2020-21, the relevant Fy for availment of ITC in respect of the said invoice in terms of section 16(4) of the CGST shall be 2020-21.
- **ITC availment based on Debit Note (July, 2021 – FY 2021-22):** *(as per amended provisions):* However, as the debit note has been issued in FY 2021-22, the relevant FY for availment of ITC in respect of the said debit note shall be 2021-22 in terms of amended provision of section 16(4) of the CGST Act.

**Illustration 2. [Time Limitation – DN based ITC – amended provisions applicable if ITC availed on/after 1<sup>st</sup> January, 2021 (even if DN issued in pre-amended period)]**

**A debit note has been issued on 10.11.2020** in respect an invoice dated 15.07.2019.

[Invoice = 15<sup>th</sup> July, 2019 (FY 2019-20)  
Debit Note = 10<sup>th</sup> Nov, 2020 (FY 2020-21) ]

- ... **ITC availment based on Debit Note (Nov, 2020 – FY 2020-21):** As per amended provision of section 16(4), the relevant FY **for availment of ITC on the said debit note, on or after 01.01.2021**, will be FY 2020-21 and accordingly, the RP can avail ITC on the same till due date of furnishing of FORM GSTR-3B for the month of Sep, 2021 or furnishing of the annual return for FY 2020-21, whichever is earlier.

**Author’s Remark:**

Pre-amendment Period	Amended Provisions	Post-Amendment Period
<b>Issuance of DN = 10<sup>th</sup> Nov, 2020</b>	<b>On/from 1<sup>st</sup> Jan, 2021</b>	<b>Availment of ITC</b> (based on DN issued in pre-amendment period)
During this period, RY for claiming ITC based on DN as ‘Year of issuance of underlying invoice’ - i.e., FY 2019-20]		During this period, RY for claiming ITC based on DN as ‘Year of issuance of DN itself’ - i.e., FY 2020-21]
Accordingly, applicable time limitation = 20 <sup>th</sup> Oct, 2020		Accordingly, applicable time limitation = 20 <sup>th</sup> Oct, 2021
Considering applicable time limitation, ITC availment based on DN was not possible at all.		Considering applicable time limitation, ITC availment based on DN is now possible. <b>CBIC has clarified that the amended provisions shall be applicable i.r.o. DN based ITC availed on/after 1<sup>st</sup> Jan, 2021</b> (irrespective of date of issuance of DN - whether issued in pre-amendment period of post-amendment period.)



### 3 : TAX INVOICE

#### 1. CBIC issued clarification in respect of applicability of Dynamic Quick Response (QR) Code on B2C invoices and compliance of N/N 14/2020- CT dated 21st March, 2020 - Reg [CIRCULAR NO.: 156/12/2021-GST (21st June 21st, 2021)]

**CIRCULAR NO.: 156/12/2021-GST** [Dated: June 21st, 2021]

**SUPPLY OF GS**  
**B2C Supply**  
(supply to unregistered person)

**Tax Invoice**  
Sec. 31 + R-46  
SP  
GST

Dynamic QR Code should be such that it can be scanned to make a digital payment

**CIRCULAR NO: 146/02/2021-GST**

**Details to be captured in QR code**

- Supplier GSTIN number
- Supplier UPI ID
- Payee's Bank A/C number and IFSC
- Invoice number & invoice date,
- Total Invoice Value and
- GST amount (CGST, SGST, IGST, CESS, etc.)

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**CIRCULAR NO: 156/12/2021-GST**

**Supply to UIN (Unique Identity Number) Holder (person registered u/Sec 25(9) of CGST Act)** - Whether invoicing requires mention of Dynamic QR Code ?

**UIN Holder** = Registered u/Sec 25(9), but **excluded** from definition of 'Registered Person' as provided in Sec 2(94) Such Supply = B2C Supply Invoicing shall be in compliance with the requirement of Dynamic QR Code.

**Supplier issuing invoice mention his UPI ID – UPI ID is linked to the bank account of the payee/ person collecting money.** Whether bank account and IFSC details also need to be provided separately in the Dynamic QR Code along with UPI ID?

Given that UPI ID is linked to a specific bank account of the payee/ person collecting money, **separate details of bank account and IFSC may not be provided in the Dynamic QR Code.**

**Payment Collection by person other than supplier (ECO or any other person authorized by the supplier on his/ her behalf) --** whether in such cases, in place of UPI ID of the supplier, the UPI ID of such person, who is authorized to collect the payment on behalf of the supplier, may be provided?

**Yes.** UPI ID of such person may be provided in the Dynamic QR Code, instead of UPI ID of the supplier.

**SUPPLY OF GS**  
**B2C Supply**  
(supply to unregistered person)

**Tax Invoice**  
Sec. 31 + R-46  
SP  
GST

Dynamic QR Code should be such that it can be scanned to make a digital payment

**CIRCULAR NO: 146/02/2021**

**Export Supply - QR code not required** (as Export invoice is covered by e-invoicing)

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**CIRCULAR NO: 156/12/2021-GST**

**Supply of services to foreign recipient – payment is being received by the supplier in For-Ex, through RBI approved modes of payment - but supply not qualifying for export as PoS In India.** -- Whether the Dynamic QR Code is required on the invoice issued to such recipient located outside India?

**No.** (Dynamic QR Code not required) - as such dynamic QR code cannot be used by the recipient located outside India for making payment to the supplier.

**Part-payment already received by the supplier (either in advance or by adjustment (e.g. using a voucher, discount coupon etc.) - Subsequent supply and invoicing** - what amount should be provided in the Dynamic QR Code for "invoice value"?

**The dynamic QR code may provide only the remaining amount payable by the customer/ recipient against "invoice value".** The details of total invoice value, along with details/ cross reference of the part-payment/ advance/ adjustment done, and the remaining amount to be paid, should be provided on the invoice.

**Retail sales over the counter- payment received on the payment counter by displaying dynamic QR code on digital display, but invoice, along with invoice number, generated on the processing system after receiving the payment. + each transaction i.e. receipt of payment from a customer is having a unique Order ID/ sales reference number, which is linked with the invoice.** Whether in such cases, the order ID/ reference number of such transaction can be provided in the dynamic QR code displayed digitally, instead of invoice number.

In such cases, where the invoice number is not available at the time of digital display of dynamic QR code in case of over the counter sales and the invoice number and invoices are generated after receipt of payment, the unique order ID/ unique sales reference number, which is uniquely linked to the invoice issued for the said transaction, may be provided in the Dynamic QR Code for digital display





Issue-1	<b>Whether Dynamic QR Code is to be provided on an invoice, issued to a person, who has obtained a Unique Identity Number (UIN) as per the provisions of Section 25 (9) of CGST Act 2017?</b>
Clarification	<p><b>UIN Holder = Not RP [Sec 2(94) of CGST Act] :- Invoice to such person = B2C Supply – QR code provisions to apply</b></p> <ul style="list-style-type: none"> <li>Any person, who has obtained a <b>UIN</b> as per the provisions of Section 25 (9) of CGST Act 2017, is <b>not</b> a “registered person” as per the definition of registered person provided in section 2(94) of the CGST Act 2017.</li> <li>Therefore, <b>any invoice, issued to such person having a UIN, shall be considered as invoice issued for a B2C supply and shall be required to comply with the requirement of Dynamic QR Code.</b></li> </ul>
Issue-2	<b>UPI ID is linked to the bank account of the payee/ person collecting money. Whether bank account and IFSC details also need to be provided separately in the Dynamic QR Code along with UPI ID?</b>
Clarification	Given that UPI ID is linked to a specific bank account of the payee/ person collecting money, <b>separate details of bank account and IFSC may not be provided in the Dynamic QR Code.</b>
Issue-3	<b>In cases where the payment is collected by some person other than the supplier (ECO or any other person authorized by the supplier on his/ her behalf), whether in such cases, in place of UPI ID of the supplier, the UPI ID of such person, who is authorized to collect the payment on behalf of the supplier, may be provided?</b>
Clarification	<b>Yes.</b> In such cases where the payment is collected by some person, authorized by the supplier on his/ her behalf, <b>the UPI ID of such person may be provided in the Dynamic QR Code, instead of UPI ID of the supplier.</b>
Issue-4	<p><b>In cases, where receiver of services is located outside India, and payment is being received by the supplier of services in foreign exchange, through RBI approved modes of payment, but as per provisions of the IGST Act 2017, the place of supply of such services is in India, then such supply of services is not considered as export of services as per the IGST Act 2017; whether in such cases, the Dynamic QR Code is required on the invoice issued, for such supply of services, to such recipient located outside India?</b></p> <p><i>[e.g., Intermediary Services provided by Selling Agent in India to foreign entity – PoS of such service = In India]</i></p>
Clarification	<b>No.</b> Wherever an invoice is issued to a recipient located outside India, for supply of services, for which the place of supply is in India, as per the provisions of IGST Act 2017, and the payment is received by the supplier in foreign currency, through RBI approved mediums, such invoice may be issued without having a Dynamic QR Code, <b>as such dynamic QR code cannot be used by the recipient located outside India for making payment to the supplier.</b>
Issue-5	<p><b>In some instances of retail sales over the counter, the payment from the customer is received on the payment counter by displaying dynamic QR code on digital display, whereas the invoice, along with invoice number, is generated on the processing system being used by supplier/ merchant after receiving the payment.</b></p> <p><b>In such cases, it may not be possible for the merchant/ supplier to provide details of invoice number in the dynamic QR code displayed to the customer on payment counter. However, each transaction i.e. receipt of payment from a customer is having a unique Order ID/ sales reference number, which is linked with the invoice for the said transaction. Whether in such cases, the order ID/ reference number of such transaction can be provided in the dynamic QR code displayed digitally, instead of invoice number.</b></p>
Clarification	In such cases, where the invoice number is not available at the time of digital display of dynamic QR code in case of over the counter sales and the invoice number and invoices are generated after receipt of payment, <b>the unique order ID/ unique sales reference number, which is uniquely linked to the invoice issued for the said transaction, may be provided in the Dynamic QR Code for digital display</b> , as long as the details of such unique order ID/ sales reference number linkage with the invoice are available on the processing system of the merchant/ supplier and the cross reference of such payment along with unique order ID/ sales reference number are also provided on the invoice.
Issue-6	<b>When part-payment has already been received by the merchant/ supplier, either in advance or by adjustment (e.g. using a voucher, discount coupon etc), before the dynamic QR Code is generated, what amount should be provided in the Dynamic QR Code for “invoice value”?</b>
Clarification	The purpose of dynamic QR Code is to enable the recipient/ customer to scan and pay the amount to be paid to the merchant/ supplier in respect of the said supply. When the part-payment for any supply has already been received from the customer/ recipient, in form of either advance or adjustment through voucher/ discount coupon etc., <b>then the dynamic QR code may provide only the remaining amount payable by the customer/ recipient against “invoice value”.</b> The details of total invoice value, along with details/ cross reference of the part-payment/ advance/ adjustment done, and the remaining amount to be paid, should be provided on the invoice.





## 4 : E-WAY BILL

- Generation of EWB: EWB is to be generated whenever there is MOVEMENT OF GOODS- whether involved in transaction of 'Supply of Goods' or 'Supply of Service'- [Clarification by GSTN Advisory]**

**GSTN: Advisory for Taxpayers regarding generation of EWB where the principal supply is Supply of Services.** Date: 16/09/2021

In terms of R-138, e-way bill is required to be generated for the movement of Goods.

Therefore, in cases where the principal supply is purely a supply of service and involving no movement of goods,

the **e-way bill is not required to be generated.**

However, in cases where along with the principal supply of service, **movement of some goods is also involved,**

**e-way bill may be generated.**

- Such situations may arise in cases of supply of services like **printing services, works contract services, catering services, pandal or shamiana services, etc.**
- In such cases, **EWB may be generated by entering the details of HSN code of the goods,** along with SAC (Service Accounting Code) of services involved.

- MOVEMENT OF GOODS (under cover of Tax Invoice + EWB): CBIC has issued circular clarifying that in case of E-invoicing (as per Rule 48(4)), carrying of Physical Copy of invoice is NOT MANDATORY as QR code having embedded IRN can be produced electronically for verification by PO. [CBIC issued Circular No. 160 /16/2021-GST (dated 20<sup>th</sup> Sep, 2021)]**

**Circular No. 160/16/2021-GST**

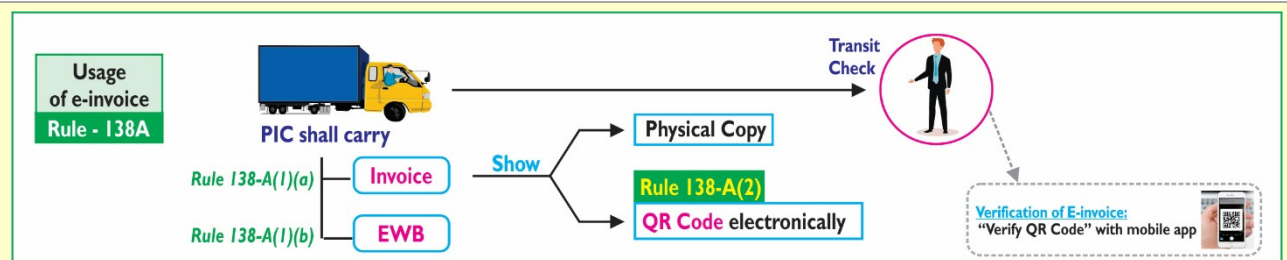
**Dated:** 20<sup>th</sup> Sep, 2019

**Subject:** E-invoice (with QR Code)- physical copy not required to be produced for verification in transit

### Issue

**Whether carrying PHYSICAL COPY of invoice is compulsory during movement of goods**

**in cases where suppliers have issued invoices in the manner prescribed under Rule 48 (4) of the CGST Rules, 2017 (i.e. in cases of e-Invoice)?**



### Clarification

- Rule 138A (1) of the CGST Rules, 2017** *inter-alia*, provides that **the person in charge of a conveyance shall carry– (a) the invoice or bill of supply or delivery challan, as the case may be; and (b) a copy of the EWB or the EWB number, either physically or mapped to a Radio Frequency Identification Device embedded on to the conveyance in such manner as may be notified by the Commissioner.**
- Further, **rule 138A (2) of CGST Rules, after being amended vide N/N 72/2020-CT dated 30.09.2020,** states that **"In case, invoice is issued in the manner prescribed under rule 48(4), the Quick Reference (QR) code having an embedded Invoice Reference Number (IRN) in it, may be produced electronically, for verification by the proper officer in lieu of the physical copy of such tax invoice"**
- A conjoint reading of **rules 138A (1) and 138A (2) of CGST Rules, 2017** clearly indicates that **there is NO requirement to carry the physical copy of tax invoice in cases where e-invoice has been generated by the supplier.**
- Accordingly, it is clarified that there is no need to carry the physical copy of tax invoice in cases where invoice has been generated by the supplier in the manner prescribed under rule 48(4) of the CGST Rules and production of the Quick Response (QR) code having an embedded Invoice Reference Number (IRN) electronically, for verification by the proper officer, would suffice.



**GST Volume-2 Amendment**

**1 : PLACE OF SUPPLY**

- INTERMEDIARY SERVICE- scope thereof:** CBIC has issued circular clarifying that the role of intermediary is only supportive and it does not provide the main supply; scope of intermediary does not cover the situation where main supply itself is supplied and sub-contracting is not an intermediary service- [Circular No. 159/15/2021-GST (dated 20<sup>th</sup> Sep, 2021)]

**Intermediary Service [Sec 2(13) of IGST Act]: Scope thereof**

The following are the requirements for intermediary services:

- A. **Minimum of Three Parties:** two of them transacting in the supply of goods or services or securities (the main supply) and one arranging or facilitating (the ancillary supply) the said main supply
- B. **Two distinct supplies:** Main supply and ancillary supply
- C. **Intermediary service provider to have the character of an agent, broker or any other similar person:** It must arrange or facilitate some other supply, which is the main supply, and does not himself provides the main supply. Thus, the role of intermediary is only supportive.
- D. **Does not include a person who supplies such goods or services or both or securities on his own account**
- E. **Sub-contracting for a service is not an intermediary service**

**Note:** It is specifically accepted that where the main service (eg. marketing consultancy service) is being done by a person in India on behalf of foreign company and their billing is directly done to foreign company in foreign currency, it would not qualify as 'intermediary' service. For an intermediary service, 3 parties are mandatory.

**Circular No. 159/15/2021-GST**

**Dated:** 20<sup>th</sup> Sep, 2019

**Subject:** INTERMEDIARY SERVICE- scope

**Subject: Clarification on doubts related to scope of "Intermediary"-reg**

Representations have been received citing ambiguity caused in interpretation of the scope of "Intermediary services" in the GST Law. The matter has been examined. In view of the difficulties being faced by the trade and industry and to ensure uniformity in the implementation of the provisions of the law across field formations, the Board, in exercise of its powers conferred by Sec 168 (1) of the CGST Act, hereby clarifies the issues in succeeding paragraphs.

**2. Scope of INTERMEDIARY SERVICES**

2.1 'Intermediary' has been defined in the **Sec 2(13) of the IGST, 2017** as under-

<b>'Intermediary'</b>	
means	<b>a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons</b>
But does not include	<b>a person who supplies such goods or services or both or securities on his OWN ACCOUNT.</b>

2.2 **The concept of 'intermediary' was borrowed in GST from the Service Tax Regime.** The definition of 'intermediary' in the Service Tax law as given in **Rule 2(f) of Place of Provision of Services Rules, 2012** issued vide N/N 28/2012-ST, dated 20-6-2012 was as follows:

<b>'Intermediary'</b>	
means	<b>a broker, an agent or any other person, by whatever name called, who arranges or facilitates a provision of a service (hereinafter called the 'main' service) or a supply of goods, between two or more persons</b>





But does not include **a person who provides the main service or supplies on his OWN ACCOUNT.**

1.3 From the perusal of the definition of “intermediary” under IGST Act as well as under Service Tax law, it is evident that there is broadly no change in the scope of intermediary services in the GST regime vis-à-vis the Service Tax regime, *except addition of supply of securities in the definition of intermediary in the GST Law.*

### 3. Primary Requirements for INTERMEDIARY SERVICES

The concept of intermediary services, as defined above, requires some **basic prerequisites**, which are discussed below:

1.1 **Minimum of Three Parties:** *By definition, an intermediary is someone who arranges or facilitates the supplies of goods or services or securities between two or more persons.*

It is thus a natural corollary that **the arrangement requires a minimum of three parties**, two of them transacting in the supply of goods or services or securities (the main supply) and one arranging or facilitating (the ancillary supply) the said main supply.

**An activity between only two parties can, therefore, NOT be considered as an intermediary service.**

An intermediary essentially “arranges or facilitates” another supply (the “main supply”) between two or more other persons and, does not himself provide the main supply.

3.2 **Two distinct supplies:** As discussed above, there are two distinct supplies in case of provision of intermediary services;

(1) **Main supply**, between the two principals, *which can be a supply of goods or services or securities;*

(2) **Ancillary supply**, *which is the service of facilitating or arranging the main supply between the two principals. This ancillary supply is supply of intermediary service and is clearly identifiable and distinguished from the main supply.*

A person involved in supply of main supply on principal to principal basis to another person cannot be considered as supplier of intermediary service.

1.2 **Intermediary service provider to have the character of an agent, broker or any OTHER SIMILAR PERSON:** The definition of “intermediary” itself provides that intermediary service provider means a broker, an agent or any other person, by whatever name called....”. This part of the definition is not inclusive but uses the expression “means” and does not expand the definition by any known expression of expansion such as “and includes”. The use of the expression “arranges or facilitates” in the definition of “intermediary” suggests a subsidiary role for the intermediary. It must arrange or facilitate some other supply, which is the main supply, and does not himself provides the main supply. Thus, **the role of intermediary is only supportive.**

1.3 **Does not include a person who supplies such goods or services or both or securities on his OWN ACCOUNT:** The definition of intermediary services specifically mentions that intermediary “does not include a person who supplies **such** goods or services or both or securities on his own account”.

**Use of word “such” in the definition with reference to supply of goods or services refers to the main supply of goods or services or both, or securities, between two or more persons, which are arranged or facilitated by the intermediary. It implies that in cases wherein the person supplies the main supply, either fully or partly, on principal to principal basis, the said supply cannot be covered under the scope of “intermediary”.**

1.4 **SUB-CONTRACTING for a service is NOT an intermediary service:** An important exclusion from intermediary is sub-contracting. **The supplier of main service may decide to outsource the supply of the main service, either fully or partly, to one or more sub-contractors. Such sub-contractor provides the main supply, either fully or a part thereof, and does not merely arrange or facilitate the main supply between the principal supplier and his customers, and therefore, clearly is not an intermediary.**

*For instance, ‘A’ and ‘B’ have entered into a contract as per which ‘A’ needs to provide a service of, say, Annual Maintenance of tools and machinery to ‘B’. ‘A’ subcontracts a part or whole of it to ‘C’. Accordingly, ‘C’ provides the service of annual maintenance to ‘A’ as part of such sub-contract, by providing annual maintenance of tools and machinery to the customer of ‘A’, i.e. to ‘B’ on behalf of ‘A’. Though ‘C’ is dealing with the customer of ‘A’, but ‘C’ is providing main supply of Annual Maintenance Service to ‘A’ on his own account, i.e. on principal to principal basis. In this case, ‘A’ is providing supply of Annual Maintenance Service to ‘B’, whereas ‘C’ is supplying the same service to ‘A’. Thus, supply of service by ‘C’ in this case will not be considered as an intermediary.*

1.5 **The specific provision of place of supply of ‘intermediary services’ under section 13 of the IGST Act shall be invoked only when either the location of supplier of intermediary services or location of the recipient of intermediary services is outside India.**

[Sec 13(8)(a) of IGST Act:: PoS of Intermediary Service = Location of Supplier]

2. Applying the abovementioned guiding principles, the issue of intermediary services is clarified through the following **ILLUSTRATIONS:**

#### Illustration 1

**‘A’ is a manufacturer and supplier of a machine.**

**‘C’ helps ‘A’ in selling the machine by identifying client ‘B’** who wants to purchase this machine and helps in finalizing the contract of supply of machine by ‘A’ to ‘B’.

‘C’ charges ‘A’ for his services of locating ‘B’ and helping in finalizing the sale of machine between ‘A’ and ‘B’, for which ‘C’ invoices ‘A’ and is paid by ‘A’ for the same.

**While ‘A’ and ‘B’ are involved in the main supply of the machinery, ‘C’, is facilitating the supply of machine between ‘A’ and ‘B’. In this arrangement,**

- ‘C’ is providing the ancillary supply of arranging or facilitating the ‘main supply’ of machinery between ‘A’ and ‘B’ and therefore, **‘C’ is an intermediary** and is providing intermediary service to ‘A’.





**Illustration 2**

'A' is a software company which develops software for the clients as per their requirement. 'A' has a contract with 'B' for providing some customized software for its business operations.

'A' outsources the task of design and development of a particular module of the software to 'C', for which "C" may have to interact with 'B', to know their specific requirements.

In this case, **'C' is providing main supply of service of design and development of software to 'A', and thus, 'C' is not an intermediary in this case.**

**Illustration 3**

An insurance company 'P', located outside India, requires to process insurance claims of its clients in respect of the insurance service being provided by 'P' to the clients.

For processing insurance claims, 'P' decides to outsource this work to some other firm. For this purpose, he approaches 'Q', located in India, for arranging insurance claims processing service from OTHER service providers in India.

'Q' contacts 'R', who is in business of providing such insurance claims processing service, and arranges supply of insurance claims processing service by 'R' to 'P'.

'Q' charges P a commission or service charge of 1% of the contract value of insurance claims processing service provided by 'R' to 'P'.

In such a case, main supply of insurance claims processing service is between 'P' and 'R', while 'Q' is merely arranging or facilitating the supply of services between 'P' and 'R', and not himself providing the main supply of services.

- Accordingly, in this case, **'Q' acts as an intermediary** as per definition of Sec 2(13) of the IGST Act.

**Illustration 4**

'A' is a manufacturer and supplier of computers based in USA and supplies its goods all over the world. As a part of this supply, 'A' is also required to provide customer care service to its customers to address their queries and complains related to the said supply of computers.

'A' decides to outsource the task of providing customer care services to a BPO firm, 'B'.

'B' provides customer care service to 'A' by interacting with the customers of 'A' and addressing / processing their queries / complains. 'B' charges 'A' for this service.

- 'B' is involved in supply of main service 'customer care service' to 'A', and **therefore, "B" is not an intermediary.**

3. **The illustrations given in para 4 above are only indicative and not exhaustive.**

The illustrations are also generic in nature and should not be interpreted to mean that the service categories mentioned therein are inherently either intermediary services or otherwise. *Whether or not, a specific service would fall under intermediary services within the meaning of Sec 2 (13) of the IGST Act, would depend upon the facts of the specific case.* While examining the facts of the case and the terms of contract, the basic characteristics of intermediary services, as discussed in para 3 above, should be kept in consideration.



## 2 : EXPORT

- EXPORT OF SERVICE- scope thereof:** CBIC has issued circular clarifying that supply of service by 'Indian Subsidiary' to 'its foreign Group / Patent Company' qualifies to be the 'Export of Service' as defined in Sec 2(6) of the IGST Act since these are not merely establishments of the distinct persons [Circular No. 159/15/2021-GST (dated 20<sup>th</sup> Sep, 2021)]

**Export of Service [Sec 2 (6) of IGST Act]: Scope thereof**

**RECIPIENT**  
Foreign Company (incorporated outside India)

**Supply of Service**

**These are not separate entities**  
Hence, such supply fulfills condition (v) of S. 2(6)

**SUPPLIER**  
Indian Subsidiary Company (incorporated in India)

**Circular No. 161/17/2021-GST**

- Foreign Parent Company and Indian Subsidiary are separate persons under CGST Act, and thus are separate legal entities.** Accordingly, these two separate persons would not be considered as "merely establishments of a distinct person in accordance with Explanation 1 in section 8".
- Therefore, supply of services by a Indian subsidiary of a foreign company (which is incorporated in India under the Companies Act, 2013 ) to the establishments of the said foreign company located outside India (incorporated outside India), would not be barred by the condition (v) of the section 2(6) of the IGST Act 2017 for being considered as export of services, as it would not be treated as supply between merely establishments of distinct persons under Explanation 1 of section 8 of IGST Act 2017 . Similarly, the supply from a company incorporated in India to its related establishments outside India, which are incorporated under the laws outside India, would not be treated as supply to merely establishments of distinct person under Explanation 1 of section 8 of IGST Act 2017.

**Such supplies, therefore, would qualify as 'export of services', subject to fulfilment of other conditions as provided under sub-section (6) of section 2 of IGST Act.**

**Circular No. 161/17/2021-GST**

**Dated:** 20<sup>th</sup> Sep, 2019

**Subject:** EXPORT OF SERVICE- scope

**Subject: Clarification relating to export of services-condition (v) of section 2(6) of the IGST Act 2017-reg.**

Various representations have been received citing **ambiguity caused in interpretation of the Explanation 1 under section 8 of the IGST Act 2017** in relation to **condition (v)** of EXPORT OF SERVICES as mentioned in **section 2(6) of the IGST Act 2017**.

Doubts have been raised whether the supply of service by a subsidiary/ sister concern/ group concern, etc. of a foreign company in India, which is incorporated under the laws in India, to the foreign company incorporated under laws of a country outside India, will hit by condition (v) of **section 2(6) of the IGST Act 2017**.

- The matter has been examined. In view of the difficulties being faced by the trade and industry and **to ensure uniformity in the implementation of the provisions of the law** across field formations, the Board, in exercise of its powers conferred by **Sec 168 (1) of the CGST Act**, hereby clarifies the issue in succeeding paragraphs.

**Relevant legal provisions:**

- The export of services has been defined in **section 2(6) of the IGST Act 2017** as under:

<b>'Export of SERVICE'</b>	
means	<p><b>the supply of any service when,—</b></p> <p>(i) the <b>supplier</b> of service is <b>located in India</b>;</p> <p>(ii) the <b>recipient</b> of service is <b>located outside India</b>;</p> <p>(iii) the <b>PoS</b> of service is <b>outside India</b>;</p> <p>(iv) the <b>payment</b> for such service <b>has been received</b> by the supplier of service <b>in convertible foreign exchange or in Indian rupees wherever permitted by the RBI</b> (e.g., export to Nepal or Bhutan);</p> <p style="text-align: center;"><b>and</b></p> <p>(v) the <b>supplier of service and the recipient of service</b> are <b>not merely establishments of a distinct person in accordance with Explanation 1 in section 8</b>.</p>





- 3.2 **Explanation 1 of the Section 8 of the IGST Act** provides for the conditions wherein establishments of a person would be treated as establishments of distinct persons, which is reproduced as under:--

**Explanation 1: For the purposes of this Act**, where a person has,--

- (i) **an establishment in India** and **any other establishment outside India**;
- (ii) an establishment in a State or Union territory and any other establishment outside that State or Union territory; or
- (iii) an establishment in a State or Union territory and any other establishment being a business vertical registered within that State or Union territory, then such establishments shall be treated as establishments of distinct persons.

**As per the above Explanation, an establishment of a person in India and another establishment of the said person outside India are considered as establishments of distinct persons.**

- 1.3 Reference is also invited to the **Explanation 2 of Section 8 of IGST Act**, which is reproduced below:

**Explanation 2:**

**A person carrying on a business through a branch or an agency or a representational office in any territory shall be treated as having an establishment in that territory.**

- 3.4 Reference is also invited to the definition of "person" as provided under **CGST Act 2017, made applicable to IGST Act vide section 2(24) of IGST Act 2017**. "Person" has been defined under sub-section (84) of the section 2 of the CGST Act 2017, as under:

Person	
includes	<ul style="list-style-type: none"> <li>(a) an individual;</li> <li>(b) a Hindu Undivided Family;</li> <li>(c) a company;</li> <li>(d) a firm;</li> <li>(e) a Limited Liability Partnership;</li> <li>(f) an association of persons or a body of individuals, whether incorporated or not, in India or outside India;</li> <li>(g) any corporation established by or under any Central Act, State Act or Provincial Act or a Government company as defined in Sec 2 (45) of the Companies Act, 2013;</li> <li>(h) any body corporate incorporated by or under the laws of a country outside India;</li> <li>(i) a co-operative society registered under any law relating to co-operative societies;</li> <li>(j) a local authority;</li> <li>(k) Central Government or a State Government;</li> <li>(l) society as defined under the Societies Registration Act, 1860;</li> <li>(m) trust; and</li> <li>(n) every artificial juridical person, not falling within any of the above;</li> </ul>

- 3.5. The definitions of company and foreign company have been provided under section 2 of Companies Act 2013, as under:

**Sec 2 (20): Company**

**means** a company incorporated under this Act or under any previous company law;.

**Sec 2 (42): Foreign Company**

**means** any company or body corporate incorporated outside India which—  
 (a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and  
 (b) conducts any business activity in India in any other manner.

**Analysis of the issue:**

- 4.1 **Clause (v) of Section 2 (6) of IGST Act**, which defines "EXPORT OF SERVICES", **places a condition that** the services provided by one establishment of a person to another establishment of the same person, considered as establishments of distinct persons as per Explanation 1 of section 8 of IGST Act, cannot be treated as export. In other words, any supply of services by an establishment of a foreign company in India to any other establishment of the said foreign company outside India will not be covered under definition of export of services.
- 4.2 Further, perusal of the **Explanation 2 to section 8 of the IGST Act** suggests that if a foreign company is conducting business in India through a branch or an agency or a representational office, then the said branch or agency or representational office of the foreign company, located in India, shall be treated as establishment of the said foreign company in India. Similarly, if any company incorporated in India, is operating through a branch or an agency or a representational office in any country outside India, then that branch or agency or representational office shall be treated as the establishment of the said company in the said country.
- 4.3. **In view of the above**, it can be stated that supply of services made by a branch or an agency or representational office of a foreign company, not incorporated in India, to any establishment of the said foreign company outside India, shall be treated as supply between establishments of distinct persons and shall not be considered as "export of services" in view of condition (v) of Section 2(6) of IGST Act. Similarly, any supply of service by a company incorporated in India to its branch or agency or representational office, located in any other country and not incorporated under the laws of the said country, shall also be considered as supply between establishments of distinct persons and cannot be treated as export of services.
- 4.4 **From the perusal of the definition of "person" under Section 2 (84) of the CGST Act, 2017** and **the definitions of "company" and "foreign company" under Section 2 of the Companies Act, 2013**, it is observed that
- o **a company incorporated in India and a foreign company incorporated outside India, are separate "person" under the provisions of CGST Act and accordingly, are separate legal entities.**





Thus, a subsidiary/ sister concern/ group concern of any foreign company which is incorporated in India, then the said company incorporated in India will be considered as a separate "person" under the provisions of CGST Act and accordingly, would be considered as a separate legal entity than the foreign company.

**Clarification:**

- 5.1 In view of the above, **it is clarified that a company incorporated in India and a body corporate incorporated by or under the laws of a country outside India, which is also referred to as foreign company under Companies Act, are separate persons under CGST Act, and thus are separate legal entities. Accordingly, these two separate persons would not be considered as "merely establishments of a distinct person in accordance with Explanation 1 in section 8"**.
- 5.2 Therefore, supply of services by a subsidiary/ sister concern/ group concern, etc. of a foreign company, which is incorporated in India under the Companies Act, 2013 (and thus qualifies as a 'company' in India as per Companies Act), to the establishments of the said foreign company located outside India (incorporated outside India), would not be barred by the condition (v) of the section 2(6) of the IGST Act 2017 for being considered as export of services, as it would not be treated as supply between merely establishments of distinct persons under Explanation 1 of section 8 of IGST Act 2017. Similarly, the supply from a company incorporated in India to its related establishments outside India, which are incorporated under the laws outside India, would not be treated as supply to merely establishments of distinct person under Explanation 1 of section 8 of IGST Act 2017. **Such supplies, therefore, would qualify as 'export of services', subject to fulfilment of other conditions as provided under sub-section (6) of section 2 of IGST Act.**



**3 : REFUNDS****1. *Special Cases of Refund***

- A. **ITC Refund to Exporters (making Zero-Rated Supply under Bond/LuT)]:** CBIC has issued circular clarifying that **Sec 54 (3) prohibition as to refund of unutilized ITC in case of EXPORTS OF GOODS which are 'subjected to export duty' shall be applicable ONLY to those cases where 'export duty is ACTUALLY PAYABLE on such export goods' (it shall not be applicable where export duty is Nil/ fully exempted) [Circular No. 160 /16/2021-GST (dated 20<sup>th</sup> Sep, 2021)]**

**Amendment in Simplified Form**

**Section 54(3)(i) of CGST Act** permits a registered person to claim refund of unutilized ITC on account of zero-rated supplies of goods and services. However, **proviso to Section 54(3) of CGST Act**, prohibits refund of unutilized ITC in those cases *where the goods exported out of India are* **SUBJECTED TO EXPORT DUTY**.

Situations	Export Duty payable or not	Whether shall be considered as 'subjected to Export duty' for purposes of 'second proviso to Sec 54(3)'	Whether ITC refund route is available to Exporter of GOODS in terms of Sec 54 (3)(i)?
Goods which are not covered under Second Schedule to the Customs Tariff Act, 1975	ED not payable	NO	YES
Goods in respect of which NIL rate is specified in Second Schedule to the Customs Tariff Act, 1975	ED not payable	NO	YES
Goods which are fully exempted from payment of export duty by virtue of any customs notification	ED not payable	NO	YES
<b>Other Goods</b> (goods covered by Sch to CTA, 1975 - not subjected to Nil Rate of Duty and no exemption applicable)	ED payable	YES	NO

**Circular No. 160/16/2021-GST**Dated: 20<sup>th</sup> Sep, 2019Subject: Meaning of 'Subjected to Export Duty' for purposes of **second proviso** to Sec 54(3)(i)**Background**

Section 54(3)(i) of CGST Act permits a registered person to claim refund of unutilized ITC on account of zero-rated supplies of goods and services. However, **the first proviso to Section 54(3) of CGST Act**, prohibits refund of unutilized ITC in those cases **where the goods exported out of India are subjected to export duty**.

**Issue**

**Whether the first proviso to section 54(3) of CGST Act, prohibiting refund of unutilized ITC is applicable in case of exports of goods which are having NIL rate of export duty.?**

**Clarification**

- The term 'SUBJECTED TO EXPORT DUTY' used in first proviso to section 54(3) of the CGST Act, 2017 means where the goods are actually leviable to export duty and suffering export duty at the time of export.**  
Therefore, **goods** in respect of which either NIL rate is specified in Second Schedule to the Customs Tariff Act, 1975 or which are fully exempted from payment of export duty by virtue of any customs notification or which are not covered under Second Schedule to the Customs Tariff Act, 1975, **CANNOT be considered to be subjected to any export duty under Customs Tariff Act, 1975.**
- Accordingly, it is clarified that **only those goods which are actually subjected to export duty i.e., on which some export duty has to be paid at the time of export, will be covered under the RESTRICTION imposed under section 54(3) from availment of refund of accumulated ITC.**

<sup>1</sup> **Mistake in Circular** – It is not 'first proviso', rather it is 'second proviso'

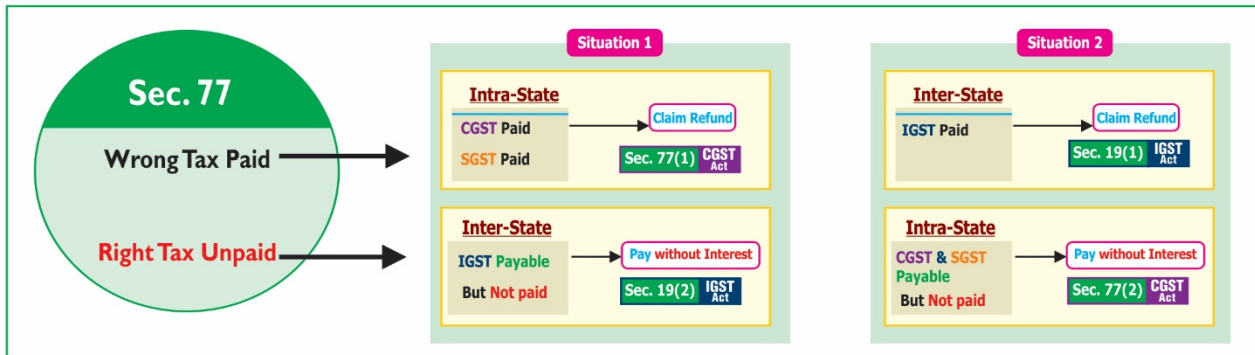




- B. Refund of 'WRONG TAX PAID due to wrong determination of 'place of supply':** CBIC issued clarification as to scope of applicability of provisions of Sec 77 (which provides for treatment of wrong tax paid due to wrong categorization of supply) - clarified that the provision covers both the cases where either the taxpayer has himself subsequently found out the mistake or held as incorrect in any proceeding [Circular No. 162/18/2021-GST (dated 25<sup>th</sup> Sep, 2021)]

### Amendment in Simplified Form

#### Refund of 'Wrong Tax paid due to wrong categorization of supply'



#### Circular No. 161/17/2021-GST

##### Interpretation of the term "subsequently held"

whether refund claim under the said sections is available only if supply made by a taxpayer as inter-State or intra-State, is subsequently held by tax officers as intra-State and inter-State respectively, either on scrutiny/ assessment/ audit/ investigation, or as a result of any adjudication, appellate or any other proceeding

or

whether the refund under the said sections is also available when the inter-State or intra-State supply made by a taxpayer, is subsequently found by taxpayer himself as intra-State and inter-State respectively.

**Clarification:** The term "subsequently held" in section 77 of CGST Act, 2017 or under section 19 of IGST Act, 2017 covers BOTH the cases

Refund in such manner and subject to conditions as may be prescribed **Now, Rule 89(1A) has been issued prescribing conditions the refund under section 77 of CGST Act/ Section 19 of IGST Act, 2017 can be claimed before the expiry of two years from the date of payment of tax under the correct head, i.e. IGST paid in respect of subsequently held inter-State supply, or central and state tax in respect of subsequently held intra-State supply, as the case may be. However, in cases, where the taxpayer has made the payment in the correct head before the date of issuance of N/N 35/2021-CT, the refund application under section 77 of the CGST Act/ section 19 of the IGST Act can be filed before the expiry of two years from the date of issuance of the said notification. i.e. from 24.09.2021**

#### Circular No. 162/18/ 2021-GST

Dated: 25<sup>th</sup> Sep, 2019

Subject: Refund of 'Wrong Tax Paid'

#### Subject: Clarification in respect of refund of tax specified in section 77(1) of the CGST Act and section 19(1) of the IGST Act -Reg.

Representations have been received seeking clarification on the issues in respect of refund of tax wrongfully paid as specified in Section 77(1) of the CGST Act and Section 19(1) of the IGST Act. In order to clarify these issues and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the CGST Act, hereby clarifies the issues detailed hereunder:

2.1 **Section 77 of the CGST Act, 2017** reads as follows:

##### "77. Tax wrongfully collected and paid to Central Government or State Government.

- (1) A registered person who has paid the Central tax and State tax or, as the case may be, the Central tax and the Union territory tax on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, **shall be refunded the amount of taxes so paid in such manner and subject to such conditions as may be prescribed.**
- (2) A registered person who has paid integrated tax on a transaction considered by him to be an inter-State supply, **but which is SUBSEQUENTLY HELD to be an intra-State supply**, shall not be required to pay any interest on the amount of central tax and State tax or, as the case may be, the Central tax and the Union territory tax payable."

**Section 19 of the IGST Act, 2017** reads as follows:

##### "19. Tax wrongfully collected and paid to Central Government or State Government

- (1) A registered person who has paid integrated tax on a supply considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, **shall be granted refund of the amount of integrated tax so paid in such manner and subject to such conditions as may be prescribed.**
- (2) A registered person who has paid central tax and State tax or Union territory tax, as the case may be, on a transaction considered by him to be an intra-State supply, **but which is SUBSEQUENTLY HELD to be an inter-State supply**, shall not be required to pay any interest on the amount of integrated tax payable."



**3. Interpretation of the term “subsequently held”**

- 3.1 **Doubts have been raised regarding the interpretation of the term “SUBSEQUENTLY HELD”** in the aforementioned sections, and ... *whether refund claim under the said sections is available only if supply made by a taxpayer as inter-State or intra-State, is subsequently held by tax officers as intra-State and inter- State respectively, either on scrutiny/ assessment/ audit/ investigation, or as a result of any adjudication, appellate or any other proceeding*
- or**
- ... *whether the refund under the said sections is also available when the inter-State or intra-State supply made by a taxpayer, is subsequently found by taxpayer himself as intra- State and inter-State respectively.*

3.2 In this regard, **it is clarified that the term “subsequently held” in section 77 of CGST Act, 2017 or under section 19 of IGST Act, 2017 covers BOTH the cases** where the inter-State or intra-State supply made by a taxpayer, is either subsequently found by taxpayer himself as intra-State or inter-State respectively or where the inter-State or intra-State supply made by a taxpayer is subsequently found/ held as intra-State or inter-State respectively by the tax officer in any proceeding. Accordingly, refund claim under the said sections can be claimed by the taxpayer in both the above mentioned situations, provided the taxpayer pays the required amount of tax in the correct head.

**4. The RELEVANT DATE for claiming refund under section 77 of the CGST Act/ Section 19 of the IGST Act, 2017**

- 4.1 Section 77 of the CGST Act and Section 19 of the IGST Act, 2017 provide that in case a supply earlier considered by a taxpayer as intra-State or inter-State, is subsequently held as inter-State or intra-State respectively, the amount of central and state tax paid or integrated tax paid, as the case may be, on such supply shall be refunded in such manner and subject to such conditions as may be prescribed.
- o **In order to prescribe the manner and conditions for refund under section 77 of the CGST Act and section 19 of the IGST Act, sub-rule (1A) has been inserted after sub-rule (1) of rule 89 of the CGST Rules** vide N/N 35/2021-CT dated 24.09.2021. The said sub-rule (1A) of rule 89 of CGST Rules, 2017 reads as follows:

(1A)	<p><b>Any person,</b>  <u>claiming refund under section 77 of the Act</u> of any tax paid by him, in respect of a transaction considered by him to be an intra- State supply, which is subsequently held to be an inter-State supply,  <i>(i.e. CGST +SGST/UTGST paid considering supply as Intra-State, but actually supply was inter-state and IGST was payable)</i></p>	<p><b>may ,</b> before the expiry of a period of <b>2 years from the date of payment of the tax on the inter-State supply,</b>                  file an <b>application electronically</b>                  in <b>FORM GST RFD-01</b>                  through the common portal, either directly or through a Facilitation Centre notified by the Commissioner.</p>
	<p><b>Provided that</b>  <b>the said application may,</b> as regard to any payment of tax on inter-State supply before coming into force of this sub-rule,</p>	<p><b>be filed before</b> <u>the expiry of a period of two years from the date on which this sub-rule comes into force.</u></p>

4.2 **The aforementioned amendment** in the rule 89 of CGST Rules, 2017 **clarifies that the refund under section 77 of CGST Act/ Section 19 of IGST Act, 2017 can be claimed before the expiry of two years from the date of payment of tax under the correct head,** i.e. IGST paid in respect of subsequently held inter- State supply, or central and state tax in respect of subsequently held intra-State supply, as the case may be.

However, in cases, **where the taxpayer has made the payment in the correct head before the date of issuance of N/N 35/2021-CT, the refund application under section 77 of the CGST Act/ section 19 of the IGST Act can be filed before the expiry of two years from the date of issuance of the said notification. i.e. from 24.09.2021.**

4.3 **Application of rule 89 (1A) read with section 77 of the CGST Act / section 19 of the IGST Act** is explained through following **illustrations.**

A taxpayer “A” has issued the invoice dated 10.03.2018 charging CGST and SGST on a transaction and accordingly paid the applicable tax (CGST and SGST) in the return for March, 2018 tax period. The following scenarios are explained hereunder:

Scenario	Last date for filing the refund claim
1 Having realized on his own that the said transaction is an inter-State supply, “A” paid IGST in respect of the said transaction on 10.05.2021.	Since “A” has paid the tax in the correct head before issuance of N/N. 35/2021-CT, the last date for filing refund application in FORM GST RFD-01 would be 23.09.23 (two years from date of notification)
2 Having realized on his own that the said transaction is an inter-State supply, “A” paid IGST in respect of the said transaction on 10.11.2021 i.e. after issuance of N/N 35/2021-CT dated 24.09.2021	Since “A” has paid the correct tax on 10.11.2021, in terms of rule 89 (1A) of the CGST Rules, the last date for filing refund application in FORM GST RFD-01 would be 09.11.2023 (two years from the date of payment of tax under the correct head, i.e. integrated tax)
3 Proper officer or adjudication authority or appellate authority of “A” has held the transaction as an inter-State supply and accordingly, “A” has paid the IGST in respect of the said transaction on 10.05.2019	Since “A” has paid the tax in the correct head before issuance of N/N. 35/2021-CT, the last date for filing refund application in FORM GST RFD-01 would be 23.09.23 (two years from date of notification)



4 Proper officer or adjudication authority or appellate authority of "A" has held the transaction as an inter-State supply and accordingly, "A" has paid the IGST in respect of the said transaction on 10.11.2022 i.e. after issuance of N/N 35/2021-CT dated 24.09.2021

Since "A" has paid the correct tax on 10.11.2022, in terms of rule 89 (1A) of the CGST Rules, the last date for filing refund application in FORM GST RFD-01 would be 09.11.2024 (two years from the date of payment of tax under the correct head, i.e. integrated tax)

**The examples above are only indicative one and not an exhaustive list.**

Rule 89 (1A) of the CGST Rules would be applicable for section 19 of the IGST Act also, where the taxpayer has initially paid IGST on a specific transaction which later on is held as intra-State supply and the taxpayer accordingly pays CGST and SGST on the said transaction.

**It is also clarified that any refund applications filed, whether pending or disposed off, before issuance of N/N 35/2021-CT, would also be dealt in accordance with the provisions of rule 89 (1A) of the CGST Rules, 2017.**

4.4 **Refund under section 77 of the CGST Act / section 19 of the IGST Act would NOT be available** where the taxpayer has made tax adjustment through issuance of credit note under section 34 of the CGST Act in respect of the said transaction.





**4 : EXEMPTIONS UNDER GST**

- Exemption Notification 12/2017- CT (R): Entry No. 66(b)(ii)** (Exemption to catering services provided to Institution providing pre-school or school education): Such exemption applicable to (a) where consideration is received by supplier in form of Government grant or corporate donations (b) where the recipient is anganwadi [CBIC Circular 149/05/2021-GST, Dated: 17<sup>th</sup> June, 2021]

**Amendment in Simplified Form**

**CIRCULAR NO: 149/05/2021-GST**



**Issue: Applicability of GST**

**E/N 12/2017- CT (Rate)**

Entry No. 66(b)(ii) Service of catering, including any mid-day meals scheme sponsored by the CG, SG, or UT to Pre-School / School is exempt.

As per recommendation of the GST Council [43rd Meeting held on 28th May, 2021], it is clarified that services provided to an educational institution by way of serving of food ( catering including mid- day meals) is exempt from levy of GST irrespective of its funding from government grants or corporate donations [under Entry 66 (b)(ii)].

**Whether such supply to ANGANWADI is also exempt?**

**Yes...**

An Anganwadi interalia provides pre-school non-formal education. Hence, anganwadi is covered by the definition of educational institution (as pre-school).



<b>Issue-1</b>	<b>Activity of Serving food in Schools under Mid-Day Meal Scheme: Whether eligible for exemption where supplies are funded by Government Grant or corporate donations?</b>			
<b>Analysis</b>	<b>E/N 12/2017- CT (Rate)</b> <b>Entry 66 (b) (ii) INWARD SUPPLIES to specified Educational Institution</b>			
	<b>Nature of Service</b>	<b>Category-1 Institution</b> (EI providing Pre-School Education / Education upto Higher Secondary School)	<b>Category-2 Institution</b> (EI providing education forming part of a curriculum for obtaining a legally recognized qualification) **	<b>Category-3 Institution</b> (EI providing education as part of approved Vocational Education Course)
	<b>(ii) Catering</b> , including any mid-day meals scheme sponsored by the CG, SG or UT; (catering service may be provided inside or outside the Educational Institution)	<b>Exempt</b>	<b>Not exempt</b>	<b>Not exempt</b>
<b>Clarification</b>	The scope of this entry is thus wide enough to cover any serving of any food to a school, including pre-school. ... As per recommendation of the GST Council [43 <sup>rd</sup> Meeting held on 28 <sup>th</sup> May, 2021], it is clarified that services provided to an educational institution by way of serving of food ( catering including mid- day meals) is exempt from levy of GST irrespective of its funding from government grants or corporate donations [under Entry 66 (b)(ii)].			





<b>Issue-2</b>	<p><b>Activity of Serving food to Anganwadi: Whether supply to ANGANWADI is also exempt?</b></p> <p><b>Wikipedia:</b> Anganwadi is a type of rural child care centre in India. They were started by the Indian government in 1975 as part of the Integrated Child Development Services program to combat child hunger and malnutrition. <i>Anganwadi</i> means "courtyard shelter" in Hindi.</p>
<b>Clarification</b>	<p>An Anganwadi <i>interalia</i> provides pre-school non-formal education. Hence, aganwadi is covered by the definition of educational institution (as pre-school).</p> <p>Educational institutions as defined in the notification include aganwadi. Hence, serving of food to anganwadi shall also be covered by said exemption, whether sponsored by government or through donation from corporates.</p>

**CIRCULAR NO.: 149/05/2021-GST [Dated: 17<sup>th</sup> June, 2021]**

Subject: Clarification regarding applicability of GST on supply of food in Anganwadis and Schools -reg.

1. Representations have been received seeking clarification regarding applicability of GST on the issues as to whether **servicing of food in schools under Mid-Day Meals Scheme** would be exempt if such supplies are funded by government grants and/or corporate donations. The issue was examined by GST Council in its 43rd meeting held on 28th May, 2021.
2. **Entry 66 (b)(ii) of N/N 12/2017-CT (Rate)**, exempts *Services provided to an educational institution, by way of catering, including any mid-day meals scheme sponsored by the Central Government, State Government or Union territory.* This entry applies to pre-school and schools.
3. Accordingly, as per said entry 66, any catering service provided to an educational institution is exempt from GST. The entry further mention that such exempt service includes mid- day meal service as specified in the entry. The scope of this entry is thus wide enough to cover any serving of any food to a school, including pre-school. Further, an Anganwadi *interalia* provides pre-school non-formal education. Hence, **aganwadi is covered by the definition of educational institution (as pre-school).**
4. Accordingly, as per recommendation of the GST Council, it is clarified that services provided to an educational institution by way of serving of food ( catering including mid- day meals) is exempt from levy of GST irrespective of its funding from government grants or corporate donations [under said entry 66 (b)(ii)]. Educational institutions as defined in the notification include aganwadi. Hence, serving of food to anganwadi shall also be covered by said exemption, whether sponsored by government or through donation from corporates.

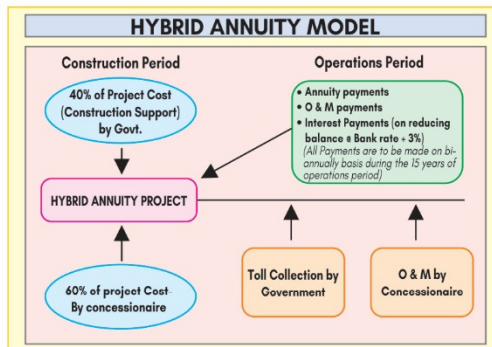
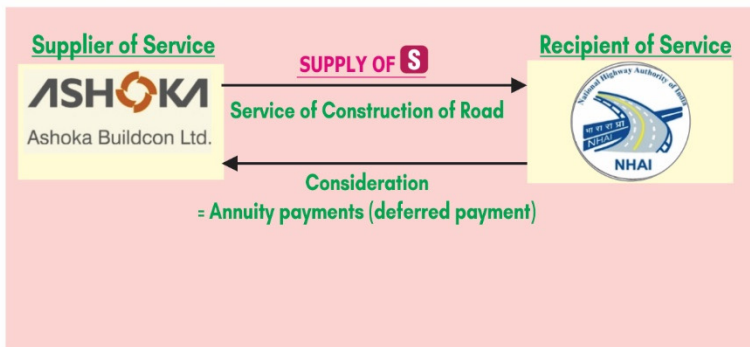


2. **Exemption Notification 12/2017- CT (R): Entry No. 23-A** (Exemption to service of allowing access to road on payment of annuity) - not applicable to activity of road construction service where consideration is received in annuity (deferred payment) [CBIC Circular 150/06/2021-GST, Dated: 17<sup>th</sup> June, 2021]

**Amendment in Simplified Form**

**CIRCULAR NO: 150/06/2021-GST**

**Issue: Applicability of GST on annuity paid to Developer under HAM**



**E/N 12/2017- CT (Rate)**

**Entry No. 23:** Service by way of access to a road or a bridge on payment of toll charges is exempt

**Entry No. 23A :** Service by way of access to a road or a bridge on payment of Annuity is exempt



The service being provided by the concessionaire to NHAI is construction service (for which the contract is entered into) covered under service code 995421 - General construction services of highways, streets, roads railways, airfield runways, bridges and tunnels.

**Exemption under Entry 23-A is available to only such annuities, which are charged for providing access to a road or bridge (at par with toll). Accordingly, as recommended by the GST Council, it is hereby clarified that Entry 23A of notification No. 12/2017-CT(R) does not exempt GST on the annuity (deferred payments) paid for construction of roads.**

<b>Issue</b>	<b>Annuity payments received by ROAD DEVELOPER under projects carried out under HAM (Hybrid Annuity Model): Whether eligible for exemption under Entry No. 23-A?</b>
<b>Analysis</b>	<p><b>E/N 12/2017- CT (Rate)</b>  <b>Entry 23</b> Service by way of access to a road or a bridge <u>on payment of TOLL CHARGES*</u> is exempt.  <b>Entry 23-A</b> Service by way of access to a road or a bridge <u>on payment of ANNUITY*</u> is exempt.</p>
<b>Clarification</b>	<p>Entry 23-A does not apply to services falling under '<u>heading 9954 (covering service by way of construction of road)</u>' {it specifically covers '<u>heading 9967 (covering supporting services in transport)</u>' ONLY}  <b>Plain reading of entry 23A makes it clear that it does not cover construction of road services (falling under heading 9954), even if deferred payment is made by way of instalments (annuities).</b>                  ... <b>Accordingly, as recommended by the GST Council, it is hereby clarified that <i>Entry 23A of N/N 12/2017-CT(R) does not exempt GST on the annuity (deferred payments) paid for construction of roads.</i></b></p>

**CIRCULAR NO.: 150/06/2021-GST [Dated: 17<sup>th</sup> June, 2021]**

Subject: Clarification regarding applicability of GST on the activity of construction of road where considerations are received in deferred payment (annuity)-reg.

- Certain representations have been received requesting for a clarification regarding **applicability of GST on annuities paid for construction of road** where certain portion of consideration is received upfront while remaining payment is made through deferred payment (annuity) spread over years.
- This issue has been examined by the GST Council in its 43rd meeting held on 28th May, 2021.
- GST is exempt on service, falling under heading 9967 (service code), by way of access to a road or a bridge on payment of annuity** [Entry 23A of N/N 12/2017-CT]. Heading 9967 covers "supporting services in transport" under which code 996742 covers "operation services of National Highways, State Highways, Expressways, Roads & streets; bridges and tunnel operation services".





Entry 23 of said notification exempts "service by way of access to a road or a bridge on payment of toll". Together the entries 23 and 23A exempt access to road or bridge, whether the consideration are in the form of toll or annuity [heading 9967].

- 2.2 **Services by way of construction of road fall under heading 9954.** This heading *inter alia* covers general construction services of highways, streets, roads railways, airfield runways, bridges and tunnels. Consideration for construction of road service may be paid partially upfront and partially in deferred annual payments (and may be called annuities). Said entry 23A does not apply to services falling under heading 9954 (it specifically covers heading 9967 only). **Therefore, plain reading of entry 23A makes it clear that it does not cover construction of road services (falling under heading 9954), even if deferred payment is made by way of instalments (annuities).**
3. **Accordingly,** as recommended by the GST Council, it is hereby clarified that **Entry 23A of N/N 12/2017-CT(R) does not exempt GST on the annuity (deferred payments) paid for construction of roads.**

3. **Exemption Notification 12/2017- CT (R): Entry No. 66 (aa)** (GST is exempt on services provided by Central or State Boards ( including the boards such as NBE) by way of conduct of examination for the students, including conduct of ENTRANCE EXAMINATION for admission to educational institution) (but, GST @18% applies to other services provided by such Boards, namely of providing accreditation to an institution (accreditation fee or registration fee such as fee for FMGE screening test) + **Entry 66 (b)** (GST is also exempt on input services relating to admission to, or conduct of examination, such as online testing service, result) [**CBIC Circular 151/07/2021-GST, Dated: 17<sup>th</sup> June, 2021**]

### Amendment in Simplified Form

#### CIRCULAR NO: 151/07/2021-GST

**Issue: Applicability of GST on on supply of various services by Central and State Board (such as National Board of Examination)**



#### E/N 12/2017- CT (Rate)

**Entry No. 66:** Services provided—

(a) **by** an educational institution **to its students, faculty and staff;**

(aa) **by** an educational institution **by way of conduct of Entrance Examination** against consideration in the form of ENTRANCE FEE;

(b). **to an educational institution, by way of,—**

(i) .....

(ii) .....

(iii) .....

(iv) **services relating to admission to, or conduct of examination by, such institution;**

**Educational Institution defined in Para 2 (y) of the notification.**

It also has following **EXPLANATION**: "For removal of doubts, it is clarified that **the Central and State Educational Boards shall be treated as 'Educational Institution' for the limited purpose of providing services by way of conduct of examination to the students.**



**CIRCULAR NO.: 151/07/2021-GST [Dated: 17<sup>th</sup> June, 2021]**

Subject: Clarification regarding GST on supply of various services by Central and State Board (such as National Board of Examination)

1. Certain representations have been received seeking clarification in respect of taxability of various services supplied by Centre and State Boards such as National Board of Examination (NBE). These services include entrance examination ( on charging a fee) for admission to educational institution, input services for conducting such entrance examination for students, accreditation of educational institutions or professional so as to authorise them to provide their respective services. [The issue was examined by GST Council in its 43rd meeting held on 28th May, 2021.](#)
2. **Illustratively**, NBE provides services of conducting entrance examinations for admission to courses including Diplomat National Board (DNB) and Fellow of National Board (FNB), prescribes courses and curricula for PG medical studies, holds examinations and grant degrees, diplomas and other academic distinctions. It carries out all functions as are normally carried out by central or state educational boards and is thus a central educational board.
3. According to [explanation 3\(iv\) of the N/N 12/2017-CT \(R\)](#), **“Central and State Educational Boards” are treated as Educational Institution for the limited purpose of providing services by way of conduct of examination to the students.**  
Therefore, NBE is an ‘Educational Institution’ in so far as it provides services by way of conduct of examination, including any entrance examination, to the students.
  - 3.1 Following services supplied by an educational institution are exempt from GST vide [sl. No. 66 of the N/N 12/ 2017- CT \(Rate\)](#) dated 28.06.2017,  
Services provided -
    - (a) by an educational institution to its students, faculty and staff;
    - (aa) **by an educational institution by way of conduct of entrance examination against consideration in the form of entrance fee;**
  - 3.2 Similarly, services provided **to** an educational institution, relating to admission to, or conduct of examination is also exempt from GST [[sl. No. 66 \(b\)\(iv\)-12/2017-CT\(r\)](#)].
  - 3.3 [Educational institutions are defined at 2\(y\) of the said notification](#) as follows-  
“(y) educational institution” means an institution providing services by way of, -
    - (i) pre-school education and education up to higher secondary school or equivalent;
    - (ii) education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force;
    - (iii) education as a part of an approved vocational education course;”;
 Further, clause (iv) of Explanation of said notification reads as below:  
**“(iv) For removal of doubts, it is clarified that the Central and State Educational Boards shall be treated as Educational Institution for the limited purpose of providing services by way of conduct of examination to the students”**
4. Taking into account the above, the GST Council has recommended, to clarify as below:
  - (i) **GST is exempt on services provided by Central or State Boards ( including the boards such as NBE) by way of conduct of examination for the students, including conduct of ENTRANCE EXAMINATION for admission to educational institution [under S. No. 66 (aa) of notif No. 12/2017-CT(R)].** Therefore, GST shall not apply to any fee or any amount charged by such Boards for conduct of such examinations including entrance examinations.
  - (ii) **GST is also exempt on input services relating to admission to, or conduct of examination, such as online testing service, result publication, printing of notification for examination, admit card and questions papers etc, when provided to such Boards [under S. No. 66 (b) (iv) of notif No. 12/2017-CT(R)].**
  - (iii) **GST at the rate of 18% applies to other services provided by such Boards, namely of providing accreditation to an institution or to a professional (accreditation fee or registration fee such as fee for FMGE screening test) so as to authorize them to provide their respective services.**



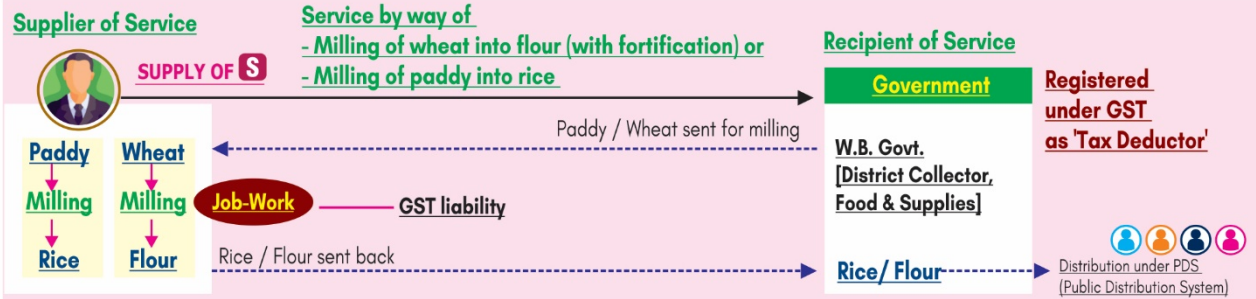


4. **Exemption Notification 12/2017- CT (R): Entry No. 3-A** (GST is exempt on services of milling of (wheat into flour) and (paddy into rice) where such supply is composite supply involving goods of value upto 25%) [CBIC Circular 153/09/2021-GST, Dated: 17<sup>th</sup> June, 2021]

### Amendment in Simplified Form

#### CIRCULAR NO: 153/09/2021-GST

**Issue: GST on milling of wheat into flour or paddy into rice for distribution by State Governments under PDS**



E/N 12/2017- CT (Rate)  
Entry No. 3-A

**COMPOSITE SUPPLY** of goods and services in which the value of supply of goods constitutes not more than 25% of the value of the said composite supply provided to the CG, SG or UT or local authority or a Governmental authority or a Government Entity by way of any activity ... in relation to any function entrusted to a Panchayat under Article 243-G of the Constitution or ... in relation to any function entrusted to a Municipality under Article 243-W of the Constitution.

Public Distribution = Function entrusted to Panchayat u/Article 243-G of Constituion of India [covered by 11th Schedule (Entry 28)]

<b>Service by way of milling</b>	Where such composite supply, Value (goods) is upto 25%. → <input checked="" type="checkbox"/> <b>Exempt [ 3-A ]</b>
	Where such composite supply, Value (goods) is > 25%. → <input type="checkbox"/> <b>Not Exempt</b>

**Applicable GST Rate on Job-work service = 5% (2.5% CGST + 2.5% SGST), if such composite supply is provided to RP**  
Person registered as 'tax deductor' (solely for meeting TDS obligation under GST u/Sec 51) is also a RP: thus, applicable rate shall be 5%.

#### CIRCULAR NO.: 153/09/2021-GST [Dated: 17<sup>th</sup> June, 2021]

Subject: GST on milling of wheat into flour or paddy into rice for distribution by State Governments under PDS -reg.

- Certain representations have been received seeking clarification whether composite supply of service by way of milling of wheat into wheat flour, alongwith fortification, by any person to a State Government for distribution of such wheat flour under Public Distribution System is eligible for exemption under entry No. 3A of N/N 12/2017-CT (Rate) dated 28.06.2017, and also as regards the rate of GST on such milling, if it does not fall in said entry No. 3A. The issue has been examined by GST Council in its 43rd meeting held on 28th May, 2021.
- Entry at Sl. No. 3A of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 exempts "composite supply of goods and services in which the value of supply of goods constitutes not more than 25 per cent of the value of the said composite supply provided to the Central Government, State Government or Union territory or local authority or a Governmental authority or a Government Entity by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution".
- As per the recommendation of the GST Council the issue is clarified as below.
- Public Distribution specifically figures at entry 28 of the 11th Schedule to the constitution, which lists the activities that may be entrusted to a Panchayat under Article 243G of the Constitution. Hence, said entry No. 3A would apply to composite supply of milling of wheat and fortification thereof by miller, or of paddy into rice, provided that value of goods supplied in such composite supply (goods used for fortification, packing material etc) does not exceed 25% of the value of composite supply.** It is a matter of fact as to whether the value of goods in such composite supply is up to 25% and requires ascertainment on case-to-case basis.



- 3.2 **In case the supply of service by way of milling of wheat into flour or of paddy into rice, is not eligible for exemption under Sl. No. 3 A of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 for the reason that value of goods supply in such a composite supply exceeds 25%, then the applicable GST rate would be 5% if such composite supply is provided to a registered person, being a job work service (entry No. 26 of N/N 11/2017- CT (Rate) dated 28.06.2017).** Combined reading of the definition of job-work [section 2(68), 2(94), 22, 24, 25 and section 51] makes it clear that a person registered only for the purpose of deduction of tax under section 51 of the CGST Act is also a registered person for the purposes of the said entry No. 26, and thus said supply to such person is also entitled for 5% rate.

5. **Miscellaneous [CBIC Circular 154/10/2021-GST, Dated: 17<sup>th</sup> June, 2021]**

**CIRCULAR NO.: 154/10/2021-GST [Dated: 17<sup>th</sup> June, 2021]**

Subject: GST on service supplied by State Govt. to their undertakings or PSUs by way of guaranteeing loans taken by them

- Certain representations have been received requesting for clarification regarding applicability of GST on supply of service by State Govt. to their undertakings or PSUs by way of guaranteeing loans. The issue was examined by GST Council in its 43<sup>rd</sup> meeting held on 28<sup>th</sup> May, 2021.
- Entry No. 34-A of N/N 12/2017-CT (Rate)** dated 28.06.2017 exempts **"Services supplied by Central Government, State Government, Union territory to their undertakings or Public Sector Undertakings (PSUs) by way of guaranteeing the loans taken by such undertakings or PSUs from the banking companies and financial institutions."**
- Accordingly, as recommended by the Council, it is re-iterated that guaranteeing of loans by Central or State Government for their undertaking or PSU is specifically exempt under said entry No. 34A.

6. **Others Clarifications [CBIC Circular 164/20/2021-GST, Dated: 06<sup>th</sup> Oct, 2021]**

**CIRCULAR NO.: 164/20/2021-GST [Dated: 06<sup>th</sup> October, 2021]**

**Coaching services supplied by coaching institutions and NGOs under the CENTRAL SECTOR SCHEME of 'Scholarships for students with Disabilities':**

<b>Issue</b>	Clarification regarding <b>applicability of GST on free coaching services provided by coaching institutions and NGOs under the central scheme of "Scholarships for students with Disabilities" where entire expenditure is provided by Government to coaching institutions by way of grant in aid</b>
<b>Discussion</b>	In this regard, it is to mention that <b>Entry 72 of N/N 12/2017- CT (Rate)</b> , exempts services provided <b>to</b> the CG, SG, UT administration under any training programme <b>for which total expenditure is borne by the CG, SG, UT administration.</b>  The <b>scope of this entry is wide enough to cover coaching services provided by coaching institutions and NGOs under the central scheme of 'Scholarships for students with Disabilities' where total expenditure is borne by the Government by way of funding to institute providing such coaching.</b>
<b>Clarification</b>	Accordingly, as recommended by the GST Council, it is clarified that  ... services provided by any institutions/ NGOs under the central scheme of 'Scholarships for students with Disabilities' where total expenditure is borne by the Government <b>is covered under Entry 72 of N/N 12/2017-CT (Rate) and hence exempt from GST.</b>

**GST on overloading charges at TOLL PLAZA:**

<b>Issue</b>	Clarification regarding <b>applicability of GST on Overloading charges collected at Toll Plazas'</b>
<b>Discussion</b>	<b>Entry 23 of N/N 12/2017-CT (Rate)</b> , exempts <b>service by way of access to a road or a bridge on payment of Toll Charges.</b>  Vide <b>notification dated 25<sup>th</sup> Sep. 2018, issued by Ministry of Road Transport And Highways, OVERLOADED VEHICLES</b> were allowed to ply on the national highways <b>after payment of fees</b> with multiplying factor of 2/4/6/8/10 times the base rate of toll.  Therefore, <b>in essence OVERLOADING FEES</b> are effectively Higher Toll Charges.
<b>Clarification</b>	Accordingly, as recommended by the GST Council, it is clarified that  ... <b>OVERLOADING CHARGES</b> at toll plazas <b>would get the same treatment as given to Toll Charges.</b>

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किसी ने मुझसे पूछा :  
क्या करते हैं आप ?



मैंने दिया ये जवाब :

सुन्दर सुर सजाने को साज बनाता हूँ  
नौसिखिये परिंदों को बाज बनाता हूँ...

चुपचाप सुनता हूँ शिकायतें सबकी,  
तब दुनिया बदलने की आवाज बनाता हूँ...

समंदर तो परखता है हौंसले कश्तियों के,  
और मैं डूबती कश्तियों को जहाज बनाता हूँ...

बनाए चाहे चाँद पर कोई बुर्ज-ए-खलीफा,  
अरे मैं तो कच्ची ईंटों से ही ताज बनाता हूँ...

नाज है मुझे अपने शिक्षक होने पर !!

प्रो. दीपक

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THE BEST OF LUCK

Praying for you

**Prof. Dippak**