

**IDT Main Book (Conceptual Learning Book)  
Amendment Notes By CA. Yashvant Mangal**

**Applicable For May 2023**

**Watch Free Amendment Lectures on**

**Our Youtube Channel :**

**<https://www.youtube.com/@YashvantMangal>**

employee to the employer in the course of or in relation to his employment in terms of Schedule III of the CGST Act, 2017.

It is further clarified that the part of employee Director's remuneration which is declared separately other than "salaries" in the Company's accounts and subjected to TDS under Section 194J of the IT Act as Fees for professional or Technical Services shall be treated as consideration for providing services which are outside the scope of Schedule III of the CGST Act, and is therefore, taxable. Further, as per the provisions relating to Reverse Charge Mechanism, the recipient of the said services i.e. the Company, is liable to discharge the applicable GST on it on reverse charge basis.

---

**Clarifications regarding applicability of GST on Perquisites provided by employer to the employees as per contractual agreement [Circular No. 172/04/2022 - GST, dated 06.07.2022]** A

---

**Issue:** *Whether various perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are liable for GST?*

**Clarification:** *Any perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are in lieu of the services provided by employee to the employer in relation to his employment. It follows therefrom that perquisites provided by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST when the same are provided in terms of the contract between the employer and employee. [Examples of perquisites: company car, fuel reimbursement, interest-free loan, medical facilities, credit cards, rent free accommodation, etc.]*

---

**Clarifications regarding applicability of GST on Sale of Land after levelling, laying down of drainage lines, etc. [Circular No. 177/09/2022 - GST, dated 03.08.2022]** A

---

- (i) *As per Sl no. (5) of Schedule III of the CGST Act, 2017, 'sale of land' is neither a supply of goods nor a supply of services, therefore, sale of land does not attract GST.*
- (ii) *Land may be sold either as it is or after some development such as levelling, laying down of drainage lines, water lines, electricity lines, etc. It is clarified that sale of such developed land is also sale of land and is covered by Sr. No. 5 of Schedule III of the CGST Act, 2017 and accordingly does not attract GST.*
- (iii) *However, it may be noted that any service provided for development of land, like levelling, laying of drainage lines (as may be received by developers) shall attract GST at applicable rate for such services.*

**Illustration 18 :**

Is GST leviable on the fee/amount charged in the following situations/cases: -

- (i) A customer pays fees while registering complaints to Consumer Disputes Redressal Commission office and its subordinate offices. These fees are credited into State Consumer Welfare Fund's bank account.
- (ii) Consumer Disputes Redressal Commission office and its subordinate offices charge penalty in cash when it is required.
- (iii) When a person files an appeal to Consumers Disputes Redressal Commission against order of District Forum, amount equal to 50% of total amount imposed by the District Forum or Rs. 25,000/- whichever is less, is required to be paid.

**Solution :**

**Clarification on GST chargeable on the amount payable to Consumer Disputes Redressal Commission office and its subordinate offices [Circular No. 32/06/2018-GST, dated 12.02.2018]**


Services by any court or Tribunal established under any law for the time being in force is neither a supply of goods nor services. Consumer Disputes Redressal Commissions (National/ State/ District) may not be tribunals literally as they may not have been set up directly under Article 323B of the Constitution. However, they are clothed with the characteristics of a tribunal having regard to their functioning.

Having regard to their functioning & characteristics, it is hereby clarified that fee paid by litigants in the Consumer Disputes Redressal Commissions are not leviable to GST. Any penalty imposed by or amount paid to these Commissions will also not attract GST.

## 2. **Activities/Transactions notified by the Government [Sec. 7(2)(b)]:**

Such activities/transactions undertaken by the central Government, a state government or union territory or any local authority in which they are engaged as public authorities, as may be notified by the government on the recommendations of the Council shall be treated neither as supply of goods nor supply of services.

Using this power, following activities have been notified which shall be treated neither as supply of goods nor supply of services:

- (i) **Services provided by Central Government, State Government, Union territory or any local authority by way of any activity in relation to a function entrusted to a Panchayat under article 243G of the constitution or to a Municipality under article 243W of the constitution [NN 14/2017 - CT(R.), dated 28.06.2017, as amended by NN 16/2018 CT(R) w.e.f. 27.07.2018].**
- (ii) **Service provided by State Government 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. [inserted by NN 25/2019 - CT(R.), w.e.f. 30.9.2019] [made applicable retrospectively w.e.f. 01.07.2017, vide Finance Act, 2022] — **

**Note: [Circular No. 121/40/2019-GST, dated 11.10.2019]**

This 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.

**Note:** Further, Government has power to grant exemption to any goods or services or both from the GST leviable u/s 11 of the CGST and u/s 6 of the IGST. And, by using this power, Government has exempted many goods and services from GST, which will be discussed in later chapters of this book.

### **Illustration 19 :**

Fifty persons, each contributing Rs. 2,000 per month, have come together to organise a chit for a period of 50 months. At the end of each month, an amount of Rs. 1,00,000 (2,000 x 50) is available in the kitty of the Chit Fund. Rs. 1,00,000 is put to auction and subscribers who are interested in drawing the money early because of their needs may participate in the auction. The auction is organised by a 'Key Member' who manages and conducts the proceedings. The successful bidder who is normally the person who offers the highest interest/discount is given that chit amount. From this interest/discount amount, after deducting a fixed amount representing the commission payable to the 'Key Member', balance becomes the dividend which is distributed among all the subscribers. The auction is repeated in the subsequent months and the same procedure is followed. Explain briefly if GST could be levied on the services rendered in connection with the Chit Fund Business.

### **Solution :**

The services carried out by a foreman of chit fund for conducting or organising a chit in any manner for a consideration (commission) qualifies to be covered under the scope of the term "supply" and will not be considered as "merely a transaction in money or actionable claim". Hence, it is chargeable to GST. Therefore, the commission payable to the "key member (i.e. foreman of chit fund)" is taxable. Further, interest/discount earned by each person is exempt under GST as per entry no. 27 of Notification No. 12/2017 CT (R), dated 28.06.2017.

---

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

---

	(ba)	<i>the details of input tax credit in respect of the said supply communicated to such registered person under section 38 has not been restricted;</i> [Clause (ba) inserted by Finance Act, 2022, w.e.f. 01.10.2022, vide NN 18/2022 - CT, dated 28.09.2022]
	(c)	subject to the provisions of section 41 the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and
	(d)	he has furnished the return under section 39:
		Provided that where the goods against an invoice are received in lots or installments, the registered person shall be entitled to take credit upon receipt of the last lot or installment:
		Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed:
		Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.
	(3)	Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income-tax Act, 1961, the input tax credit on the said tax component shall not be allowed.
	(4)	A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the <i>thirtieth day of November due date of furnishing of the return under section 39 for the month of September<sup>1</sup></i> following the end of financial year to which such invoice or <del>invoice relating to such<sup>2</sup></del> debit note pertains or furnishing of the relevant annual return, whichever is earlier. [Substituted by Finance Act, 2022, w.e.f. 01.10.2022, vide NN 18/2022 - CT, dated 28.09.2022] [ <sup>2</sup> omitted by Finance Act, 2020, w.e.f. 01.01.2021]
Sec. 41		<b>Availment of Input Tax Credit</b>
	(1)	<i>Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to avail the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited <del>on a provisional basis</del> to his electronic credit ledger.</i>
	(2)	<i>The credit of input tax availed by a registered person under sub-section (1) in respect of such supplies of goods or services or both, the tax payable whereon has not been paid by the supplier, shall be reversed along with applicable interest, by the said person in such manner as may be prescribed:</i> <i>Provided that where the said supplier makes payment of the tax payable in respect of the aforesaid supplies, the said registered person may re-avail the amount of credit reversed by him in such manner as may be prescribed.</i> <i>The credit referred to in sub-section (1) shall be utilised only for payment of self-assessed output tax as per the return referred to in the said sub-section.</i>
[Section 41 substituted by Finance Act, 2022, w.e.f. 01.10.2022, vide NN 18/2022 - CT, dated 28.09.2022]		
<b>Chapter V : Input Tax Credit of the CGST Rules</b>		
Rule 36	<b>Documentary requirements and conditions for claiming input tax credit</b>	
	(1)	The input tax credit shall be availed by a registered person, including the Input Service Distributor, on the basis of any of the following documents, namely :
	(a)	an invoice issued by the supplier of goods or services or both in accordance with the provisions of section 31;
	(b)	an invoice issued in accordance with the provisions of clause (f) of sub-section (3) of section 31, subject to the payment of tax;

	(c)	a debit note issued by a supplier in accordance with the provisions of section 34;
	(d)	a bill of entry or any similar document prescribed under the Customs Act, 1962 or rules made thereunder for the assessment of integrated tax on imports;
	(e)	an input service distributor invoice or input service distributor credit note or any document issued by an input service distributor in accordance with the provisions of sub-rule (1) of rule 54.
(2)	<b>A</b>	<p>Input tax credit shall be availed by a registered person only if all the applicable particulars as specified in the provisions of Chapter VI are contained in the said document, <del>and the relevant information, as contained in the said document, is furnished in FORM GSTR-2 by such person.</del> [omitted words, omitted by NN 19/2022 - CT, w.e.f. 01.10.2022]</p> <p>Provided that if the said document does not contain all the specified particulars but contains the details of the amount of tax charged, description of goods or services, total value of supply of goods or services or both, GSTIN of the supplier and recipient and place of supply in case of inter-State supply, input tax credit may be availed by such registered person. [Proviso inserted by NN 39/2018 CT w.e.f. 04.09.2018]</p>
(3)		No input tax credit shall be availed by a registered person in respect of any tax that has been paid in pursuance of any order where any demand has been confirmed on account of any fraud, wilful misstatement or suppression of facts.
(4)	<b>A</b>	<p>No input tax credit shall be availed by a registered person in respect of invoices or debit notes the details of which are required to be furnished under sub-section (1) of section 37 unless,-</p> <p>(a) the details of such invoices or debit notes have been furnished by the supplier in the statement of outward supplies in FORM GSTR-1 or using the invoice furnishing facility; and</p> <p>(b) the details of <u>input tax credit in respect of</u> such invoices or debit notes have been communicated to the registered person in FORM GSTR-2B under sub-rule (7) of rule 60. [Bold &amp; italic words inserted by NN 19/2020 - CT, w.e.f. 01.10.2022]</p> <p>[Rule 36(4) Substituted by NN 40/2021 - CT, w.e.f. 01.01.2022]</p>
<b>Rule 37</b>		<b>Reversal of input tax credit in the case of non-payment of consideration</b> <b>A</b>
(1)		<p>A registered person, who has availed of input tax credit on any inward supply of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, but fails to pay to the supplier thereof, the amount towards the value of such supply along with the tax payable thereon, within the time limit specified in the second proviso to sub-section (2) of section 16, shall pay an amount equal to the input tax credit availed in respect of such supply along with interest payable thereon under section 50, while furnishing the return in FORM GSTR-3B for the tax period immediately following the period of one hundred and eighty days from the date of the issue of the invoice:</p> <p>Provided that the value of supplies made without consideration as specified in Schedule I of the said Act shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16.</p> <p>Provided further that the value of supplies on account of any amount added in accordance with the provisions of clause (b) of sub-section (2) of section 15 shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16. [Rule 37(1) Substituted by NN 19/2022 - CT, w.e.f. 01.10.2022]</p>
(2)		Where the said registered person subsequently makes the payment of the amount towards the value of such supply along with tax payable thereon to the supplier thereof, he shall be entitled to re-avail the input tax credit referred to in sub-rule (1). [Rule 37(2) Substituted by NN 19/2022 - CT, w.e.f. 01.10.2022]
(3)		<del>The registered person shall be liable to pay interest at the rate notified under sub-section (1) of section 50 for the period starting from the date of availing credit on such supplies till the date when the amount added to the output tax liability, as mentioned in sub-rule (2), is paid.</del> [Rule 37(3) omitted by NN 19/2022 - CT, w.e.f. 01.10.2022]
(4)		The time limit specified in sub-section (4) of section 16 shall not apply to a claim for re-availing of any credit, in accordance with the provisions of the Act or the provisions of this Chapter, that had been

**Note:** Section 16 and the CGST Rules do not specify that which particular copy of the invoice will form the basis of taking ITC. However, rule 48 of the CGST Rules specifies that the original copy is for the recipient of goods. The original copy may preferably be kept for record to support the credit entry.

**(aa) Auto-population of ITC in GSTR-2B [Section 16(2)(aa) read with rule 36(4) of the CGST Rules] :**

**Sec. 16(2)(aa):** The details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37 [inserted by Finance Act, 2021, w.e.f. 01.01.2022, vide NN. 39/2021 - CT, dated 21.12.2021].

**Rule 36(4) [As substituted by NN 40/2021 - CT, w.e.f. 01.01.2022]:** No input tax credit shall be availed by a registered person in respect of invoices or debit notes the details of which are required to be furnished under sub-section (1) of section 37 unless,-

- (a) the details of such invoices or debit notes have been furnished by the supplier in the statement of outward supplies in FORM GSTR-1 or using the invoice furnishing facility; and
- (b) the details of input tax credit in respect of such invoices or debit notes have been communicated to the registered person in FORM GSTR-2B under sub-rule (7) of rule 60. [***Bold & italic words inserted by NN 19/2020 - CT, w.e.f. 01.10.2022***]

**Analysis:**

CGST Rule 36(4) is amended to remove 5% Provisional ITC over and above ITC appearing in GSTR-2B. Now, w.e.f. 1<sup>st</sup> January 2022, businesses can avail ITC only if it is reported by the supplier in GSTR-1/Invoice Furnishing Facility and it appears in their GSTR-2B.

Earlier until 31<sup>st</sup> December 2021, this rule allowed buyers to claim provisional ITC (without invoices on GSTR-2B) in the GSTR-3B to the extent of 5% of eligible ITC reflected in the GSTR-2B. This was referred to as the Provisional ITC.

Provisional ITC means ITC that is claimed by buyers in their GST returns for which invoice is not reported or yet to be reported by their vendors or suppliers with the government. The ITC claims on a provisional basis have been removed from the revised Rule 36(4) from 1<sup>st</sup> January 2022. It is done based on the inclusion of new clause (aa) under Section 16(2) of the CGST Act.

At present, with the revised CGST Rule 36(4) being implemented from 1<sup>st</sup> January 2022, more restrictions have been imposed on buyers. They can only claim amounts of ITC appearing in GSTR-2B without any additional or provisional claims.

**Analytical Example:**

S. No.	Particulars	Before 09 <sup>th</sup> Oct., 2019 [i.e. before introduction of Rule 36(4)]	As per Rule 36(4) until 31 <sup>st</sup> Dec. 21	After revised rule 36(4) from 1 <sup>st</sup> Jan. 22
A	Eligible ITC available in the Purchase register	1,00,000	1,00,000	1,00,000
B	Eligible ITC available in the GSTR-2B	60,000	60,000	60,000
C	ITC that can be claimed as the provisional credit	40,000	3000 (60,000*5%)	0
D=B+C	Total ITC that can be claimed in the GSTR-3B	1,00,000	63000	60,000
E=A-D	ITC not allowed in the GSTR-3B	Nil	37,000	40,000



Hence, Even though we have tax invoices for total GST of Rs. 1,00,000/-, then also, we cannot claim ITC completely, as the vendors have not furnished the invoices in their GSTR 1/IFF. The ITC of the same can be taken when it gets reflected in GSTR 2B.

The revised rule further negatively impacts the GST registered buyers. It leads to taxpayer's working capital getting blocked. Buyers must wait for suppliers to upload invoices in the corresponding GSTR-1. Until then, they must pay GST liability in cash. Taxpayers should rigorously follow up with the vendors or suppliers to upload or report their invoices.

Businesses can claim the balance ITC not appearing in GSTR-2B of one period, only in the later tax periods. It is allowed once the supplier reports in their GSTR-1/IFF and it appears in GSTR-2B of such later periods.

**Important Note:** The aforesaid restriction of availment of ITC on provisional basis is imposed only in respect of those invoices/debit notes, details of which are required to be furnished by the suppliers under sub-section (1) of section 37 in FORM GSTR - 1 or using the invoice furnishing facility (IFF) and which have not been furnished. Therefore, **taxpayers may avail full ITC in respect of IGST paid on import, documents issued under RCM, credit received from ISD etc. which are outside the ambit of sub-section (1) of section 37**, provided that eligibility conditions for availment of ITC are met in respect of the same. [Circular No. 123/42/2019 - GST, dated 11.11.2019]

- (b) **Receipt of the goods and / or services [Section 16(2)(b)] :** The person taking the ITC must have received the goods and/or services.

**"Bill to Ship to" Model also included:** Under this model, the goods are delivered to a third party on the direction of the registered person who purchases the goods from the supplier. Receipt of goods u/s 16(2)(b) includes delivery to another person on the direction of the registered person by way of transfer of documents of title to goods or otherwise either before or during the movement of goods. It would be deemed that the registered person has received the goods in such scenario. So, ITC will be available to the registered person on whose order the goods are delivered to third person.

Further, where the services are provided by the supplier to any other person (like employee, agent or otherwise) on the direction of and on account of such registered person, then also, it shall be deemed that the registered person has received the services for the purposes of claiming ITC.

#### **Illustration 2 :**

Y places an order on M for supply of a machinery. Y receives a buying order from A for the same machinery. Y instructs M to deliver the machinery to A, and in turn Y raises an invoice on A. Though the goods are not physically received at the premises of Y, the condition of section 16(2)(b) is satisfied, and Y is entitled to ITC on the consignment.

#### **Illustration 3 :**

The registered head office (New Delhi) of ABC Pvt. Ltd. enters into a contract with DEF Pvt. Ltd. of New Delhi for repair and maintenance of computers systems installed at its registered branch office in Bengaluru, Karnataka. DEF Pvt. Ltd. issues an invoice on ABC Pvt. Ltd., New Delhi for the services provided by it. Though the actual services are received by the branch office and not by the head office, section 16(2)(b) allows ITC of such repair and maintenance services to head office.

- (ba) **Restricted ITC can not be availed [Section 16(2)(ba)] :** *Input tax credit with respect to a supply can be availed only if such credit has not been restricted as per the details communicated to the taxpayer under section 38. The details of ITC is communicated to the recipient through Form GSTR-2B, which contains a table/list of ineligible ITC also. By virtue of insertion of this clause w.e.f. 01.10.2022, it is statutorily denied to avail such ITC which is ineligible as per Form GSTR-2B. At present, GSTR-2B declares any credit as ineligible ITC, if supplier files his GSTR-1 after the time period mentioned in Sec. 16(4) or if 'Place of Supply' of any supply and 'Location of the Supplier' is same State which is different from the State of the recipient, etc. [Clause (ba) inserted by Finance Act, 2022, w.e.f. 01.10.2022, vide NN 18/2022 - CT, dated 28.09.2022]*

- (c) **GST is actually paid to Government [Section 16(2)(c)]** : GST should actually have been paid on the goods and/or services for which ITC is being taken. However, the recipient can take ITC of eligible input tax on self-assessment basis in his return as per provisions of section 41. Provisions of Section 41 are discussed below.

**Availment of Input Tax Credit [Section 41]** : [Sec. 41 substituted by Finance Act, 2022, w.e.f. 01.10.2022, vide NN 18/2022 - CT, dated 28.09.2022] A

- (1) *The recipient can take ITC of eligible input tax on self-assessment basis in his return and such amount shall be credited to his electronic credit ledger.*
- (2) *However, if the tax payable on any such supplies of goods/services (in respect of which ITC has been availed as per sub-section (1)) is not paid by the supplier, then, such ITC shall be reversed by the recipient along with applicable interest (if ITC is utilised).*

*Further, where the said supplier subsequently makes payment of the tax payable in respect of the aforesaid supplies, the said recipient may re-avail the ITC reversed by him.*

Thus, even if the recipient has paid the tax to the supplier, his claim for ITC gets confirmed only when the supplier deposits the tax so collected by him to the Government.

Presently, suppliers are required to furnish details of outward supplies through GSTR-1 or using Invoice Furnishing Facility (IFF). Then, GSTR-2B, an auto-generated ITC statement is generated for the recipient, based on GSTR-1/IFF filed by the suppliers. On the basis of the details available in GSTR-2B, the recipient takes ITC on self-assessment basis in his GSTR-3B for discharging the tax liability.

Subsequently, if supplier does not pay the Tax to the government, then, recipient shall be required to reverse the ITC along with applicable interest (if ITC is utilized). Further, the recipient can re-avail the ITC, if the supplier pays the tax to the government.

**Analysis of Amendment of Section 41:** — A

- *The concept of provisional ITC is removed and ITC availed in monthly returns would be considered as Final.*
- *ITC may have to be reversed along with interest (if ITC is utilized), if tax is not paid by the supplier to the Government.*
- *ITC can be re-availed once the supplier pays the tax.*

- (d) **Filing of Return [Section 16(2)(d)]** : The registered person taking the ITC must have filed his return under section 39 (i.e. GSTR - 3B).

#### **Illustration 4 :**

Explain the conditions necessary for obtaining input tax credit?

(IPCC MTP May 2018, 5 Marks)

#### **Solution :**

The following **6** conditions are to be satisfied by the registered taxable person for obtaining input tax credit:

- (a) he is in possession of tax invoice or debit note or such other tax paying documents as may be prescribed;
- (aa) the details of such invoices or debit notes have been furnished by the supplier in the statement of outward supplies in FORM GSTR-1 or using the invoice furnishing facility and the details of input tax credit in respect of such invoices or debit notes have been communicated to the recipient in FORM GSTR-2B;
- (b) he has received the goods or services or both;
- (ba) the details of input tax credit in respect of the said supply communicated to such registered person under section 38 has not been restricted; — A
- (c) GST should actually have been paid to the Government in respect of the goods/services for which ITC is being taken; and
- (d) he has furnished the return under section 39.

**III. Goods received in lots: ITC available only on receipt of last lot [First proviso to section 16(2)]**



In case the goods covered under an invoice are not received in a single consignment but are received in lots/instalments, the ITC can be taken only upon receipt of the last lot/instalment.

#### **Illustration 5 :**

XYZ makes an advance payment in August and orders 10 MT of a particular chemical which is in short supply. The supplier of the chemical raises a bill for the entire amount in August and collects GST from XYZ on the advance paid. The chemical is delivered in lots over a period of three months and the supply is completed in November. Though XYZ paid tax in advance as early as August, he can take the ITC only on receipt of last instalment of the chemical in the month of November.

#### **Illustration 6 :**

Abhinav Nathany, a registered manufacturer of Bhilwara, entered into a contract with a supplier for supply of Inputs in the month of August, 2018. As per contract, it was agreed that 15,000 kgs of Inputs will be supplied for Rs. 5,90,000 (inclusive of CGST and SGST @ 9% each) in 3 lots of equal quantity. Invoice of Rs. 5,90,000 has been issued with first lot supply on 11/08/2018. Further second and third lot of inputs were supplied on 15/09/2018 & 01/10/2018 respectively. Briefly explain whether Abhinav Nathany is eligible to take credit on proportionate basis.

#### **Answer :**

As per first proviso to Section 16(2), where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment. Therefore, in the given case, Abhinav Nathany is not eligible to take credit on proportionate basis, because inputs have been received in lots. Hence, the credit of tax of Rs. 90,000 i.e. (Rs. 5,90,000 × 18 ÷ 118) paid on such inputs shall be taken by Abhinav Nathany only after receipt of Third lot i.e., on 01-10-2018.

#### **IV. Payment for the invoice to be made within 180 days [Second proviso to section 16(2) read with rule 37 of CGST Rules]**

If the registered person, who has availed input tax credit on any inward supply of goods or services or both, fails to pay to the supplier, the value of the goods and/or services along with the tax within 180 days from the date of issue of invoice, then, such ITC availed by the registered person would be added to his output tax liability along with applicable interest *while furnishing the return in Form GSTR-3B for the tax period in which the said 180 days expired. The details of such supplies and corresponding credits thereon must be furnished in Form GSTR-2 of the month immediately following such 180 days.* (A)

**Exception:** This condition of payment of value of supply plus tax within 180 days does not apply to the supplies on which tax is payable under reverse charge mechanism.

#### **Note:**

1. The value of supplies made without consideration as specified in Schedule I of the said Act shall be deemed to have been paid for the purposes of this provision.
2. The value of supplies on account of any amount added in accordance with the provisions of section 15(2)(b) shall be deemed to have been paid for the purposes of this provision.
3. *Interest will be payable @ 18% p.a. from the date of utilising the ITC till the date when it is paid to the Government after adding it to the output tax liability.* (A)

However, subsequently, when the recipient makes the payment to the supplier, the recipient will be entitled to re-avail the credit again without any time limit specified u/s 16(4). In case part payment has been made, proportionate credit will be allowed.

#### **Illustration 7 :**

M/S PQR Pvt. Ltd. availed services of a contractor. And, it withheld 10% retention money from the invoice value of the contractor for 1 year as per terms of the contract and made payment of only 90% of the invoice amount.

M/S PQR Pvt. Ltd. withheld 10% of the amount payable as retention money for 1 year (i.e. more than 180 days) as per the terms of the contract which is not a failure in making payment on the part of recipient. Therefore, in such case, No ITC is required to be added to the output tax liability. Because, as per terms of the contract, recipient did not failed to make payment to the supplier within 180 days.

**Illustration 8 :**

Due to a quality dispute, ABC Ltd. withheld payment on a machine supplied by a vendor till it could be rectified. Over 180 days went by in this dispute. The credit taken by ABC on the invoice got added to the output tax liability of ABC and thus, it had to pay back the credit. Only after the vendor rectified the machine and ABC released the payment, could ABC take the credit again.

**Illustration 9 :**

— (A)

Ankush Ltd., a registered supplier of auto parts, supplied auto parts valued @ Rs. 2,83,200 (inclusive of GST @ 18%) to Amar Ltd. on 06-10-2022 for which tax invoice was also issued on the same date. The inputs were also received by Amar Ltd. on 06-10-2022. Amar Ltd. availed the credit and utilised it on 20-11-2022 while paying liability for the month of October 2022. But, Amar Ltd. fails to make any payment towards such supply to Ankush Ltd. Is Amar Ltd. eligible to avail input tax credit on such supply? Discuss ITC implications, if Amar Ltd. makes full and final payment to Ankush Ltd. on 14-02-2024.

**Answer :**

Yes, Amar Ltd. can avail input tax credit on receipt of taxable supply of goods. But, it is required to pay the consideration along with tax within 180 days from the date of issue of invoice.

**If Amar Ltd. Failed to make payment within 180 days from the date of invoice:** As per Rule 37 of CGST Rules, 2017, a registered person, who has availed input tax credit on any inward supply of goods or services or both, fails to pay to the supplier, the value of the goods and/or services along with the tax within 180 days from the date of issue of invoice, then, such ITC availed by the registered person would be added to his output tax liability along with applicable interest while furnishing the return in Form GSTR-3B for the tax period in which the said 180 days expired.

In this case, since, Amar Ltd. fails to make any payment within 180 days from date of invoice i.e. up to 04-04-2023, therefore, amount equal to input tax credit availed by Amar Ltd. shall be added towards its output tax liability along with applicable interest while furnishing the return in Form GSTR-3B for April, 2023.

Interest shall be calculated @ 18% p.a. [as given u/s 50] for the period starting from the date of utilising the credit (i.e. 20.11.2022) till the date when input tax credit added to the output tax liability is paid.

Particulars	Amount (Rs.)
Amount of Input Tax	43,200
Date of utilising credit	20.11.2022
Date of payment of ITC added to output tax liability (assuming liability for the month of April, 2023 is paid on 20.05.2023)	20.05.2023
No. of days for which interest is to be paid [days from 21-11-2022 to 20-05-2023] [i.e. 10+31+31+28+31+30+20 days]	181 days
Interest @ 18% to be paid on 20-05-2023 (Rs. 43,200 x 18% x 181/365)	3,856

**Note:** If Amar Ltd. makes the payment to the supplier on 14-02-2024, then, it shall be entitled to re-avail the credit of input tax of Rs. 43,200 which was reversed earlier.

**V. If depreciation claimed on GST component of Capital Goods, then, ITC not allowed [Section 16(3)]**

If the person taking the ITC on capital goods and plant and machinery has claimed depreciation on the tax component of the cost of the said items under the Income-tax Act 1961, the ITC on the said tax component shall not be allowed. Thus, in respect of the tax paid on such items, dual benefit cannot be claimed under Income-tax Act, 1961 and GST laws simultaneously. In other words, either depreciation on the tax component can be claimed under Income Tax Act or ITC of such tax paid can be availed under GST laws.

**VI. Time limit for availing ITC: 30<sup>th</sup> November of succeeding financial year or actual date of filing of annual return, whichever is earlier [Section 16(4)]**

— (A)

— P.T.O.

A

ITC on invoices pertaining to a financial year or debit notes relating to invoices<sup>1</sup> pertaining to a financial year can be availed any time till ~~30<sup>th</sup> November~~ ~~due date of filing of the return for the month of September~~<sup>2</sup> of the succeeding financial year or the actual date of filing of the relevant annual return, whichever is earlier. [omitted by Finance Act, 2020, w.e.f. 01.01.2021] [*Substituted by Finance Act, 2022, w.e.f. 01.10.2022, vide NN 18/2022 - CT, dated 28.09.2022*]

**[Analysis of Amendment made by Finance Act, 2020:** After amendment made by Finance Act, 2020, the date of issue of invoice relating to debit note is of no relevance for determining time limit to take ITC of GST charged on Debit Note.]

It may be noted that the annual return of a financial year is to be filed by 31<sup>st</sup> December of the succeeding financial year.

So, the upper time limit for taking ITC is 30<sup>th</sup> November of the next financial year or the actual date of filing of annual return, whichever is earlier. The underlying reasoning for this restriction is that no change in return is permitted after November of next financial year. If annual return is filed before the month of November, then, no change can be made after filing of annual return.

**Exception :** The time limit u/s 16(4) does not apply to claim for re-availing of credit that had been reversed earlier.

**Illustration 10 : (Analytical illustration to understand the amendment made by FA, 2020):** — A

Nitesh delivered a machine to Vihaan in February 2022 under Invoice no. 12 dated 5<sup>th</sup> February, 2022 for Rs. 50,000 plus GST and undertook trial runs of the machine as per the requirements of Vihaan. The amount chargeable for the post-delivery activities was covered in a debit note raised in May 2022 for Rs. 10,000 plus GST. Vihaan filed its annual returns for financial years 2021-22 and 2022-23 in the month of December, 2022 and December, 2023 respectively. What is the time limit to take ITC of GST charged on Invoice and Debit Note issued in this case?

**Solution :**

In this case, the time limit to take ITC of GST charged on Invoice of Rs. 50,000 shall be 30<sup>th</sup> November, 2022 (being earlier of the date of actual filing of the annual return for 2021-22 or the 30<sup>th</sup> November, 2022). Further, the time limit to take ITC of GST charged on Debit Note of Rs. 10,000 shall be 30<sup>th</sup> November, 2023 (being earlier of the date of actual filing of the annual return for 2022-23 or the 30<sup>th</sup> November, 2023), because the Debit Note was issued in the financial year 2022-23. [Note: After amendment made by Finance Act, 2020, the date of issue of invoice relating to debit note is of no relevance for determining time limit to take ITC of GST charged on Debit Note.]

[Before Amendment made by Finance Act, 2020, the answer would had been as under:

Though the debit note was received in the next financial year, it relates to an invoice received in the financial year 2021-22. Therefore, the time limit for taking ITC of GST charged on Invoice of Rs. 50,000 as well as on Debit Note of Rs. 10,000 shall be 30<sup>th</sup> November, 2022 (being earlier of the date of actual filing of the annual return for 2021-22 or the 30<sup>th</sup> November, 2022)].

**Clarification regarding amendment relating to time limit to claim ITC on the basis of Debit Notes [Circular No. 160/16/2021-GST, dated 20.09.2021]**

**Issue:** Whether any availment of input tax credit, 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:** The availment of ITC on debit notes in respect of amended provision shall be applicable from 01.01.2021. The intent of law is to delink the date of issuance of debit note from the date of issuance of the underlying invoice for purposes of availing input tax credit. 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 11 : Section 16(2)(a)**

In January, 2023, inputs purchased and received, on which Rs. 2,00,000/- GST was paid. But, 1 invoice for GST of Rs. 50,000/- paid was received by the assessee on 03.02.2023. What will be the eligible amount of ITC on the inputs in the month of January, 2023?

**Solution :**

Since, the invoice for Rs. 50,000 was not received till 31.01.2023, therefore, the ITC of Rs. 50,000 cannot be availed in the month of January, 2023 as per Section 16(2)(a) of the CGST Act, 2017. Hence, eligible amount of ITC on the inputs in the month of January, 2023 will be Rs. 1,50,000/-.

**Illustration 12 : Section 16(2)(b)**

M/s PQR Ltd. purchased 1,00,000 units of inputs on which Rs. 10,00,000/- GST was paid (as indicated on the invoice). But, due to some abnormal loss, during transportation, it could receive only 60,000 units of inputs. What will be the eligible amount of ITC on the inputs ?

**Solution :**

As per Section 16(2)(b) of the CGST Act, 2017, ITC of only Rs. 6,00,000/- (i.e. on the quantity of inputs received) can be availed by M/s PQR Ltd.

**Illustration 13 :**

XYZ Ltd., is engaged in manufacture of taxable goods. Compute the ITC available with XYZ Ltd. for the month of October, 2022 from the following particulars:

S.N.	Inward Supplies	GST (Rs.)	Remarks
(i)	Inputs A	1,00,000	One invoice on which GST payable was Rs. 10,000, is missing
(ii)	Inputs B	50,000	Inputs are to be received in two installments. First installment has been received in October, 2022.
(iii)	Capital goods	1,20,000	XYZ Ltd. has capitalised the capital goods at full invoice value inclusive of GST as it will avail depreciation on the full invoice value.
(iv)	Input services	2,25,000	One invoice dated 20.01.2022 on which GST payable was Rs. 50,000 has been received in October, 2022.

**Notes :**

- All the conditions necessary for availing the ITC have been fulfilled.
- XYZ Ltd. is registered in GST.
- The annual return for the financial year 2021-22 was filed on 15<sup>th</sup> September, 2022.

**Solution : Computation of ITC available with XYZ Ltd. for the month of October, 2022**

S.N.	Inward Supplies	GST (Rs.)
(i)	<b>Inputs A</b> [ITC cannot be taken on missing invoice. The registered person should have the invoice in its possession to claim ITC-Section 16(2)(a)]	90,000
(ii)	<b>Inputs B</b> [When inputs are received in installments, ITC can be availed only on receipt of last installment - First proviso to section 16(2)]	Nil
(iii)	<b>Capital goods</b> [Input tax paid on capital goods cannot be availed as ITC, if depreciation has been claimed on such tax component - Section 16(3)]	Nil
(iv)	<b>Input services</b> [As per section 16(4), ITC on an invoice cannot be availed after 30 <sup>th</sup> November following the end of financial year to which such invoice pertains or the actual date of filing]	1,75,000

A

annual return, whichever is earlier.] Since, the annual return for the F.Y. 2021-22 has been filed on 15th September, 2022 (i.e. prior to 30 <sup>th</sup> November, 2022), ITC on the invoice pertaining to F.Y. 2021-22 cannot be availed after 15th September, 2022. (A)	
<b>Total</b>	2,65,000

**Illustration 14 :**

Compute the amount of Input tax credit admissible to RIL Pvt. Ltd. in respect of various inputs purchased during the month of July, 2022.

Particulars	Amount (Rs.)
Purchases of goods not to be used for business purposes	55,000
Purchases of goods from ABC & Co. (Invoice of ABC & Co. is received in month of July 2022, but goods were received in month of August 2022)	75,000
Goods purchased without invoice	30,000
Goods purchased against valid invoice from XYZ Pvt. Ltd. Tax has been deposited by XYZ Pvt. Ltd. RIL Pvt. Ltd. has made payment to XYZ Pvt. Ltd. for such purchases in the month of August 2022.	1,44,000
Goods purchased from JKL Ltd. (Full Payment is made by RIL Pvt. Ltd. to JKL Ltd. against such supply but tax has not been deposited by JKL Ltd.)	46,000

**Answer :** Computation of admissible ITC to RIL Pvt. Ltd. for the month of July, 2022

Particulars	Amount (Rs.)
Purchases of goods not to be used for business purposes [Note-1]	-
Purchases of goods from ABC & Co. (Invoice of ABC & Co. is received in month of July 2022, but goods were received in month of August 2022) [Note-2]	-
Goods purchased without invoice [Note-3]	-
Goods purchased against valid invoice from XYZ Pvt. Ltd. Tax has been deposited by XYZ Pvt. Ltd. RIL Pvt. Ltd. has made payment to XYZ Pvt. Ltd. for such purchases in the month of August 2022. [Note-4]	1,44,000
Goods purchased from JKL Ltd. (Full Payment is made by RIL Pvt. Ltd. to JKL Ltd. against such supply but tax has not been deposited by JKL Ltd.) [Note-5]	-
<b>Total admissible Input Tax credit for the month of July 2022</b>	<b>1,44,000</b>

**Notes:**

1. A registered person shall be entitled to take input tax credit on goods which are used or intended to be used in the course or furtherance of his business. Since, RIL Pvt. Ltd. has purchased the goods for non-business purpose, hence, no credit will be admissible on such purchases.
2. Input tax credit is admissible only when registered person has received such goods. Since the goods are received in the month of August, 2022, input tax credit cannot be taken in the month of July, 2022.
3. No Input tax credit will be available since RIL Pvt. Ltd. is not in possession of valid tax paying document.
4. Input tax credit shall be admissible in month of July, 2022 even if payment is made by RIL Pvt. Ltd. in month of August, 2022.
5. As per Section 16(2), no registered person shall be entitled to the credit of any input tax in respect of any supply of goods unless the tax charged in respect of such supply has been actually paid to the Government. Since, JKL Ltd.



has not deposited the tax to the credit of Government, no ITC can be claimed by RIL Pvt. Ltd. (assuming provisional ITC of this amount is not available due to non-furnishing of GSTR-1/IFF).

#### **Illustration 15 :**

Ankit Pvt. Ltd. purchased goods valuing Rs. 50,00,000 (exclusive of 9% CGST and 9% SGST) under the cover of invoice dated 28-02-2022 and received goods on the same day and payment also made to the supplier on the same date. Since, there was a doubt regarding admissibility of tax credit on such inputs, the company did not take the input tax credit at the time of receipt of inputs. The company obtained clarification from a legal consultant who opined that the goods were eligible as inputs under Input tax Credit Rules. The opinion was received on 17-08-2022. The company now wants to avail Input tax credit of the tax paid on such inputs. Can it do so? The company has filed its annual return for the year 2021-22 on 19-09-2022.

**Answer :**



As per Section 16(4), a registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after 30<sup>th</sup> November following the end of financial year to which such invoice or debit note pertains i.e. 30-11-2022 or furnishing of the relevant annual return (i.e. 19-09-2022), whichever is earlier, i.e. 19-09-2022. Therefore, Ankit Pvt. Ltd. can avail ITC in the month of August, 2022 in this case.

### **5.4 Conditions of use of amount available in electronic credit ledger [Rule 86A] [inserted by NN 75/2019 - CT, w.e.f. 26.12.2019]**

- (1) The Commissioner or an officer authorised by him in this behalf, not below the rank of an Assistant Commissioner, having **reasons to believe** that credit of input tax available in the electronic credit ledger has been fraudulently availed or is ineligible in as much as-
  - a) the credit of input tax has been availed on the strength of tax invoices or debit notes or any other document prescribed under rule 36-
    - i. issued by a registered person who has been found non-existent or not to be conducting any business from any place for which registration has been obtained; or
    - ii. without receipt of goods or services or both; or
  - b) the credit of input tax has been availed on the strength of tax invoices or debit notes or any other document prescribed under rule 36 in respect of any supply, the tax charged in respect of which has not been paid to the Government; or
  - c) the registered person availing the credit of input tax has been found non-existent or not to be conducting any business from any place for which registration has been obtained; or
  - d) the registered person availing any credit of input tax is not in possession of a tax invoice or debit note or any other document prescribed under rule 36,

may, for reasons to be recorded in writing, not allow debit of an amount equivalent to such credit in electronic credit ledger for discharge of any liability under section 49 or for claim of any refund of any unutilised amount.
- (2) The Commissioner, or the officer authorised by him under sub-rule (1) may, upon being satisfied that conditions for disallowing debit of electronic credit ledger as above, no longer exist, allow such debit.
- (3) Such restriction shall cease to have effect after the expiry of a period of **one year** from the date of imposing such restriction.

### **5.5 Restrictions on use of amount available in electronic credit ledger [Rule 86B] [inserted by NN 94/2020 - CT, w.e.f. 22.12.2020]**

An inward supply of these is used for making an outward taxable supply of the same category or as an element of a taxable composite or mixed supply.

**Example:** Mr. Raman, a caterer for a wedding gives sub-contract of Pani-Puri Stall to Mrs. Ishita. In such case, Mr. Raman will be allowed ITC of the tax paid by him to Mrs. Ishita.

**(ii) Membership of a club, health and fitness centre**

**(iii) Travel benefits to employees on vacation such as LTC or home travel concession**

**Exception:**

The ITC of GST paid on purchase of goods or services or both covered under sub-clauses (i), (ii) & (iii) of clause (b) above shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force. [Further, Circular No. 172/04/2022-GST, dated 06.07.2022 has also clarified that this exception at the end of this clause (b) of Sec. 17(5) is applicable to the entire clause (b) {i.e. on all sub-clauses (i), (ii) & (iii) of clause (b)} and not only to the sub-clause (iii) of clause (b), to widen the scope of availability of Input Tax Credit.]

**Examples:**

- (1) A manufacturing company purchases food items for being served to its customers, free of cost. ITC on such goods is blocked.
- (2) AB & Co., a caterer of Amritsar, has been awarded a contract for catering in a marriage to be held at Ludhiana. The firm has given the contract for supply of snacks, to be served in the marriage, to CD & Sons, a local caterer of Ludhiana. ITC on such outdoor catering services availed by AB & Co., is allowed.
- (3) ITC on outdoor catering services availed by a garment exporter for a marketing event organised for its prospective customers, is blocked.
- (4) Outdoor catering service is availed by a company to run a free canteen in its factory. The Factories Act, 1948 requires the company to set up a canteen in its factory. ITC on such outdoor catering is allowed.
- (5) The Managing Director of a company has taken membership of a club, the fees for which is paid by the company. ITC on such service is blocked.
- (6) A company avails services of a travel agency for organizing a free vacation for its top performing employees. ITC on such services is blocked.

**Circular No. 172/04/2022-GST, dated 06.07.2022**

**Issue:** *Whether the provisions of Sec. 17(5)(b)(i) of the CGST Act bar availment of ITC on input services by way of "leasing of motor vehicles, vessels or aircraft" or ITC on input services by way of any type of leasing is barred under the said provisions?*

**Clarification:** *It is clarified that "leasing" referred in Sec. 17(5)(b)(i) refers to leasing of motor vehicles, vessels and aircrafts only and not to leasing of any other items. Accordingly, availment of ITC is not barred u/s 17(5)(b)(i) of the CGST Act in case of leasing, other than leasing of motor vehicles, vessels and aircrafts.*

**(c) Works contract services for construction of an immovable property EXCEPT WHEN**

- It is input service for further supply of works contract service.
- Immovable property is plant and machinery.

**(d) Inward supplies received by a taxable person for construction of an immovable property (other than plant and machinery) on his own account even when such supplies are used in the course or furtherance of business.**

#### Analytical Points to be Noted

##### 1. Meaning of construction and plant and machinery

- "Construction" includes re- construction, renovation, additions or alterations or repairs, to the extent of

Rule 38	<p><b>A banking company</b> or a financial institution, including a non-banking financial company, engaged in the supply of services by way of accepting deposits or extending loans or advances that chooses not to comply with the provisions of sub-section (2) of section 17, in accordance with the option permitted under sub-section (4) of that section, shall follow the following <b>procedure</b>, namely, -</p>
(a)	the said company or institution shall <b>not avail</b> the credit of, -
	<p>(i) the tax paid on inputs and input services that are used for <b>non-business purposes</b>; and</p> <p>(ii) the credit attributable to the supplies specified in <b>sub-section (5) of section 17</b>, <del>in FORM GSTR-2</del> [omitted words, omitted by NN 19/2022 - CT, w.e.f. 01.10.2022];</p>
(b)	the said company or institution shall <b>avail</b> the credit of tax paid on inputs and input services referred to in the <b>second proviso</b> to sub-section (4) of section 17 and not covered under clause (a);
(c)	fifty percent of the remaining amount of input tax shall be the input tax credit admissible to the company or the institution <del>and shall be furnished in FORM GSTR-2</del> [omitted words, omitted by NN 19/2022 - CT, w.e.f. 01.10.2022];
(d)	<del>the amount referred to in clauses (b) and (c) shall, subject to the provisions of sections 41, 42 and 43, be credited to the electronic credit ledger of the said company or the institution</del> [clause (d) omitted by NN 19/2022 - CT, w.e.f. 01.10.2022].
Rule 42	<b>Manner of determination of input tax credit in respect of inputs or input services and reversal thereof</b>
(1)	<p>The input tax credit in respect of inputs or input services, which attract the provisions of sub-section (1) or sub-section (2) of section 17, being partly used for the purposes of business and partly for other purposes, or partly used for effecting taxable supplies including zero rated supplies and partly for effecting exempt supplies, shall be attributed to the purposes of business or for effecting taxable supplies in the following manner, namely, -</p> <p>(a) the total input tax involved on inputs and input services in a tax period, be denoted as T;</p> <p>(b) the amount of input tax, out of T, attributable to inputs and input services intended to be used <b>exclusively</b> for the purposes <b>other than business</b>, be denoted as T<sub>1</sub>;</p> <p>(c) the amount of input tax, out of T, attributable to inputs and input services intended to be used <b>exclusively</b> for effecting <b>exempt supplies</b>, be denoted as T<sub>2</sub>;</p> <p>(d) the amount of input tax, out of T, in respect of inputs and input services on which credit is not available under <b>sub-section (5) of section 17</b>, be denoted as T<sub>3</sub>;</p> <p>(e) the amount of <b>input tax credit credited to the electronic credit ledger</b> of registered person, be denoted as C<sub>1</sub> and calculated as <math>C_1 = T - (T_1 + T_2 + T_3)</math>;</p> <p>(f) the amount of input tax credit attributable to inputs and input services intended to be used <b>exclusively</b> for effecting supplies other than exempted but including zero rated supplies, be denoted as T<sub>4</sub>;</p> <p>(g) T<sub>1</sub>, T<sub>2</sub>, T<sub>3</sub> and T<sub>4</sub> shall be determined and declared by the registered person <del>at the invoice level in FORM GSTR-2 and</del> at summary level in FORM GSTR-3B [omitted words, omitted by NN 19/2022 - CT, w.e.f. 01.10.2022];</p> <p>(h) input tax credit left after attribution of input tax credit under clause (f) shall be called <b>common credit</b>, be denoted as C<sub>2</sub> and calculated as <math>C_2 = C_1 - T_4</math>;</p> <p>(i) the amount of input tax credit attributable towards exempt supplies, be denoted as D<sub>1</sub> and calculated as <math>D_1 = (E \div F) \times C_2</math> where, E is the aggregate value of <b>exempt supplies</b> during the <b>tax period</b>, and F is the <b>total turnover</b> in the State of the registered person during the tax period:</p> <p>Provided further that where the registered person <b>does not have any turnover</b> during the said tax</p>

	period or the aforesaid information is <b>not available</b> , the value of E/F shall be calculated by taking values of E and F of the <b>last tax period</b> for which the details of such turnover are available, <b>previous to the month</b> during which the said value of E/F is to be calculated;
	<b>Explanation:</b> For the purposes of this clause, it is hereby clarified that the <b>aggregate value of exempt supplies</b> and the <b>total turnover</b> shall <b>exclude</b> the amount of <b>any duty or tax</b> levied under <b>entry 84 and entry 92A of List I</b> of the Seventh Schedule to the Constitution and <b>entry 51 and 54 of List II</b> of the said Schedule; [Words "and entry 92A" inserted by NN 03/2019 - CT, w.e.f. 01.02.2019]
(j)	the amount of credit attributable to <b>non-business purposes if common</b> inputs and input services are used partly for business and partly for non-business purposes, be denoted as 'D <sub>2</sub> ', and shall be equal to <b>5% of C<sub>2</sub></b> ; and
(k)	the remainder of the common credit shall be the <b>eligible input tax credit</b> attributed to the purposes of business and for effecting supplies other than exempted supplies but including zero rated supplies and shall be denoted as C <sub>3</sub> , where, $C_3 = C_2 - (D_1 + D_2)$ ;
(l)	the amount C <sub>3</sub> , D <sub>1</sub> and D <sub>2</sub> shall be computed <b>separately</b> for input tax credit of <b>central tax, State tax, Union territory tax and integrated tax and declared in FORM GSTR-3B or through FORM GST DRC-03</b> ;
(m)	the amount equal to aggregate of D <sub>1</sub> and D <sub>2</sub> shall be <del>added to the output tax liability of the registered person</del> <b>reversed by the registered person in FORM GSTR-3B or through FORM GST DRC-03</b> ;
	Provided that where the amount of input tax relating to inputs or input services used partly for the purposes other than business and partly for effecting exempt supplies has been identified and segregated at the invoice level by the registered person, the same shall be included in T <sub>1</sub> and T <sub>2</sub> respectively, and the remaining amount of credit on such inputs or input services shall be included in T <sub>4</sub> .
(2)	Except in case of supply of services covered by clause (b) of paragraph 5 of the Schedule II of the Act, the input tax credit determined under sub-rule (1) shall be calculated finally for the financial year before the due date for furnishing of the return for the month of September following the end of the financial year to which such credit relates, in the manner specified in the said sub-rule and, -
(a)	where the aggregate of the amounts calculated finally in respect of D <sub>1</sub> and D <sub>2</sub> <b>exceeds</b> the aggregate of the amounts determined under sub-rule (1) in respect of D <sub>1</sub> and D <sub>2</sub> , such excess shall be <del>added to the output tax liability of the registered person</del> <b>reversed by the registered person in FORM GSTR-3B or through FORM GST DRC-03</b> in the <b>month not later than the month of September</b> following the end of the financial year to which such credit relates and the said person shall be liable to <b>pay interest</b> on the said <b>excess amount</b> at the rate specified in sub-section (1) of section 50 for the period starting from <b>the first day of April</b> of the succeeding financial year <b>till the date of payment</b> ; or
(b)	where the aggregate of the amounts determined under sub-rule (1) in respect of D <sub>1</sub> and D <sub>2</sub> exceeds the aggregate of the amounts calculated finally in respect of D <sub>1</sub> and D <sub>2</sub> , such <b>excess amount shall be claimed as credit</b> by the registered person in his return for a <b>month not later than the month of September</b> following the end of the financial year to which such credit relates.
<b>Rule 43</b>	<b>Manner of determination of ITC in respect of capital goods and reversal thereof in certain cases</b>
(1)	Subject to the provisions of sub-section (3) of section 16, the input tax credit in respect of <b>capital goods</b> , which attract the provisions of sub-sections (1) and (2) of section 17, being <b>partly</b> used for the purposes of <b>business and partly for other purposes</b> , or partly used for effecting <b>taxable supplies including zero rated supplies</b> and partly for effecting <b>exempt supplies</b> , shall be attributed to the purposes of business or for effecting taxable supplies in the following manner, namely, -
(a)	the amount of input tax in respect of capital goods used or intended to be used <b>exclusively</b> for <b>non-business purposes</b> or used or intended to be used exclusively for effecting <b>exempt supplies</b> shall be indicated in <del>FORM GSTR-2 and</del> FORM GSTR - 3B and <b>shall not be credited to his electronic credit</b>

	<b>ledger; [omitted words, omitted by NN 19/2022 - CT, w.e.f. 01.10.2022]</b>
(b)	the amount of input tax in respect of capital goods used or intended to be used <b>exclusively</b> for effecting supplies <b>other than exempted supplies but including zero-rated supplies</b> shall be indicated in <del>FORM GSTR-2 and</del> FORM GSTR - 3B and shall be <b>credited to the electronic credit ledger; [omitted words, omitted by NN 19/2022 - CT, w.e.f. 01.10.2022]</b>
(c)	<p>the amount of input tax in respect of <b>capital goods not covered under clauses (a) and (b)</b>, denoted as 'A', being the amount of tax as reflected on the invoice, shall credit directly to the <b>electronic credit ledger</b> and validity of the useful life of such goods shall extend upto <b>five years from the date of the invoice for such goods</b>:</p> <p>Provided that where any capital goods earlier covered under clause (a) is subsequently covered under this clause, input tax in respect of such capital goods denoted as "A" shall be credited to the electronic credit ledger subject to the condition that the <b>ineligible credit</b> attributable to the period during which such capital goods were covered by clause (a), denoted as "Tie", shall be calculated at the rate of <b>five percentage points for every quarter or part thereof and added to the output tax liability</b> of the tax period in which such credit is claimed :</p> <p>Provided further that the amount "Tie" shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax and declared in FORM GSTR-3B.</p> <p><u>Explanation:</u> An item of capital goods declared under clause (a) on its receipt shall not attract the provisions of sub-section (4) of section 18 if it is subsequently covered under this clause.</p>
(d)	<p>the aggregate of the amounts of "A" credited to the electronic credit ledger under clause (c) in respect of common capital goods whose useful life remains during the tax period, to be denoted as "Tc", shall be the common credit in respect of such capital goods:</p> <p>Provided that where any capital goods earlier covered under clause (b) are subsequently covered under clause (c), the input tax credit claimed in respect of such capital good(s) shall be added to arrive at the aggregate value "Tc";</p>
(e)	<p>the amount of input tax credit attributable to a tax period on common capital goods during their useful life, be denoted as <math>T_m</math> and calculated as</p> $T_m = T_c \div 60$ <p><u>Explanation:</u> For the removal of doubt, it is clarified that useful life of any capital goods shall be considered as five years from the date of invoice and the said formula shall be applicable during the useful life of the said capital goods.</p>
(f)	<del>the amount of input tax credit, at the beginning of a tax period, on all common capital goods whose useful life remains during the tax period, be denoted as <math>T_r</math> and shall be the aggregate of <math>T_m</math> for all such capital goods. [clause (f) omitted by NN 16/2020 - CT, w.e.f. 01.04.2020]</del>
(g)	<p>the amount of common credit attributable towards exempted supplies, be denoted as <math>T_e</math>, and calculated as</p> $T_e = (E \div F) \times T_r$ <p>where, E is the aggregate value of <b>exempt supplies</b>, made, during the tax period, and F is the <b>total turnover</b> in the state of the registered person during the tax period:</p>
	<p>Provided further that where the registered person <b>does not have any turnover</b> during the said tax period or the aforesaid information is not available, the value of E/F shall be calculated by taking values of E and F of the <b>last tax period</b> for which the details of such turnover are available, <b>previous to the month</b> during which the said value of E/F is to be calculated;</p>
	<p><u>Explanation:</u> For the purposes of this clause, it is hereby clarified that the aggregate value of <b>exempt supplies and the total turnover shall exclude</b> the amount of any <b>duty or tax levied under entry 84 and entry 92A of List I</b> of the Seventh Schedule to the Constitution and <b>entry 51 and 54 of List II</b> of</p>



		the said Schedule;
	(h)	the amount $T_e$ along with the <b>applicable interest</b> shall, during every tax period of the useful life of the concerned capital goods, be added to the <b>output tax liability</b> of the person making such claim of credit.
	(i)	The amount $T_e$ shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax and declared in FORM GSTR-3B.
<b>Explanation 1:</b> For the purposes of rule 42 and Rule 43, it is hereby clarified that the <b>aggregate value of exempt supplies shall exclude:</b>		
(a)	[Omitted by NN 03/2019 - CT, w.e.f. 01.02.2019]	
(b)	the value of services by way of accepting deposits, extending loans or advances in so far as the consideration is represented by way of interest or discount, except in case of a banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances;	
(c)	the value of supply of services by way of transportation of goods by a vessel from the customs station of clearance in India to a place outside India; and	
(d)	<i>the value of supply of Duty Credit Scrips specified in the notification of the Government of India, Ministry of Finance, Department of Revenue No. 35/2017-Central Tax (Rate), dated the 13th October, 2017. [clause (d) inserted by NN 14/2022 - CT, dated 05.07.2022]</i>	
<b>Explanation to Rule 45 -</b> For the purposes of this Chapter, the expressions capital goods shall include plant and machinery as defined in the Explanation to section 17.		

## ANALYTICAL VIEW OF THE TOPIC

### **I. Apportionment of ITC [Sub-sections (1) and (2) of section 17 read with rule 42 and rule 43 of CGST Rules]**

Where goods and/or services are used partly for non-business purposes and partly for business purposes, ITC attributable only to business purposes can be taken by the registered person. Similarly, where goods and/or services are partly used for making taxable supplies including zero rated supplies (exports) and partly for exempt supplies, ITC attributable to taxable supplies and zero rated supplies can be taken by the registered person.

**Note :** Section 16(2) of the IGST Act specifies that ITC may be availed on inward supplies for making zero-rated supply, notwithstanding the exempt nature of the zero-rated supply. Zero-rated supply is an expression that covers two kinds of supplies: (i) exports, and (ii) supplies to a SEZ or SEZ developer. Therefore, ITC is available on goods and/or services used for supplies made in the course of export or to an SEZ unit or SEZ developer.

**Example :** Out of 15 packing boxes purchased by a registered person engaged in taxable as well as exempted supply of goods, 5 are used for packing exempted goods. ITC on such 5 boxes used for exempted goods cannot be availed.

**Example :** A registered person purchased 3 laptops but one of the laptop is being used by the son of the registered person. ITC will not be available on such 1 laptop as it is used for personal purposes.

### **1. Methodology of apportionment of credit on inputs and input services and reversal thereof [Rule 42 of the CGST Rules]**

Rule 42 of the CGST Rules provides the methodology for apportionment of ITC on inputs and input services and reversal of ineligible credit as follows:

#### **Applicability of Rule 42 for all cases other than Construction services covered by clause (b) of paragraph 5 of Schedule II of the Act**

##### **Step 1 : Compute common credit**

- (i) If the registered person does not have any turnover during the said tax period, or the above information is not available, the values for the last tax period may be used.
- (ii) Exempt supplies include outward supplies charged to tax under reverse charge, transactions in securities, sale of land and sale of building when entire consideration is received after completion certificate issued by the competent authority or its first occupation, whichever is earlier.

**Note :**

1. For this purpose, the value of exempt supply in following cases shall be:

- (a) the value of land and building supplied (i.e. exempt supply) shall be taken as the same as adopted for the purpose of paying stamp duty; and

**Removal of Difficulty Order No. 04/2018 - CT, dated 01.04.2019**

For the removal of difficulties, it is hereby clarified that in case of supply of services covered by clause (b) of paragraph 5 of Schedule II of the said Act, the amount of credit attributable to the taxable supplies including zero rated supplies and exempt supplies shall be determined on the basis of the area of the construction of the complex, building, civil structure or a part thereof, which is taxable and the area which is exempt.

- (b) the value of security sold (i.e. exempt supply) shall be taken as 1% of the sale value of such security.

2. For this purpose, the expression 'value of exempt supply' shall not include the value of activities or transactions specified in Schedule III, except those specified in paragraph 5 of the said Schedule (i.e. except sale of land, & sale of building when entire consideration is received after completion certificate issued by the competent authority or its first occupation, whichever is earlier). [Explanation inserted by CGST (Amendment) Act, 2018, w.e.f. 01.02.2019]

**Analysis of Amendment:**

It means, in respect of activities & transactions which are covered under Schedule III of the CGST Act, ITC shall be available, although such activities & transactions are not leviable to GST. But, transactions of sale of land & building which is not chargeable to GST will be treated as exempt supply and accordingly ITC will not be available for this particular transaction of Schedule III.

- (iii) Aggregate value of exempt supplies and total turnover excludes the central excise duty, State excise duty, VAT and CST.

Presently, (i) central excise duty is leviable on manufacture/production of tobacco, petroleum crude, diesel, petrol, ATF and natural gas (ii) State excise duty is leviable on manufacture/production of alcoholic liquor, opium, Indian hemp and narcotics, and (iii) VAT/CST is leviable on sale of petroleum crude, diesel, petrol, ATF, natural gas and alcoholic liquor. Petroleum crude, diesel, petrol, ATF, natural gas are presently not taxable under GST and alcoholic liquor is outside the ambit of GST. Thus, supply of both these products (petrol/petroleum products and alcoholic liquor) being non-taxable under GST, will be exempt supplies u/s 2(47) and taxes/duties leviable thereon will be excluded from the value thereof for the purpose of apportionment of credit.

*FOR THE PURPOSES OF RULE 42 & 43*

- (iv) The aggregate value of exempt supplies shall exclude the following:

- (a) ~~the value of supply of services having place of supply in Nepal or Bhutan, against payment in Indian Rupees; [Omitted by NN 03/2019 - CT, w.e.f. 01.02.2019]~~
- (b) the value of services by way of accepting deposits, extending loans or advances in so far as the consideration is represented by way of interest or discount, except in case of a banking company or a

*P. T. O.*

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

- (c) the value of supply of services by way of transportation of goods by a vessel from the customs station of clearance in India to a place outside India.

**(d) the value of supply of Duty Credit Scrips [e.g. - RoDTEP, RoSCTL, MEIS, SEIS Duty Credit Scrips] [inserted by NN 14/2022 - CT, dated 05.07.2022].**

### Example on how to apportion common credit into credit attributable to exempt supplies

Ezee Footwear, which manufactures two varieties of exempt Hawaii slippers and five varieties of taxable sandals and shoes, has the following turnover in October and has Rs. 1,15,000 common credit that has to be apportioned:

Turnover of Hawaii 1 plus Hawaii 2 : Rs. 3 crores (This is E)

Turnover of all varieties of taxable shoes and sandals : Rs. 2 crore

Total turnover of all footwear during the month : Rs. 5 crores (This is 'F')

No inputs/input services are used for non-business purposes.

$(3,00,00,000 / 5,00,00,000) \times 1,15,000 = \text{Rs. } 69,000$  is the input tax that pertains to exempt supply (D1).

- **Compute credit attributable to non-business purposes  $D_2$  as under:**

$$D_2 = 5\% \text{ of } C_2 \text{ (common credit)}$$

### Step 3 : Compute eligible credits

Compute  $C_3$  i.e. common eligible ITC attributable to business purposes and taxable supplies including zero rated supplies as under:

$$C_3 = C_2 - (D_1 + D_2)$$

### Step 4 : Restrict ineligible credits

ITC amount equal to  $[D_1 + D_2]$  shall be reversed in form GSTR-3B.

### Note :

- Compute  $C_3$  separately for ITC of CGST, SGST/ UTGST and IGST.
- Compute  $\sum (D_1 + D_2)$  for the whole financial year, by taking exempted turnover and aggregate turnover for the whole financial year, before the due date for filing the return for September of the following financial year.
- If  $\sum (D_1 + D_2) >$  the amount already reversed every month, the differential amount has to be reversed in any month till the month of September of the following financial year and interest @ 18% p.a. should be paid on such differential amount from 1<sup>st</sup> April of succeeding year till the date of payment.
- If the amount reversed every month  $> \sum (D_1 + D_2)$ , the additional amount paid has to be claimed back as ITC in the return of the month not later than September of the next financial year.

**Explanation :** For the removal of doubt, it is clarified that useful life of any capital goods shall be considered as 5 years from the date of invoice and the said formula shall be applicable during the useful life of the said capital goods.

**Analysis of the amendment**

By adding the explanation, it has been clarified that **useful life of any capital goods would be 5 years from the date of invoice**. The said formula shall be applicable during useful life of said capital goods (i.e. 5 years from the date of invoice). Earlier, due to bad drafting of law, wrong calculation had to be done by taking a period of 5 years from the date of conversion of use of the capital goods, irrespective of the fact that, it was already been used for some period for some other use.

**Step 3 : Apportion common credit attributable to exempt supplies as under:**

$$T_e = (E \div F) \times T_r$$

Where

E = Aggregate value of exempt supplies made during the tax period

F = Total turnover during the tax period

**Notes :**

- (i) If the registered person does not have any turnover during the said tax period, or the above information is not available, the values for the last tax period may be used.
- (ii) Aggregate value of exempt supplies and total turnover excludes the central excise duty, State excise duty, VAT and CST.
- (iii) The aggregate value of exempt supplies shall exclude the following:
  - (a) ~~the value of supply of services having place of supply in Nepal or Bhutan, against payment in Indian Rupees; [Omitted by NN 03/2019 - CT, w.e.f. 01.02.2019]~~
  - (b) the value of services by way of accepting deposits, extending loans or advances in so far as the consideration is represented by way of interest or discount, except in case of a banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances; and
  - (c) the value of supply of services by way of transportation of goods by a vessel from the customs station of clearance in India to a place outside India.
  - (d) *the value of supply of Duty Credit Scrips [e.g. - RoDTEP, RoSCTL, MEIS, SEIS Duty Credit Scrips] [inserted by NN 14/2022 - CT, dated 05.07.2022].*
- (iv) Exempt supplies include outward supplies charged to tax under reverse charge, transactions in securities, sale of land and sale of building when entire consideration is received after completion certificate issued by the competent authority or its first occupation, whichever is earlier.

**Note :** For this purpose, the value of exempt supply in following cases shall be:

- (a) the value of land and building supplied (i.e. exempt supply) shall be taken as the same as adopted for the purpose of paying stamp duty; and

**Removal of Difficulty Order No. 04/2018 - CT, dated 01.04.2019**

	unutilized ITC balance of transferor.	
	(ii) Which date shall be relevant to calculate the ratio of value of assets, as prescribed in the proviso to rule 41 (1) of the CGST Rules, 2017?	<p>According to section 232 (6) of the Companies Act, 2013, "The scheme under this section shall clearly indicate an <b>appointed date</b> from which it shall be effective and the scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date". The said legal provision appears to indicate that the "<b>appointed date of demerger</b>" is the date from which the scheme for demerger comes into force and it is specified in the respective scheme of demerger. Therefore, for the purpose of apportionment of ITC under rule sub-rule (1) of rule 41 of the CGST Rules, the ratio of the value of assets should be taken as on the "appointed date of demerger".</p> <p>In other words, for the purpose of apportionment of ITC under sub-rule (1) of rule 41 of the CGST Rules, while the <b>ratio of the value of assets</b> should be taken as on the "<b>appointed date of demerger</b>", the said ratio is to be applied on the ITC balance of the transferor on the date of filing FORM GST ITC - 02 to calculate the amount to transferable ITC.</p>

**(vi) Rule 41A. Transfer of credit on obtaining separate registration for multiple places of business within a State or Union territory [inserted by NN 03/2019 - CT, w.e.f. 01.02.2019]:**

(1) A registered person who has obtained separate registration for multiple places of business in accordance with the provisions of rule 11 and who intends to transfer, either wholly or partly, the unutilised input tax credit lying in his electronic credit ledger to any or all of the newly registered place of business, shall furnish within a period of 30 days from obtaining such separate registrations, the details in **FORM GST ITC-02A** electronically on the common portal.

However, the **input tax credit shall be transferred** to the newly registered entities in the **ratio of the value of assets** held by them at the time of registration.

Explanation.- For the purposes of this sub-rule, it is hereby clarified that the value of assets means the value of the entire assets of the business whether or not input tax credit has been availed thereon.


(2) The newly registered person (transferee) shall, on the common portal, accept the details so furnished by the registered person (transferor) and, upon such acceptance, the unutilised input tax credit specified in FORM GST ITC-02A shall be credited to his electronic credit ledger.

## 5.9 How ITC is Utilised

Statutory Provisions	
Sec. 49	Payment of tax, interest, penalty and other amounts
Sub-sec.	Particulars
(2)	The input tax credit as self-assessed in the return of a registered person shall be credited to his electronic credit ledger, in accordance with section 41, to be maintained in such manner as may be prescribed.
(4)	The amount available in the electronic credit ledger may be used for making any payment towards output tax under this Act or under the Integrated Goods and Services Tax Act in such manner and subject to such conditions <u>and restrictions</u> and within such time as may be prescribed. [ <i>words 'and restrictions' inserted by Finance Act, 2022, w.e.f. 01.10.2022</i> ]
(5)	The amount of input tax credit available in the electronic credit ledger of the registered person on account of -
(a)	integrated tax shall first be utilised towards payment of integrated tax and the amount remaining, if any, may be utilised towards the payment of central tax and State tax, or as the case may be, Union



- (v) The **manufacturer** of the following goods which are not eligible for Composition Scheme, have been notified u/s 10(2)(e) vide Notification No. 14/2019 - C.T.:

HSN Code	Description
2105 00 00	Ice cream and other edible ice, whether or not containing cocoa
2106 90 20	Pan masala
2202 10 10	Aerated Water, containing added sugar or other sweetening matter or flavoured [Eg. Pepsi, Coca-cola, etc.] [inserted by NN 43/2019 - C.T., w.e.f. 01.10.2019]
Chapter 24	All goods, i.e. Tobacco and manufactured tobacco substitutes
 6815*	Fly ash bricks; fly ash aggregates <del>with 90% or more fly ash content</del> ; Fly ash blocks [omitted words, omitted by NN 16/2022 - CT, w.e.f. 18.07.2022]
6901 00 10*	Bricks of fossil meals or similar siliceous earths
6904 10 00*	Building bricks
6905 10 00*	Earthen or roofing tiles

\*[inserted by NN 04/2022 - C.T., w.e.f. 01.04.2022]

- (vi) **Clarification regarding the classification of Services by Cloud Kitchens/Central Kitchens [Circular No. 164/20/2021 - GST, dated 06.10.2021]**

1. The word "Restaurant Service" is defined in NN 11/2017 - CT (R) as follows: "Restaurant Service" means supply, by way of or as part of any service, of goods, being food or any other article for human consumption or any drink, provided by a restaurant, eating joint including mess, canteen, whether for consumption on or away from the premises where such food or any other article for human consumption or drink is supplied.
2. The explanatory notes to the classification of service state that "Restaurant Service" includes services provided by Restaurants, Cafes and similar eating facilities including takeaway services, room services and door delivery of food. Therefore, it is clear that takeaway services and door delivery services for consumption of food are also considered as restaurant service and, accordingly, service by an entity, by way of cooking and supply of food, even if it is exclusively by way of takeaway or door delivery or through or from any restaurant would be covered by restaurant service. This would thus cover services provided by cloud kitchens/central kitchens.
3. Accordingly, as recommended by the Council, it is clarified that service provided by way of cooking and supply of food, by cloud kitchens/central kitchens are covered under "Restaurant Service".

- (vii) **Clarification Regarding Supply of Ice Cream by Ice Cream Parlors [Circular No. 164/20/2021 - GST, dated 06.10.2021]**

1. Ice cream parlors sell already manufactured ice-cream and they do not have a character of a restaurant. 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. Thus, supply of ice-cream parlor stands on a different footing than restaurant service. 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.
2. Accordingly, as recommended by the Council, it is clarified that 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.

**Illustration 1 :**

- (g) he is not a manufacturer of such goods or supplier of such services as may be notified by the Government on the recommendations of the Council. Using this power, government has notified that the **manufacturer** of the following goods shall not be eligible for this scheme:

HSN Code	Description
2105 00 00	Ice cream and other edible ice, whether or not containing cocoa
2106 90 20	Pan masala
2202 10 10	Aerated Water, containing added sugar or other sweetening matter or flavoured [Eg. Pepsi, Coca-cola, etc.] [inserted by NN 43/2019 - C.T., w.e.f. 01.10.2019]
Chapter 24	All goods, i.e. Tobacco and manufactured tobacco substitutes
Ⓐ 6815*	Fly ash bricks; fly ash aggregates <del>with 90% or more fly ash content</del> ; Fly ash blocks <del>[omitted words, omitted by NN 16/2022 - CT, w.e.f. 18.07.2022]</del>
6901 00 10*	Bricks of fossil meals or similar siliceous earths
6904 10 00*	Building bricks
6905 10 00*	Earthen or roofing tiles

\*[inserted by NN 04/2022 - C.T., w.e.f. 01.04.2022]

**Composition scheme to be adopted uniformly by all the registered persons having the same PAN [Proviso to section 10(2A)] :** All registered persons having the same Permanent Account Number (PAN) have to opt for composition scheme. If one such registered person opts for normal scheme, others become ineligible for composition scheme.

**Example:** Mr. Ram has two offices, one in Mumbai and another in Delhi and is eligible for composition levy. If Mr. Ram opts for the composition scheme, both the offices would pay taxes under composition scheme and abide by all the conditions as may be prescribed for the composition scheme.

**Composition scheme supplier cannot collect tax [Section 10(4)] :** Taxable person opting for the composition scheme shall not collect tax from the recipient on supplies made by him. It implies that a composition scheme supplier cannot issue a tax invoice.

The registered person shall issue, instead of tax invoice, a **bill of supply** as referred to in clause (c) of sub-section (3) of section 31 of the said Act with particulars as prescribed in rule 49 of Central Goods and Services Tax Rules.

The registered person shall **mention** the following words at the **top of the bill of supply**, namely: - 'composition taxable person not eligible to collect tax on supplies'.



**Composition scheme supplier cannot enter into credit chain [Section 10(4)] :** Taxable person opting for the composition scheme is not entitled to any credit of input tax.

**Composition scheme supplier has to discharge RCM liability at normal applicable rates [Section 10(2A)] :** The registered person opting for Composition scheme shall be liable to pay GST on inward supplies on which he is liable to pay tax under Reverse Charge Mechanism under section 9(3) or 9(4) of the said Act at the applicable normal rates.

**Validity of composition levy [Section 10(3)] :**

The option to pay tax under composition scheme lapses from the day on which his aggregate turnover during the F.Y. exceeds the specified limit of Rs. 50 lakhs.

The option exercised by a registered person to pay amount under composition levy shall remain valid so long as he satisfies all the conditions mentioned in the said section.

S. N.	Category of Supply of Service	Supplier of Service	Recipient of Service
1. 	Supply of services by a Goods Transport Agency (GTA), <del>who has not paid GST at the rate of 12%</del> , in respect of transportation of goods by road to - (a) any factory registered under or governed by the Factories Act, 1948; or (b) any society registered under the Societies Registration Act, 1860 or under any other law for the time being in force in any part of India; or (c) any co-operative society established by or under any law; or (d) any person registered under the CGST Act or the IGST Act or the SGST Act or the UTGST Act; or (e) any body corporate established, by or under any law; or (f) any partnership firm whether registered or not under any law including association of persons; or (g) any casual taxable person	Goods Transport Agency (GTA)	(a) any <b>factory</b> registered under or governed by the Factories Act, 1948; or (b) any <b>society</b> registered under the Societies Registration Act, 1860 or under any other law for the time being in force in any part of India; or (c) any <b>co-operative society</b> established by or under any law; or (d) any <b>person registered</b> under CGST Act or the IGST Act or the SGST Act or the UTGST Act; or (e) any <b>body corporate</b> established, by or under any law; or (f) any <b>partnership firm</b> whether <b>registered or not</b> under any law <b>including association of persons</b> ; or (g) any <b>casual taxable person</b> registered under GST located in the taxable territory.
	<p>However, RCM on GTA service shall <b>not apply</b></p> <p>(i) to services provided by a GTA to, - (a) a Department or Establishment of the Central Government or State Government or Union territory; or (b) local authority; or (c) Governmental agencies, which has taken registration under the CGST Act, 2017 only for the purpose of deducting TDS u/s 51 and not for making a taxable supply of goods or services.</p> <p>(ii) <i>where, -</i> (a) <i>the supplier (GTA) has taken registration under GST and exercised the option to pay GST under forward charge mechanism on the services of GTA; and</i> (b) <i>the supplier (GTA) has issued a tax invoice to the recipient charging GST at the applicable rates and has made following declaration on such invoice issued by him:</i> <i>"I/we have taken registration under the CGST Act, 2017 and have exercised the option to pay tax on services of GTA in relation to transport of goods supplied by us during the Financial Year ____ under forward charge."</i></p> <p>[as amended by NN 05/2022 - CT (R), w.e.f. 18.07.2022] [also refer analysis given at the end of this table]</p>		
2. 	Services provided by an individual <b>advocate</b> including a senior advocate or firm of advocates by way of legal services, directly or indirectly Explanation.- "legal service" means any service provided in relation to advice, consultancy or	An individual advocate including a senior advocate or firm of advocates	Any <b>business entity</b> located in the taxable territory.

	assistance in any branch of law, in any manner and includes representational services before any court, tribunal or authority" [also refer analysis given at the end of this table]		
3.	Services supplied by an <b>arbitral tribunal</b> to a business entity	An arbitral tribunal	Any <b>business entity</b> located in the taxable territory.
4.	Services provided by way of <b>sponsorship</b> to any body corporate or partnership firm	Any person	Any <b>body corporate</b> or partnership <b>firm</b> located in the taxable territory.
5.	Services supplied by the <b>Central Government, State Government, Union territory or local authority</b> to a business entity excluding, - (1) renting of immovable property, and (2) Services specified below - (i) services by the Department of Posts <del>by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Central Government, State Government or Union territory or local authority;</del> [Omitted words, omitted by NN 05/2022 - CT (R), w.e.f. 18.07.2022] (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; (iii) transport of goods or passengers	Central Government, State Government or Union territory or local authority	Any <b>business entity</b> located in the taxable territory.
5A.	Services supplied by the <b>Central Government, State Government, Union territory or local authority</b> by way of <b>renting of immovable property</b> to a person registered under the CGST Act, 2017	Central Government, State Government, Union Territory or Local Authority	Any <b>person registered</b> under the CGST Act, 2017
5AA.	<del>Service by way of renting of residential dwelling to a registered person [Inserted by NN 05/2022 - CT (R), w.e.f. 18.07.2022]</del>	Any person	Any Registered person
5B.	Services supplied by any person by way of <b>transfer of development rights (TDR) or Floor Space Index (FSI)</b> (including additional FSI) for construction of a project by a promoter [also refer analysis given at the end of this table]	Any person	<b>Promoter</b>
5C.	<b>Long term lease of land (30 years or more)</b> by any person against consideration in the form of upfront amount (called as premium, salami, cost, price, development charges or by any other name) and/or periodic rent for construction of a project by a promoter [also refer analysis given at the end of this table]	Any person	<b>Promoter</b>
6.	Services supplied by a <b>director</b> of a company/body corporate to the said company/ body corporate	A director of a company or a body corporate	The <b>company</b> or a <b>body corporate</b> located in the taxable territory.

		intermediary for the purpose of lending under the Scheme of SEBI	
--	--	------------------------------------------------------------------	--

**Analytical Notes:****I. Analysis of GTA Service:**

1. The person who pays or is liable to pay freight for the transportation of goods by road in goods carriage, located in the taxable territory shall be treated as the person who receives the service for the purpose of this notification.
2. **Exemption** has been granted to services provided by a **Goods Transport Agency (GTA), to an unregistered person, including an unregistered casual taxable person**, other than the following recipients, namely :
  - (a) Any factory registered under or governed by the Factories Act, 1948; or
  - (b) Any society registered under the Societies Registration Act, 1860 or under any other law for the time being in force in any part of India; or
  - (c) Any co-operative society established by or under any law for the time being in force; or
  - (d) Any body corporate established, by or under any law for the time being in force; or
  - (e) Any partnership firm whether registered or not under any law including association of persons; and
  - (f) Any casual taxable person registered under the CGST Act or the IGST Act or the SGST Act or the UTGST Act.

[Entry No. 21A of NN. 12/2017 CT (R), inserted by NN. 32/2017 CT (R), dated 13.10.2017]

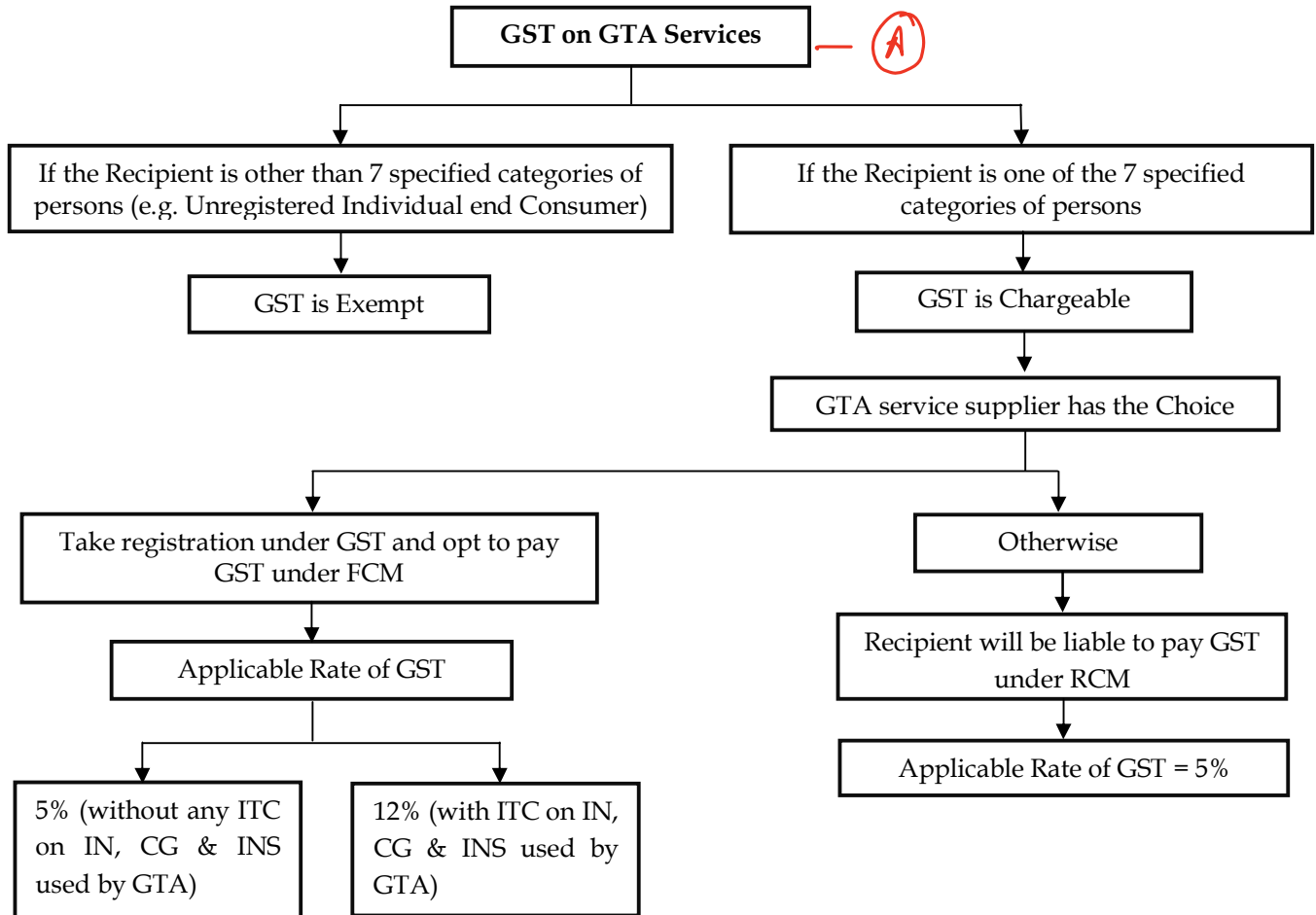
**Analysis:**

- (i) Services provided by GTA will be chargeable to GST only if services are provided to persons covered under aforesaid clauses (a) to (f) or to any other registered person in GST, otherwise, it is exempt from GST.
  - (ii) If GST on GTA service is chargeable and if GTA is registered under GST, then, GTA has the choice to opt to pay GST under Forward Charge Mechanism by making a required declaration on the tax invoice issued by it.
  - (iii) Further, if GTA opts to pay GST under Forward Charge Mechanism, then, GTA has the choice to pay GST either at 5% (without any ITC on Inputs, Capital Goods & Input Services used by GTA) or 12% (with ITC on Inputs, Capital Goods & Input Services used by GTA).
  - (iv) Further, if GST on GTA service is chargeable and if GTA does not opt to pay GST under Forward Charge Mechanism, then, recipient will be liable to pay GST under Reverse Charge Mechanism and applicable rate of GST will be 5% in this case.
3. **Exemption has been granted to the services provided by a goods transport agency, by way of transport of goods in a goods carriage by road, to, -**
    - (a) a Department or Establishment of the Central Government or State Government or Union territory; or
    - (b) local authority; or
    - (c) Governmental agencies,

which has taken registration under GST only for the purpose of deducting TDS u/s 51 and not for making a taxable supply of goods or services.

[Entry No. 21B of NN. 12/2017 CT (R), inserted by NN 28/2018 - CT (R), w.e.f. 01.01.2019]





**Illustration 4 : (Analytical Illustrations to understand the Concept of RCM under GTA Services)** — A

Mr. A sent goods to Mr. B in Ahmedabad, through M/s Pappu Transport Agency. Mr. B is liable to pay the freight. Who will be liable to pay GST to the government? [Mr. A & Mr. B are not registered under GST] [M/s Pappu Transport Agency has not opted to pay GST under Forward Charge Mechanism (FCM)]

**Answer :**

GST is exempt in this case vide exemption entry no. 21A of NN 12/2017-CT(R), because Mr. B is not registered in GST and does not fall under any other specified categories of persons.

**Illustration 5 :**

What would be your answer in illustration 4, if M/s Pappu Transport Agency is registered under GST and has opted to pay GST under FCM?

**Answer :**

GST is still exempt in this case also vide exemption entry no. 21A of NN 12/2017 CT(R), because Mr. B is not registered in GST and does not fall under any other specified categories of persons.

**Illustration 6 :**

What would be your answer in illustration 4, if Mr. B is registered under GST?

**Answer :**

Mr. B will be liable to pay the GST under RCM at the rate of 5%.

**Illustration 7 :**

What would be your answer in illustration 4, if Mr. B is registered under GST. Further, M/s Pappu Transport Agency is also registered under GST and has opted to pay GST under FCM ?

**Answer :**

M/s Pappu Transport Agency will be liable to pay GST under FCM.

**Illustration 8 :**

What would be your answer in illustration 4, if Mr. A is registered under GST?

**Answer :**

GST is exempt in this case also vide exemption entry no. 21A of NN 12/2017 CT(R), because Mr. B is not registered in GST and does not fall under any other specified categories of persons.

**Illustration 9 :**

What would be your answer in illustration 4, if receiver of goods is M/s B (LLP) (not registered in GST), and M/s B (LLP) is liable to pay freight?

**Answer :**

M/s B (LLP) will be liable to pay GST under RCM at the rate of 5%.

**Illustration 10 :**

What would be your answer in illustration 4, if goods are sent to department of Central Government, who is liable to pay freight and is registered under GST only for the purpose of deducting TDS u/s 51.

**Answer :**

GST is exempt in this case vide exemption entry no. 21B of NN 12/2017- CT(R).

**II. Analysis of Advocate Services:**

1. The business entity located in the taxable territory who is litigant, applicant or petitioner, as the case may be, shall be treated as the person who receives the legal services for the purpose of this notification.
2. Whether legal services other than representational services provided by an individual advocate or a senior advocate to a business entity are liable for GST under reverse charge mechanism?


**Clarification:** Yes. In case of legal services including representational services provided by an advocate including a senior advocate to a business entity, GST is required to be paid by the recipient of the service under reverse charge mechanism, i.e. the business entity. [Circular No. 27/01/2018-GST, dated 04.01.2018]

**III. Analysis of Supply of TDR, FSI, etc.:**

1. Supply of TDR, FSI, long term lease (premium) of land by a landowner to a developer are exempt subject to the condition that the constructed flats are sold before issuance of completion certificate and tax is paid on them.
2. Exemption of TDR, FSI, long term lease (premium) is withdrawn in case of flats sold after issue of completion certificate, but such withdrawal shall be limited to 1% of value in case of affordable houses and 5% of value in case of other than affordable houses. In such cases, the liability to pay tax on TDR, FSI, long term lease (premium) has been shifted from land owner to builder under the reverse charge mechanism (RCM).

**IV. Analysis of Renting of Motor Vehicles Service**

5. Though a supplier providing the service to a body corporate under RCM may still be paying GST @ 5% on the services supplied to other non-body corporate clients, to bring in greater clarity, serial No. 15 of the notification No. 13/2017-CT (R) dated 28.6.17 has been amended vide notification No. 29/2019-CT (R) dated 31.12.19 to state that RCM shall be applicable on the service by way of renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient only if the supplier fulfils all the following conditions:-
- is other than a body-corporate;
  - does not issue an invoice charging GST @ 12% from the service recipient; and
  - supplies the service to a body corporate.
6. It may be noted that the present amendment of the notification is merely clarificatory in nature and therefore for the period 01.10.2019 to 31.12.2019 also, clarification given at para 5 above shall apply, as any other interpretation shall render the RCM notification for the said service unworkable for that period.

**Clarification regarding whether RCM is applicable on Service of Transportation of Passengers or on Renting of Motor Vehicle designed to carry passengers [Circular No. 177/09/2022 - CGST, dated 03.08.2022]** 

- In case of services provided by a non-body corporate to a body corporate by way of renting of any motor vehicle for transport of passengers, tax is required to be paid by the body corporate under RCM.*
- Representations have been received to clarify whether RCM is applicable on service of transportation of passengers (Heading 9964) or on renting of motor vehicle designed to carry passengers (Heading 9966).*
- Renting of motor vehicle with operator for transport of passengers falls under Heading 9966. According to the explanatory notes to heading 9966, the service covered here is renting of motor vehicle for transport of passengers for a period of time where the renter defines how and when the vehicles will be operated, determining schedules, routes and other operational considerations.*
- 'Passenger transport services' on the other hand fall under Heading 9964. According to the explanatory notes Heading 9964 covers passenger transport services over pre-determined routes on pre-determined schedules.*
- Therefore, a clear distinction exists in service of transport of passengers and renting of a vehicle that is used for transport.*
- Accordingly, as recommended by the GST Council, it is clarified that where the body corporate hires the motor vehicle (for transport of employees etc.) for a period of time, during which the motor vehicle shall be at the disposal of the body corporate, the service would fall under Heading 9966, and the body corporate shall be liable to pay GST on the same under RCM. It may be seen that reverse charge thus would apply on act of renting of vehicles by body corporate and in such a case, it is for the body corporate to use in the manner as it likes subject to agreement with the person providing vehicle on rent.*
- However, where the body corporate avails the passenger transport service for specific journeys or voyages and does not take vehicle on rent for any particular period of time, the service would fall under Heading 9964 and the body corporate shall not be liable to pay GST on the same under RCM.*

**List of Additional services taxable under reverse charge under IGST Act (NN. 10/2017 IT (R) dated 28.06.2017) :** All the services which have been notified for reverse charge purposes under CGST Act (as given above) have also been notified for reverse charge under IGST Act. Further, following two services are additionally included under RCM for IGST purposes:

S.N.	Category of Supply of Service	Supplier of Service	Recipient of Service
1	Any service <b>supplied by any person who is located in a non taxable territory</b> to any person, other than non-taxable online recipient.	Any person located in a non-taxable territory	Any person located in the taxable territory, other than non taxable online recipient.

**Goods imported by unit/developer in SEZ exempt from IGST:** All goods imported by a unit/developer in the Special Economic Zone (SEZ) for authorised operations are exempt from the whole of the integrated tax leviable thereon under section 3(7) of the Customs Tariff Act, 1975 read with section 5 of the IGST Act, 2017 [Notification No. 64/2017 Cus dated 05.07.2017].

## 9.4 List of Services Exempt From GST

### I. SPECIFIC SERVICES EXEMPT FROM CGST/IGST

Notification No. 12/2017 CT (R) dated 28.06.2017/ Notification No. 9/2017 IT (R) dated 28.06.2017 unless otherwise specified, has exempted the following services wholly from CGST / IGST respectively:

Sr. No.	Description of Services
	<b>Health Care Related Services</b>
1.	<p>Services by way of -</p> <p>(a) <b>health care services</b> by a clinical establishment, an authorised medical practitioner or paramedics;  <i>Provided that nothing in this entry shall apply to the services provided by a clinical establishment by way of providing room [other than Intensive Care Unit (ICU)/Critical Care Unit (CCU)/Intensive Cardiac Care Unit (ICCU)/Neo natal Intensive Care Unit (NICU)] having room charges exceeding Rs. 5000 per day to a person receiving health care services. [Proviso inserted by NN. 04/2022 -CT (R), w.e.f. 18.07.2022]</i></p> <p>(b) services provided by way of transportation of a patient in an <b>ambulance</b>, other than those specified in (a) above.</p> <p><b>[Entry No. 74 of NN. 12/2017 CT (R)]</b></p> <p><b>Notes :</b></p> <p>(1) As per clause (zg) under this notification, '<b>Health care services</b>' means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognized system of medicines in India and includes services by way of transportation of the patient to and from a clinical establishment, but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma.</p> <p>(2) As per clause (s) under this notification, '<b>Clinical establishment</b>' means a hospital, nursing home, clinic, sanatorium or any other institution by, whatever name called, that offers services or facilities requiring diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India, or a place established as an independent entity or a part of an establishment to carry out diagnostic or investigative services of diseases.</p> <p>(3) As per clause (k) under this notification, '<b>Authorised medical practitioner</b>' means a medical practitioner registered with any of the councils of the recognised system of medicines established or recognised by law in India and includes a medical professional having the requisite qualification to practice in any recognised system of medicines in India as per any law for the time being in force.</p> <p>(4) <b>Paramedics</b> are trained health care professionals, for example, nursing staff, physiotherapists, technicians, lab assistants, etc.</p> <p>(5) Recognised system of medicines in India are</p> <p>(i) Allopathy</p> <p>(ii) Yoga</p> <p>(iii) Naturopathy</p> <p>(iv) Ayurveda</p>

- (v) Homeopathy
- (vi) Siddha
- (vii) Unani
- (viii) Any system of medicines that may be recognized by Central Govt.

- (6) Rent of rooms provided to in-patients (i.e. patients admitted) in hospitals is also exempt from GST. [Circular No. 27/01/2018- GST, dated 04.01.2018]

**(A)** *However, if any clinical establishment charges room rent exceeding Rs. 5000 per day, then, room rent will be chargeable to GST. But, charges for Intensive Care Unit (ICU) / Critical Care Unit (CCU) / Intensive Cardiac Care Unit (ICCU) / Neo natal Intensive Care Unit (NICU) will be exempt from GST irrespective of charges. [Proviso inserted by NN. 04/2022 -CT (R), w.e.f. 18.07.2022]*

- (7) Hospitals hire senior doctors/ consultants/technicians independently, without any contract of such persons with the patient; and pay them consultancy charges, without there being any employer employee relationship. Will such consultancy charges be exempt from GST? Will revenue (department) take a stand that they are providing services to hospitals and not to patients and hence must pay GST?

**Answer :**

Services provided by senior doctors/consultants/technicians hired by the hospitals, whether employees or not, are healthcare services, which are exempt from GST. [Circular No. 32/06/2018 - GS, dated 12.02.2018]

- (8) **Retention money:** Hospitals charge the patients, say, Rs. 10,000/- and pay to the consultants/ technicians only Rs. 7,500/- and keep the balance for providing ancillary services which include nursing care, infrastructure facilities, paramedic care, emergency services, checking of temperature, weight, blood pressure, etc. Will GST be applicable on such money retained by the hospitals?

**Answer :**

Healthcare services have been defined to mean any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India [para 2(zg) of notification No. 12/2017-CT (Rate)]. Therefore, hospitals also provide healthcare services. The entire amount charged by them from the patients including the retention money and the fee payments made to the doctors, etc., is towards the healthcare services provided by the hospitals to the patients and is exempt. [Circular No. 32/06/2018 - GST, dated 12.02.2018]

- (9) **Food supplied to the patients:** Health care services provided by the clinical establishments will include food supplied to the patients; but such food may be prepared by the canteens run by the hospitals or may be outsourced by the Hospitals from outdoor caterers. When outsourced, there should be no ambiguity that the suppliers shall charge tax as applicable and hospital will get no ITC. If hospitals have their own canteens and prepare their own food; then no ITC will be available on inputs including capital goods and in turn if they supply food to the doctors and their staff; such supplies, even when not charged, may be subjected to GST.

**Answer :**



Food supplied to the in-patients as advised by the doctor/nutritionists is a part of composite supply of healthcare and not separately taxable. Other supplies of food by a hospital to patients (not admitted) or their attendants or visitors are taxable. [Circular No. 32/06/2018 - GST, dated 12.02.2018]

- (10) **Whether GST is applicable on services by way of Assisted Reproductive Technology (ART) procedures such as In vitro fertilization (IVF) ?**

**(A)**

**Clarification:** *The abnormality/disease/ailment of infertility is treated using ART procedure such as IVF. It is clarified that services by way of IVF are also covered under the definition of health care services for the purpose of above exemption notification [Circular No. 177/09/2022 - GST, dated 03.08.2022].*



2.	Services by a <b>veterinary clinic</b> in relation to health care of animals or birds. [Entry No. 46 of NN. 12/2017 CT (R)]
3.	Services by way of <b>artificial insemination of livestock</b> (other than horses). [Entry no. 55A of NN 12/2017 CT(R), inserted by NN 14/2018 CT(R) CT(R) w.e.f. 27.07.2018]
4. 	<del>Services provided by operators of the <b>common bio-medical waste treatment facility</b> to a clinical establishment by way of treatment or disposal of bio-medical waste or the processes incidental thereto.</del> [Entry No. 75 of NN. 12/2017 CT (R), omitted by NN 04/2022 - CT(R), w.e.f. 18.07.2022] <b>Analysis:</b> W.e.f. 18.07.2022, the services of common bio-medical waste treatment facility is made taxable.
5. 	<del>Services provided by the <b>cord blood banks</b> by way of preservation of stem cells or any other service in relation to such preservation.</del> [Entry No. 73 of NN. 12/2017 CT (R), omitted by NN 04/2022 - CT(R), w.e.f. 18.07.2022] <b>Analysis:</b> W.e.f. 18.07.2022, the services of cord blood banks is made taxable.
6.	Services by an entity registered under section 12AA or 12AB of the Income-tax Act, 1961 by way of <b>charitable activities</b> . [Words "or 12AB" inserted by NN 07/2021 - CT (R), w.e.f. 01.10.2021] [Entry No. 1 of NN. 12/2017 CT (R)] <b>Notes :</b> As per clause (r) under this notification, ' <b>Charitable Activities</b> ' means activities relating to - (i) public health by way of,- A. care or counselling of i. terminally ill persons or persons with severe physical or mental disability; ii. persons addicted to a dependence-forming substance such as narcotics drugs or alcohol; or B. public awareness of preventive health, family planning or prevention of HIV infection; (ii) advancement of religion, spirituality or yoga; (iii) advancement of educational programmes or skill development relating to, A. abandoned, orphaned or homeless children; B. physically or mentally abused and traumatized persons; C. prisoners; or D. persons over the age of 65 years residing in a rural area; (iv) preservation of environment including watershed, forests and wildlife; <b>Analysis :</b> In order to claim exemption under this head, following two conditions must be satisfied : (i) The entity is registered with income tax authorities under section 12AA or 12AB of the Income tax Act, 1961, and (ii) Only charitable activities performed by such entity are exempt from GST. Other activities shall not be exempt under this entry. (iii) It implies that tax is payable on any service other than by way of charitable activities to any person provided by a charitable institution. (iv) <b>GST on Residential programmes or camps meant for advancement of religion, spirituality or yoga by religious and charitable trusts</b> [Circular No. 66/40/2018-GST dated 26.09.2018] The services provided by entity registered under Section 12AA or 12AB of the Income Tax Act, 1961 by way of advancement of religion, spirituality or yoga are exempt. Fee or consideration charged in any other form from the participants for participating in a religious, Yoga or meditation programme or camp meant for advancement of religion, spirituality or yoga shall be <b>exempt</b> . Residential programmes or

2	Amount received towards doctor's visit at home of patients [Exempt - W.N. (ii)]	-
3	Amount received towards nursing care at home of patients [Exempt - W.N. (ii)]	-
4	Cosmetic surgery services [Taxable - W.N. (iii)]	8,00,000
5	Cosmetic surgery of patients traumatised by accidents to reconstruct anatomy of body [Exempt - W.N. (iii)]	-
6	Path-laboratory charges for diagnosis [Exempt - W.N. (i)]	-
7	Receipt against cord blood bank services by child care unit [Taxable - W.N. (iv)]	10,00,000
8	Charges for providing common Bio-medical waste treatment facility to other clinical establishments [Exempt - W.N. (v)]	25,00,000
9	Receipts from veterinary services section for animals [Exempt - W.N. (vi)]	-
10	Ambulance service charges [Exempt - W.N. (vii)]	-
11	Receipts of physiotherapy section covered under paramedics [Exempt - W.N. (i)]	-
12	Receipts from Unani treatments, a recognised system of medicine in terms of Section 2(h) of Clinical Establishment Act, 2010 [Exempt - W.N. (i)]	-
13	Receipts from Mortuary services [Exempt - W.N. (viii)]	-
<b>Total Value of Taxable Services</b>		<b>43,00,000</b>

**Working Notes:**

- (i) Entry No. 74 of Exemption Notification no. 12/2017 CT (R), exempts **health care services** by clinical establishment, an authorised medical practitioner and paramedics. Clause (zg) of said notification covers diagnosis, treatment or care of illness, injury, abnormality, etc. in any recognised system of medicines in India, under health care services. So, the said service is exempt from tax.
- (ii) Entry No. 74 of Exemption Notification no. 12/2017 CT (R), exempts health care services provided by medical practitioners and paramedics irrespective of place of provision of these services, whether it is hospital or patient's home.
- (iii) Clause (zg) of Exemption Notification no. 12/2017 CT (R) has specifically excluded hair transplant, cosmetic or plastic surgery from the scope of the term "health care service". So, the same will be taxable. However, when such treatments are undertaken to restore anatomy of the body, then, the same will be covered under the definition of health care services and thus, it will be exempt in such case.
- (iv) Cord Blood Bank services are taxable as Entry No. 73 of Exemption Notification no. 12/2017 CT (R) is omitted by NN 04/2022 - CT(R), w.e.f. 18.07.2022.
- (v) Common Bio-medical waste treatment facility provided to clinical establishments is taxable as Entry No. 75 of Exemption Notification no. 12/2017 CT (R) is omitted by NN 04/2022 - CT(R), w.e.f. 18.07.2022.
- (vi) Services by veterinary clinic are covered by Entry No. 46 of Exemption Notification no. 12/2017 CT (R). So, it is exempt.
- (vii) Ambulance services by way of transportation of patients are specifically covered by Entry No. 74 of Exemption Notification no. 12/2017 CT (R).
- (viii) Mortuary or crematorium services are neither treated as supply of goods nor supply of services as per para 4 of Schedule III of the CGST Act, 2017. Hence, not liable to GST.

### Services Relating to Agriculture

1. Services relating to **cultivation of plants and rearing of all life forms of animals**, except the rearing of horses, for food, fibre, fuel, raw material or other similar products or agricultural produce by way of -
- (a) **agricultural operations** directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or testing;
  - (b) supply of **farm labour**;
  - (c) **processes** carried out **at an agricultural farm** including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations **which do not alter the essential characteristics** of agricultural produce but make it only marketable for the primary market;
  - (d) **renting** or leasing of agro **machinery** or vacant **land** with or without a structure incidental to its use;
  - (e) **loading**, unloading, packing, storage or **warehousing** of agricultural produce;  
**Analysis:** Agro warehousing including cold storage of fruits, vegetables, etc. is exempt.
  - (f) **agricultural extension** services;
  - (g) services by any Agricultural Produce Marketing Committee (**APMC**) or Board or services provided by a **commission agent** for sale or purchase of agricultural produce.
  - (h) services by way of **fumigation in a warehouse** of agricultural produce. *[omitted by NN 04/2022 - CT(R), w.e.f. 18.07.2022]*

**[Entry No. 54 of NN. 12/2017 CT (R)]**

**Notes :**

- (1) As per clause (c) under this notification, '**Agricultural extension**' means application of scientific research and knowledge to agricultural practices through farmer education or training.
- (2) As per clause (d) under this notification, '**Agricultural produce**' means any produce out of cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products, on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market.
- (3) As per clause (e) under this notification, '**Agricultural Produce Marketing Committee or Board**' means any committee or board constituted under a State law for the time being in force for the purpose of regulating the marketing of agricultural produce.

**Analysis :**

- (1) The activities like breeding of fish (pisciculture), rearing of silk worms (sericulture), cultivation of ornamental flowers (floriculture) and horticulture, forestry are included in the definition of agriculture. Plantation crops like rubber, tea or coffee are also covered under agricultural produce.
- (2) For example, Sugarcane is agricultural produce, but, Sugar is not agricultural produce, because it is manufactured through processes which alter the essential characteristics of farm produce (sugarcane).
- (3) **Analysis of the term 'testing' used clause (a) of this entry:** All testing and ancillary activities relating to testing in relation to agriculture or agricultural produce such as seed certification, technical inspection, technical testing, analysis, tagging of seeds, rendered during testing of seeds, are covered within the meaning of testing as mentioned in clause (a) of this entry. Therefore, such services are not liable to GST.
- (4) Charges for process of plucking of flowers (say, Rose) from their plant and make it marketable, for sale in

primary market, at agricultural farm will be exempt from GST.

- (5) But, charges for such type of processes carried out at some other place, other than agricultural farm, shall be taxable, although such process does not change essential characteristics of agricultural produce.
- (6) Renting of land for “stud farming” is taxable. Because, rearing of horses is not covered under the scope of this entry.
- (7) But, renting of land for poultry farming or for rearing of sheep, shall be exempt from GST, as it is covered under the scope of this entry.
- (8) **Rice is not agricultural produce.** Paddy is agricultural produce.

**Illustration 3 :**

Mark Agro Products Ltd., a registered person, furnishes the following details of various services provided by it in the month of December, 20XX:

Sr. No.	Particulars	Amount (Rs.)
1	Rearing of Silkworm and Horticulture	2,50,000
2	Plantation of Tea and Coffee	2,00,000
3	Renting of Vacant Land for Performing Marriage Ceremony	4,50,000
4	Sale of Wheat on Commission basis	50,000
5	Sale of Rice on Commission basis	2,00,000

Compute the value of taxable services and the GST liability of Mark Agro Products Ltd. for the month of December, 20XX. Assume that time of supply in respect of all activities mentioned above falls in the month of December, 20XX itself. GST has been charged separately wherever applicable. Give reasons by way of short notes to your answer. [Assume CGST @ 9% and SGST @ 9%]

**Answer :**                      **Computation of Value of Taxable Service and GST Liability of Mark Agro Products Ltd. for the month of December, 20XX**

Sr. No.	Particulars	Amount (Rs.)
1	Rearing of Silkworm and Horticulture [Not taxable, as it is covered under entry no. 54 of NN 12/2017 CT (R)]	Nil
2	Plantation of Tea and Coffee [Not taxable, as it is covered under entry no. 54	Nil
3	Renting of Vacant Land for performing Marriage Ceremony [Taxable, as it is not covered under any exemption]	4,50,000
4	Sale of Wheat on Commission basis [Not Taxable, as it is covered under entry no. 54 of NN 12/2017 CT (R)]	Nil
5	Sale of Rice on Commission basis [Taxable, as rice is not agricultural produce. Therefore, not covered under any exemption.]	2,00,000
	<b>Total Taxable Value</b>	6,50,000
	<b>CGST @ 9%</b>	58,500
	<b>SGST @ 9%</b>	58,500

2.  


Services by way of fumigation in a warehouse of agricultural produce. [Entry No. 53A of NN 12/2017 CT (R), omitted by NN 04/2022 - CT(R), w.e.f. 18.07.2022]

**Analysis:** W.e.f. 18.07.2022, Services by way of fumigation in a warehouse of agricultural produce is made

	<i>taxable.</i>
3.	Services by way of <b>loading, unloading, packing, storage or warehousing</b> of rice. [Entry No. 24 of NN. 12/2017 - CT (R)] <b>Analysis:</b> Commission agent of rice is taxable.
4.	Services by way of <b>warehousing of minor forest produce.</b> [Entry No. 24A of NN 12/2017 - CT (R)] <b>Examples of minor forest produce:</b> Trees and leaves, flowers and fruits, and all other parts or produce of trees, etc. brought from the forest.
5.	Services by way of <b>storage or warehousing</b> of cereals, pulses, fruits, <del>nuts</del> and vegetables, <del>spices, copra, sugarcane, jaggery, raw vegetable fibres such as cotton, flax, jute etc., indigo, unmanufactured tobacco, betel leaves, tendu leaves, coffee and tea.</del> [Entry No. 24B of NN 12/2017 - CT (R)] [ <i>omitted words, omitted by NN 04/2022 - CT(R), w.e.f. 18.07.2022</i> ]
6.	Carrying out an <b>intermediate production process as job work</b> in relation to cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products or agricultural produce. [Entry No. 55 of NN. 12/2017 CT (R)] <b>Clarification on taxability of custom milling of paddy by Rice Millers [Circular No. 19/19/2017-GST, dated 20.11.2017]:</b> <b>Issue :</b> Whether custom milling of paddy by Rice millers is liable to GST or is exempted under Entry No. 55 of Notification 12/2017 - Central Tax (Rate) <b>Clarification :</b> Milling of paddy is not an intermediate production process in relation to cultivation of plants. It is a process carried out after the process of cultivation is over and paddy has been harvested. Further, processing of paddy into rice is not usually carried out by cultivators, rather it done by rice millers. Milling of paddy into rice also changes its essential characteristics. Therefore, <b>milling of paddy into rice cannot be considered as an intermediate production process</b> in relation to cultivation of plants for food, fibre or other similar products or agricultural produce. Therefore, in view of the above, it is clarified that milling of paddy into rice is <b>not eligible for exemption</b> under Entry No. 55 of Notification No. 12/2017 - Central Tax (Rate) and corresponding notifications issued under IGST and UTGST Acts. Further, GST will be liable to be paid only on the processing charges charged by millers for milling of paddy into rice on job work basis (and not on the entire value of rice).
7.	Services by way of <b>pre-conditioning, pre-cooling, ripening, waxing, retail packing, labelling of fruits and vegetables</b> which do not change or alter the essential characteristics of the said fruits or vegetables. [Entry No. 57 of NN. 12/2017 CT (R)]
8.	Services provided by a <b>goods transport agency [GTA]</b> , by way of transport in a goods carriage of Agricultural Produce, milk, salt and foodgrain including flour, pulses and rice. [Entry No. 21(c) and 21(d) of NN. 12/2017 CT (R)]
9.	Services by way of <b>transportation by rail or a vessel</b> from one place in India to another of the Agricultural Produce, milk, salt and foodgrain including flour, pulses and rice. [Entry No. 20(e) and 20(f) of NN. 12/2017 CT (R)]
10.	Services by way of <b>artificial insemination of livestock</b> (other than horses).



	[Entry no. 55A of NN 12/2017 CT(R), inserted by NN 14/2018 CT(R) CT(R) w.e.f. 27.07.2018]
11.	Services by way of <del>slaughtering</del> of animals. [Entry No. 56 of NN. 12/2017 CT (R), omitted by NN 04/2022 - CT(R), w.e.f. 18.07.2022] <u>Analysis:</u> W.e.f. 18.07.2022, Services by way of slaughtering of animals is made taxable.
12.	Services provided by the Central Government, State Government, Union territory or local authority by way of assignment of <b>right to use natural resources to an individual farmer</b> for cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products. [Entry No. 63 of NN. 12/2017 CT (R)]
13.	Services supplied by electricity distribution utilities by way of construction, erection, commissioning, or <b>installation of infrastructure</b> for extending <b>electricity</b> distribution network upto the <b>tube well of the farmer</b> or agriculturalist for agricultural use. [Entry No. 10A of NN 12/2017 CT (R), inserted by NN 14/2018 - CT (R), w.e.f. 26.07.2018]
14.	Services provided by the <b>National Centre for Cold Chain Development</b> under the Ministry of Agriculture, Co-operation and Farmer's Welfare by way of cold chain knowledge dissemination. [Entry No. 58 of NN. 12/2017 CT (R)]

**Illustration 4 :**

Mangal Agro Ltd. registered under GST furnishes the following details with respect to the activities undertaken by them in the month of March, 20XX :

Sl.No.	Particulars	Amount (Rs.)
1)	Charges for soil testing of farm land	65,000
2)	Charges for training of farmers on use of new pesticides and fertilizers developed through scientific research	75,000
3)	Receipts from Supply of farm labour	83,000
4)	Charges for warehousing of potato chips	60,000
5)	Charges for warehousing of rice	45,000
6)	Charges for seed testing	15,000
7)	Renting of vacant land to a stud farm	1,15,000
8)	Retail packing and labelling of fruits and vegetables	77,000
9)	Commission received on sale of wheat	5,50,000
10)	Charges for warehousing of cotton fabrics	1,00,000
11)	Leasing of vacant land to a cattle farm	1,50,000

Compute the value of taxable supply of Mangal Agro Ltd. for the month of March, 20XX if all the above amounts are exclusive of GST.

**Answer :****Computation of Value of taxable supply**

Sl.No.	Particulars	Amount (Rs.)
1)	Charges for soil testing of farm land [Exempt as per Entry No. 54 of NN. 12/2017-CT (R)]	Nil
2)	Charges for training of farmers on use of new pesticides and fertilizers developed through	Nil

	<p>serving of food to anganwadi shall also be covered by said exemption, whether sponsored by government or through donation from corporates.</p> <p>(19) Services provided by any person to any educational institution in respect of imparting any skill, knowledge, education or development of course content or any other knowledge - enhancement activity, whether for the students or the faculty, are taxable.</p> <p>(20) Building let out to any educational institution is taxable.</p> <p>(21) Placement services provided to any educational institutions for securing job placements for the students are not covered in exemption. Hence, taxable.</p> <p>(22) Security, cleaning or house-keeping services provided to pre-school or school will be exempt from GST only if these services are performed in these educational institutions. It means, if these services are performed at any other place other than the place of pre-school or school, then, these services will be taxable, even if provided to the pre-school or school.</p> <p>(23) However, catering services provided to pre-school or school will always be exempt from GST irrespective of place where such catering service is performed.</p> <p>(24) <b>Clarification on applicability of GST on application fee charged for entrance or the fee charged for issuance of eligibility certificate for admission or for issuance of migration certificate by educational institutions [Circular No. 177/09/2022 - GST, dated 03.08.2022]</b></p> <p><b>A</b> <i>All services supplied by an 'educational institution' to its students are exempt from GST. Consideration charged by the educational institutes by way of entrance fee for conduct of entrance examination is also exempt. The exemption is wide enough to cover the amount or fee charged for admission or entrance, or amount charged for application fee for entrance, or the fee charged from prospective students for issuance of eligibility certificate to them in the process of their entrance/admission to the educational institution. Services supplied by an educational institution by way of issuance of migration certificate to the leaving or ex- students are also covered by the exemption. Accordingly, such activities of educational institution are covered by exemption under Sl. No. 66 of NN. 12/2017 - CT (R) and thus, exempt from GST.</i></p>
2	<p>Services by way of giving on hire 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.</p> <p><b>[Entry No. 22(c) of NN 12/2017 CT (R), inserted by NN 02/2018 - CT (R), dated 25.01.2018]</b></p>
3	<p>Services provided by the <b>Indian Institutes of Management</b>, as per the guidelines of the Central Government, to their students, by way of the following educational programmes, except Executive Development Programme:</p> <p>(a) <del>2 year full time Post Graduate Programmes in Management for the Post Graduate Diploma in Management, to which admissions are made on the basis of Common Admission Test (CAT) conducted by the Indian Institute of Management;</del></p> <p>(b) <del>fellow programme in Management;</del></p> <p>(c) <del>5 year integrated programme in Management.</del></p> <p><b>[Entry No. 67 of NN. 12/2017 CT (R)] [omitted by NN 28/2018 - CT (R), dated 31.12.2018]</b></p> <p><b>Applicability of GST on various programmes conducted by the Indian Institutes of Management (IIMs) [Circular No. 82/01/2019- GST, dated 01.01.2019]</b></p> <p>(1) The Indian Institutes of Management Act, 2018 came into force on <b>31.01.2018</b>. With effect from 31.01.2018, all IIMs are "educational institutions" as defined under NN. 12/2017- CT(R) as they provide education as a part of a curriculum for obtaining a qualification recognised by law for the time being in force.</p> <p>(2) At present, IIMs are providing various long duration programs (1 year or more) for which they award diploma/ degree certificate duly recommended by Board of Governors as per the power vested in them under the IIM Act, 2017. Therefore, it is clarified that services provided by IIMs to their students in all such</p>

- 8 Services by way of training or coaching in - A
- (i) **recreational activities** relating to arts or culture, by an individual, or
- (ii) sports by charitable entities registered under section 12AA or 12AB of the Income-tax Act.
- [Entry No. 80 of NN. 12/2017 CT (R), as amended by NN 04/2022 - CT (R), w.e.f. 18.07.2022]
- Analysis:**
- A 1. *The exemption benefit in relation to coaching or training in recreational activities relating to arts or culture (i.e. all forms of dance, music, painting, sculpture making, theatre, etc.) is available only if such training or coaching is provided by an Individual.*
  2. The exemption benefit in relation to coaching or training relating to sports is available only if such training or coaching is provided by a charitable entity registered under section 12AA or 12AB of the Income-tax Act.

**Illustration 5 :**

Mangal Education Pvt. Ltd. owning various educational institutions provides the details about various receipts :

**(A) Receipts of Mangal Public School**

- (i) Tution fee from students - Rs. 10,00,000
- (ii) Hostel fee from students - Rs. 5,50,000
- (iii) Staff quarter rent received from faculties - Rs. 1,20,000
- (iv) Receipts from pre-nursery section - Rs. 1,00,000
- (v) Mess charges from students - Rs. 1,60,000
- (vi) Bus fee from students - Rs. 1,80,000
- (vii) "Mind Parichay" career counselling fees from students - Rs. 25,000
- (viii) Sale of admission forms of school - Rs. 40,000
- (ix) Fee for participation of educational seminar from students - Rs. 20,000

**(B) Receipts of Mangal International School affiliated to University of Australia**

- (i) Tution fee for high school diploma recognised by Indian government - Rs. 5,00,000
- (ii) Tution fee for High School Diploma recognised by Government of Australia, equivalent to higher secondary education in India - Rs. 7,00,000

**(C) Receipts from Mangal Technological College affiliated to University of U.K.**

- (i) Course fee for 'Masters in Technology' recognised degree course approved by Ministry of H.R.D., India - Rs. 20,00,000
- (ii) Course fee for 'Masters in Technology' recognised degree course of U.K. - Rs. 45,00,000
- (iii) Campus Placement Participation fee from students covered
  - (a) in course of point (i) - Rs. 1,00,000
  - (b) in course of point (ii) - Rs. 60,000
- (iv) Campus Placement Participation fee from prospective employer companies
  - (a) For students of course of point (i) - Rs. 3,00,000
  - (b) For students of course of point (ii) - Rs. 4,00,000
- (v) Fee for I.T. training, which is a part of a curriculum for obtaining degree
  - (a) Under course of point (i) - Rs. 3,00,000
  - (b) Under course of point (ii) - Rs. 4,00,000
- (vi) Donation received from various persons - Rs. 20,00,000

covered by any other exemption notification also]	
(iii) Campus Placement Participation fee from students covered	
(a) in course of point (i) [Exempt - Entry 66, NN 12/2017 CT (R)]	Nil
(b) in course of point (ii) [Taxable, since it is not provided by "educational institution" as defined in clause (y) of NN 12/2017 CT (R)]	60,000
(iv) Campus Placement Participation fee from prospective employer companies	
(a) For students of course of point (i) [Taxable, since the services are not provided to students, faculties or staff, so not covered under Entry 66, NN 12/2017 CT (R)]	3,00,000
(b) For students of course of point (ii) [Taxable - Refer (iii) (b) and (iv) (a) above]	4,00,000
(v) Fee for I.T. training, which is a part of a curriculum for obtaining degree	
(a) Under course of point (i) [Exempt - Entry 66, NN 12/2017 CT (R)]	Nil
(b) Under course of point (ii) [Taxable - Refer point (iii)(b) above]	4,00,000
(vi) Donation received from various persons [It is not a consideration for any service, so not taxable]	Nil
<b>(D) Receipts from Mangal Training Centre for Football registered under Section 12AA or 12AB of the Income-tax Act</b>	
(i) Training fee [Exempt - Entry 80, NN 12/2017 CT (R)]	Nil
(ii) Transportation fee from students [Taxable - Not covered by exemption notification, since it is not a education institution as defined in clause (y) of NN 12/2017 CT (R), and only services by way of training or coaching is covered in entry 80, NN 12/2017 CT (R)]	60,000
(iii) Hostel fee from students [Taxable, because entry no. 14 of the Exemption NN 12/2017 - CT(R), is omitted] [Discussed in subsequent Topics of this chapter]	10,000
(iv) Staff quarter rent from faculties [Exempt, as it is covered under entry no. 12 of the Exemption Notification No. 12/2017 CT (R)] [Discussed in subsequent Topics of this chapter]	Nil
<b>(E) Receipts from Mangal Coaching Classes for CA, CS and CMA students</b>	
(i) Coaching fee [Taxable, since Mangal Coaching Classes is not "educational institution" as defined in clause (y) of NN 12/2017 CT (R)]	10,00,000
(ii) Sale of admission forms [Taxable, since Mangal Coaching Classes is not "educational institution" as defined in clause (y) of NN 12/2017 CT (R)]	50,000
<b>(F) Receipts from Mangal Industrial Training Center (ITC) affiliated to the National Council for Vocational Training offering approved course</b>	
(i) Training fee from students [Exempt - Entry 66, NN 12/2017 CT (R)]	Nil
(ii) Bus fee from students and faculty [Exempt]	Nil
<b>Total Value of Taxable Services</b>	<b>67,80,000</b>

**Illustration 6 :**

Mind Parichay Education Services Ltd. is engaged in Providing Various Services to educational institutions furnishes following information :

Sr. No.	Particulars	Amount (Rs.)
---------	-------------	--------------

	admission is Rs. 1,000 per person	
(8)	Receipts on account of admission to recognised sporting event where the consideration for admission is Rs. 1,000 per Person	6,00,000
(9)	Receipts on account of admission to non recognised sporting event where the consideration for admission is Rs. 1,000 per Person	35,00,000
(10)	Receipts of amusement park	10,00,000
<b>Taxable Value of supply</b>		<b>90,00,000</b>

**Note:**

Services by way of right to admission to-

- (a) circus, dance, or theatrical performance including drama or ballet;
- (b) award function, concert, pageant, musical performance or any sporting event other than a recognised sporting event;
- (c) recognised sporting event,
- (d) Planetarium

where the consideration for right to admission to the events or places as referred to in (a), (b), (c) or (d) above is not more than Rs. 500 is exempt as per entry no. 81 of NN 12/2017 CT (R).

5.	<p>Services provided by a <b>tour operator to a foreign tourist</b> in relation to a tour conducted <b>wholly outside India</b>.  <b>[Entry No. 54 of NN. 09/2017 IT (R)]</b></p> <p><b>Note :</b> As per clause (zzl) under this notification, '<b>Tour operator</b>' means any person engaged in the business of planning, scheduling, organizing, arranging tours (which may include arrangements for accommodation, sightseeing or other similar services) by any mode of transport, and includes any person engaged in the business of operating tours.</p>
5A. <span style="border: 1px solid red; border-radius: 50%; padding: 2px;">A</span>	<p><i>Tour operator service, which is performed partly in India and partly outside India, supplied by a tour operator to a foreign tourist, to the extent of the value of the tour operator service which is performed outside India.</i></p> <p><i>The value of the tour operator service performed outside India shall be such proportion of the total consideration charged for the entire tour which is equal to the proportion which the number of days for which the tour is performed outside India has to the total number of days comprising the tour, or 50% of the total consideration charged for the entire tour, whichever is less.</i></p> <p><i>Further, in making the above calculations, any duration of time equal to or exceeding 12 hours shall be considered as 1 full day and any duration of time less than 12 hours shall be taken as half a day.</i></p> <p><i>Explanation - "foreign tourist" means a person not normally resident in India, who enters India for a stay of not more than 6 months for legitimate non- immigrant purposes.</i></p> <p><i>Illustrations: A tour operator provides a tour operator service to a foreign tourist as follows: -</i></p> <p><i>(a) 3 days in India, 2 days in Nepal; Consideration Charged for the entire tour = Rs. 1,00,000/-</i>  <i>Exemption: Rs. 40, 000/- (Rs. 1,00,000/- x 2/5) or, Rs. 50, 000/- (50% of Rs. 1,00,000/-), whichever is less, i.e. Rs. 40,000/- (Taxable value: Rs. 60,000/-);</i></p> <p><i>(b) 2 days in India, 3 nights in Nepal; Consideration Charged for the entire tour = Rs. 1,00,000/-</i>  <i>Exemption: Rs. 60,000 (Rs. 1,00,000/- x 3/5) or, Rs. 50,000/- (50% of Rs. 1,00,000/-), whichever is less, i.e. Rs. 50,000/- (Taxable value: Rs. 50,000/-);</i></p> <p><i>(c) 2.5 days in India, 3 days in Nepal; Consideration charged for the entire tour = Rs. 1,00,000/-</i>  <i>Exemption: Rs. 54,545 (Rs. 1,00,000/- x 3/5.5) or, Rs. 50,000/- (50% of Rs. 1,00,000/-), whichever is less, i.e. Rs. 50,000/- (Taxable value: Rs. 50,000/-).</i></p> <p><b>[Entry No. 52A of NN. 09/2017 CT (R), inserted by NN 04/2022 CT (R), w.e.f. 18.07.2022]</b></p>
6.	Services provided to a recognised sports body by -



S.N.	Particulars	Amount (Rs.)
(1)	Receipts of sports training academy registered u/s 12AA of Income Tax Act to coach young players [Exempt from GST as per Entry No. 80 of NN. 12/2017-CT (R)]	Exempt
(2)	Receipts from acting as brand ambassador for corporate client [Liable for GST]	35 lakh
(3)	Receipts from franchisee of Indian Premier league (not a recognised sports body) [Liable for GST]	135 lakh
(4)	Receipts from Sports Authority of India for participation in recognised sport [Exempt from GST as per Entry No. 68 of NN. 12/2017-CT (R)]	Exempt
<b>Total Value of Taxable Services</b>		<b>170 Lakh</b>

7.	<p>Services by way of <b>sponsorship of sporting events</b> organised -</p> <p>(a) by a national sports federation, or its affiliated federations, where the participating teams or individuals represent any district, State, zone or Country;</p> <p>(b) by Association of Indian Universities, Inter-University Sports Board, School Games Federation of India, All India Sports Council for the Deaf, Paralympic Committee of India or Special Olympics Bharat;</p> <p>(c) by the Central Civil Services Cultural and Sports Board;</p> <p>(d) as part of national games, by the Indian Olympic Association; or</p> <p>(e) under the Panchayat Yuva Kreedaa Aur Khel Abhiyaan Scheme.</p> <p><b>[Entry No. 53 of NN. 12/2017 CT (R)]</b></p>
8.	<p>Services provided <b>by and to</b> Fédération Internationale de Football Association (FIFA) and its subsidiaries directly or indirectly related to <b>any of the events under FIFA U-17 Women's World Cup 2020</b> to be hosted in India whenever rescheduled.</p> <p>But, this exemption shall be allowed only if 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.</p> <p>[words "whenever rescheduled" inserted by NN 07/2021 - CT (R), w.e.f. 01.10.2021] <b>[Entry No. 9AA of NN 12/2017 CT (R), inserted by NN 21/2019 - CT (R), w.e.f. 01.10.2019]</b></p>
9.	<p>Services by way of right to <b>admission</b> to the events organised under <b>FIFA U-17 Women's World Cup 2020, whenever rescheduled.</b> [words "whenever rescheduled" inserted by NN 04/2022 - CT (R), w.e.f. 18.07.2022] <b>[Entry No. 82A of NN 12/2017 CT (R), inserted by NN 21/2019 - CT (R), w.e.f. 01.10.2019]</b></p> <p><b>Analysis:</b> This service is exempt without any monetary limit.</p>
10.	<p>Services provided <b>by and to</b> Federation Internationale de Football Association (FIFA) and its subsidiaries directly or indirectly related to any of the <b>events under FIFA U-17 World Cup 2017</b> to be hosted in India.</p> <p>But, this exemption shall be allowed only if 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 World Cup 2017.</p> <p><b>[Entry No. 9A of NN. 12/2017 CT (R), inserted by NN 21/2017 CT (R), dated 22.08.2017]</b></p>
11.	<p>Services by way of right to <b>admission</b> to the events organized under <b>FIFA U-17 World Cup 2017.</b></p> <p><b>[Entry No. 82 of NN. 12/2017 CT (R), inserted by NN 25/2017 CT (R), dated 21.09.2017]</b></p> <p><b>Analysis:</b> This service was exempt without any monetary limit.</p>
12.	<p>Services provided <b>by and to</b> Asian Football Confederation (AFC) and its subsidiaries directly or indirectly related to any of the events under <b>AFC Women's Asia Cup 2022 to be hosted in India.</b></p> <p>But, this exemption shall be allowed only if Director (Sports), Ministry of Youth Affairs and Sports certifies that the services are directly or indirectly related to any of the events under AFC Women's Asia Cup 2022.</p>

vessel, from Kolkata to Port Blair (mainland to island) or Port Blair to Rose Island (inter island) is covered in item (d) of Entry 17 since such transportation is between two places located in India.

(6) Transport of passengers by metered cabs or auto rickshaws (including e-rickshaws) shall be taxable, if transportation services are supplied through an electronic commerce operator, and notified u/s 9(5) of CGST Act, 2017. [Proviso inserted by NN 16/2021 - CT(R) w.e.f. 01.01.2022]

(7) **Clarification on Applicability of GST on tickets of private ferry used for passenger transportation** [Circular No. 177/09/2022 - GST, dated 03.08.2022]

A

- *These private ferries are used as means of transport from one island to another in Andaman and Nicobar Islands.*
- *As per clause (d) of above entry no. 17, "transportation of passengers by public transport, other than predominantly for tourism purpose, in a vessel between places located in India" is exempted.*
- *It is clarified that this exemption would apply to tickets purchased for transportation from one point to another irrespective of whether the ferry is owned or operated by a private sector enterprise or by a PSU/government.*
- *It is further clarified that, the expression 'public transport' used in the exemption notification only means that the transport should be open to public. It can be privately or publicly owned. Only exclusion is on transportation which is predominantly for tourism, such as services which may combine with transportation, sightseeing, food and beverages, music, accommodation such as in shikara, cruise, etc.*

2. **Transport of passengers, with or without accompanied belongings, by -**

- A
- (a) **Air in economy class**, embarking from or terminating in an airport located in the state of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, or Tripura or at Bagdogra located in West Bengal; [Words "in economy class" inserted by NN 04/2022 - CT (R), w.e.f. 18.07.2022]
- (b) **non-air conditioned contract carriage** other than radio taxi, for transportation of passengers, excluding tourism, conducted tour, charter or hire; or
- (c) **stage carriage** other than air- conditioned stage carriage.

Provided that nothing contained in items (b) and (c) above shall apply to services supplied through an electronic commerce operator, and notified u/s 9(5) of CGST Act, 2017. [Proviso inserted by NN 16/2021 - CT(R) w.e.f. 01.01.2022]

[Entry No. 15 of NN. 12/2017 CT (R)]

**Notes :**

- (1) As per clause (zzh) under this notification, '**Stage carriage**' shall have the same meaning as assigned to it in clause (40) of section 2 of the Motor Vehicles Act, 1988.
- (2) As per Sec. 2(40) of the Motor Vehicle Act, 1988, "**Stage carriage**" means a motor vehicle constructed or adapted to carry more than 6 passengers excluding the driver on hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey.
- (3) As per clause (t) under this notification, '**Contract carriage**' has the same meaning as assigned to it in clause (7) of section 2 of the Motor Vehicles Act, 1988.
- (4) As per clause (zu) under this notification, '**Radio taxi**' means a taxi including a radio cab, by whatever name called, which is in two-way radio communication with a central control office and is enabled for tracking using the Global Positioning System or General Packet Radio Service;

**Analysis :**

- (1) No GST is payable for the service rendered by a non-A.C. bus with a contract carriage permit. However, transport of passengers in any contract carriage whether A.C. or non-A.C. for the transportation for tourism, conducted tour, charter or hire is taxable.
- (2) However, transport of passengers by a radio taxi is not exempted, whether A.C. or non-A.C., hence, taxable.
- (3) Transport of passengers by A.C. contract carriage is also not exempted, hence, taxable.

	(4) Transport of passengers in Non-A.C. stage carriage is exempted under this entry.
	(5) But, Transport of passengers by A.C. stage carriage is not exempted, hence, taxable.
	(6) Transport of passengers by ropeway, cable car or aerial tramway is not exempted under any exemption entry, hence, it is taxable.
	(7) Transport of passengers by modes covered under items (b) and (c) of this entry shall be taxable, if transportation services are supplied through an electronic commerce operator, and notified u/s 9(5) of CGST Act, 2017. [Proviso inserted by NN 16/2021 - CT(R) w.e.f. 01.01.2022]
A	(8) <i>W.e.f. 18.07.2022, transport of passengers by Air, embarking from or terminating in an airport located in the state of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, or Tripura or at Bagdogra located in West Bengal is made taxable if transportation is done in any class other than economy class. [As amended by NN 04/2022 - CT (R), w.e.f. 18.07.2022]</i>
A	(9) <i>Clarification on whether hiring of Non-A.C. Contract Carriages by firms for transportation of their employees to and from work is exempt under clause (d) of above entry no. 17 i.e. Transport of passengers by non-a.c. contract carriage [Circular No. 177/09/2022 - GST, dated 03.08.2022]</i> <ul style="list-style-type: none"> <li>• <i>As per clause (d) of above entry no. 17, "transport of passengers, with or without accompanied belongings, by non-a.c. contract carriage, other than radio taxi, for transport of passengers, excluding tourism, conducted tour, charter or hire" is exempted.</i></li> <li>• <i>It is clarified that 'charter or hire' excluded from the above exemption entry is charter or hire of a motor vehicle for a period of time, where the renter (i.e. service recipient) defines how and when the vehicles will be operated, determining schedules, routes and other operational considerations.</i></li> <li>• <i>In other words, the said exemption would apply to passenger transportation services by non-air conditioned contract carriages where according to explanatory notes, transportation takes place over pre-determined route on a pre-determined schedule. The exemption shall not be applicable where contract carriage is hired for a period of time, during which the contract carriage is at the disposal of the service recipient and the recipient is thus free to decide the manner of usage (route and schedule) subject to conditions of agreement entered into with the service provider.</i></li> </ul>

**Illustration 13 :**

Blue Bus Ltd. is engaged in providing service of transportation of passengers by following modes in the month of June 20XX.

S.N.	Particulars	Amount (Rs.)
1)	Service of transportation of passenger by non air conditioned Stage carriage	50,00,000
2)	Service of transportation of passengers in air conditioned contract carriages	45,00,000
3)	Service of transportation of passengers by vessels in National Waterways	15,00,000
4)	Service of transportation of passengers in Radio Taxis	30,00,000
5)	Service of transportation of passengers in Non air conditioned contract carriages	5,00,000
6)	Service of transportation of passenger in Metered Cab	30,00,000
7)	Service of transportation of passengers by contract carriage for Tourism	25,00,000
8)	Service of transportation of passenger for Mumbai to Chennai port in a vessel and such service is not for tourism purpose	25,00,000
9)	Service of transportation of passenger by Air conditioned Stage Carriage	5,00,000

Compute the value of taxable supply if all charges are exclusive of GST.

**Answer :**

**Computation of Value of taxable supply**

<p style="text-align: center;">A</p>	<p>nature of service provided by 'Express Cargo Service' falls within the scope and definition of the courier agency. Similarly, 'Angadia' who undertakes delivery of documents, goods or articles received from a customer to another person for a consideration is also covered within the scope and definition of the courier agency and hence, liable to GST.</p> <p>(4) The services of transportation of goods by railways and by air within the country or abroad are not covered in the exemption list and hence, taxable.</p> <p>(5) The services of transportation of goods by a vessel other than in inland waters or national waterways i.e. in the coastal waters of India, are not covered in the exemption list and hence, taxable.</p> <p>(6) The services provided as agents for inland waterways are not covered by exemption list and hence, taxable.</p> <p>(7) <b>Clarification on Taxability of transport of minerals within a mining area, say from mining pit head to railway siding, beneficiation plant etc., by vehicles deployed with driver for a specific duration of time and whether the same would be covered under Entry No. 18 of NN. 12/2017 - CT (R) which exempts transport of goods by road except by a GTA [Circular No. 177/09/2022 - GST, dated 03.08.2022]</b></p> <ul style="list-style-type: none"> <li>• <i>Usually in such cases the vehicles such as tippers, dumpers, loader, trucks etc., are given on hire to the mining lease operator. Expenses for fuel are generally borne by the recipient of service. The vehicles with driver are at the disposal of the mining lease operator for transport of minerals within the mine area (mining pit to railway siding, beneficiation plant etc.) as per his requirement during the period of contract.</i></li> <li>• <i>Such services are nothing but "rental services of transport vehicles with operator". The person who takes the vehicle on rent defines how and when the vehicles will be operated, determines schedules, routes and other operational considerations. The person who gives the vehicles on rent with operator can not be said to be supplying the service by way of transport of goods.</i></li> <li>• <i>Accordingly, as recommended by the GST Council, it is clarified that such renting of trucks and other freight vehicles with driver for a period of time is a service of renting of transport vehicles with operator and not service of transportation of goods by road and hence, it is not eligible for exemption under Entry No. 18 of NN. 12/2017 - CT (R) (i.e. transport of goods by road except by a GTA).</i></li> </ul>
<p>5.</p>	<p>Services by way of <b>transportation of goods by an aircraft</b> from a place outside India upto the customs station of clearance in India. [Entry No. 19 of NN. 12/2017 CT (R)]</p> <p><b>Analysis:</b></p> <p>(1) Transportation of goods by an aircraft from a place outside India upto the customs station of clearance in India is exempt from GST and not only upto first customs station in India. For example, if any aircraft carrying goods from Singapore has arrived at Delhi Customs station, and unloaded certain goods, which are to be transhipped to Mumbai Customs station through another aircraft. Then, in such case, transportation upto Mumbai Customs station shall be exempt from GST, because, Mumbai customs station is the Customs station of clearance in India.</p> <p>(2) Prior to 01.06.2016, this exemption was available to such transport by aircraft as well as vessel. But, now, this exemption is available only in case of transport by aircraft. W.e.f. 01.06.2016, such transport by vessels is made taxable.</p>
<p>6.</p> <p style="text-align: center;">A</p>	<p>Services by way of transportation of goods by an <b>aircraft</b> from customs station of clearance in India <b>to a place outside India.</b></p> <p>Nothing contained in this entry shall apply after the <del>30.09.2018</del> <del>30.09.2019</del> <del>30.09.2020</del> <del>30.09.2021</del> 30.09.2022. [Exemption extended till 30.09.2022 by NN 07/2021 - CT (R) w.e.f. 01.10.2021]</p> <p>[Entry No. 19A of NN 12/2017 CT (R), inserted by NN 02/2018 CT (R), dated 25.01.2018]</p> <p><b>Analysis:</b> W.e.f. 01.10.2022, this service is made taxable, because, this exemption is not extended beyond 30.09.2022.</p>
<p>7.</p>	<p>Services by way of transportation of goods by a <b>vessel</b> from customs station of clearance in India <b>to a place</b></p>

<p style="text-align: center;">A</p>	<p><b>outside India.</b></p> <p>Nothing contained in this entry shall apply after the <del>30.09.2018</del> <del>30.09.2019</del> <del>30.09.2020</del> <del>30.09.2021</del> 30.09.2022. [Exemption extended till 30.09.2022 by NN 07/2021 - CT (R) w.e.f. 01.10.2021]</p> <p><b>[Entry No. 19B of NN 12/2017 CT (R), inserted by NN 02/2018 CT (R), dated 25.01.2018]</b></p> <p><b>Analysis:</b> W.e.f. 01.10.2022, this service is made taxable, because, this exemption is not extended beyond 30.09.2022.</p>															
<p>7A.</p>	<p><b>Satellite launch services</b> supplied by Indian Space Research Organisation (ISRO), Antrix Corporation Limited or New Space India Limited.</p> <p><b>[Entry No. 19C of NN 12/2017 CT (R), inserted by NN 05/2020 CT (R), w.e.f. 16.10.2020]</b></p>															
<p style="text-align: center;">A</p>	<p>8. Services by way of <b>transportation by rail or a vessel</b> from one place in India to another of the following goods:</p> <p>(a) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap;</p> <p>(b) defence or military equipments;</p> <p>(c) newspaper or magazines registered with the Registrar of Newspapers;</p> <p>(d) <del>railway equipments or materials</del>; [Omitted by NN 04/2022 CT (R), w.e.f. 18.07.2022]</p> <p>(e) agricultural produce;</p> <p>(f) milk, salt and food grain including flours, pulses and rice; or</p> <p>(g) organic manure.</p> <p><b>[Entry No. 20 of NN. 12/2017 CT (R)]</b></p>															
<p style="text-align: center;">A</p>	<p>9. Services provided by a <b>goods transport agency</b>, by way of transport in a goods carriage of -</p> <p>(a) agricultural produce;</p> <p>(b) <del>goods, where consideration charged for the transportation of goods on a consignment transported in a single carriage does not exceed Rs. 1,500</del>; [Omitted by NN 04/2022 CT (R), w.e.f. 18.07.2022]</p> <p>(c) <del>goods, where consideration charged for transportation of all such goods for a single consignee does not exceed Rs. 750</del>; [Omitted by NN 04/2022 CT (R), w.e.f. 18.07.2022]</p> <p>(d) milk, salt and food grain including flour, pulses and rice;</p> <p>(e) organic manure;</p> <p>(f) newspaper or magazines registered with the Registrar of Newspapers;</p> <p>(g) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap; or</p> <p>(h) defence or military equipments.</p> <p><b>[Entry No. 21 of NN. 12/2017 CT (R)]</b></p> <p><b>Illustration 14 : (GTA Service)</b></p> <p>Calculate the value of taxable service of 'X' Transport Company engaged in the business of transport of goods by road. Give reasons for taxability or exemption of each item. Freight is received from persons registered in GST. Suitable assumptions may be made wherever required. Rate of GST = 12%.</p> <table border="1" data-bbox="196 1629 1500 1961"> <thead> <tr> <th>S.N.</th> <th>Particulars</th> <th>Amount (Rs.)</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>Total freight charges received by 'X' during the year</td> <td>13,50,000</td> </tr> <tr> <td>2</td> <td>Freight charges received for transporting fruits</td> <td>1,25,000</td> </tr> <tr> <td>3</td> <td>Freight collected for transporting small consignment for persons who paid less than Rs. 750/- for all consignments</td> <td>75,000</td> </tr> <tr> <td>4</td> <td>Freight collected for transporting goods in small vehicles for persons who paid less than Rs. 1,500/- per trip per vehicle</td> <td>1,50,000</td> </tr> </tbody> </table> <p><b>Answer:</b> Computation of Value of Taxable Service and GST thereon</p>	S.N.	Particulars	Amount (Rs.)	1	Total freight charges received by 'X' during the year	13,50,000	2	Freight charges received for transporting fruits	1,25,000	3	Freight collected for transporting small consignment for persons who paid less than Rs. 750/- for all consignments	75,000	4	Freight collected for transporting goods in small vehicles for persons who paid less than Rs. 1,500/- per trip per vehicle	1,50,000
S.N.	Particulars	Amount (Rs.)														
1	Total freight charges received by 'X' during the year	13,50,000														
2	Freight charges received for transporting fruits	1,25,000														
3	Freight collected for transporting small consignment for persons who paid less than Rs. 750/- for all consignments	75,000														
4	Freight collected for transporting goods in small vehicles for persons who paid less than Rs. 1,500/- per trip per vehicle	1,50,000														



Particulars	Amount (Rs.)
Total freight received	13,50,000
<b>Less : Freight charges received for transporting fruits [Exempted vide Entry No. 21 of NN. 12/2017 CT (R)]</b>	1,25,000
<b>Less : Freight collected less than Rs. 750 from each consignee (Taxable) [Exemption withdrawn by NN. 04/2022 CT (R), we.f. 18.07.2022]</b>	(A) NIL
<b>Less : Freight collected for transporting goods in small vehicles for persons who paid less than Rs. 1,500/- per trip per vehicle (Taxable) [Exemption withdrawn by NN. 04/2022 CT (R), we.f. 18.07.2022]</b>	(A) NIL
<b>Total Value of Taxable Service</b>	<b>12,25,000</b>
<b>GST @ 12%</b>	<b>1,47,000</b>

**Illustration 15 : (GTA Service)**

Discuss whether GST is chargeable in respect of goods transport agency service in each of the following independent cases :

- (i) Transportation of organic manures - Rs. 50,000.
- (ii) Transportation of goods by a single goods carriage - Rs. 1,800.
- (iii) Transportation of military equipments - Rs. 25,000.
- (iv) Transportation of polyester fibre - Rs. 15,000.

Necessary explanation is also to be given.

**Answer :**

Entry No. 21 of Mega exemption notification no. 12/2017 CT (R) exempts goods transport agency service in respect of certain goods.

S.N.	Particulars	Taxability
(i)	Transportation of organic manures - Rs. 50,000 [Entry 21(e)]	Exempt
(ii)	Transportation of goods by a single goods carriage - Rs. 1,800 (A)	Taxable
(iii)	Transportation of military equipments - Rs. 25,000 [Entry 21(h)]	Exempt
(iv)	Transportation of polyester fibre - Rs. 15,000	Taxable

10. Services provided by a **Goods Transport Agency (GTA), to an unregistered person, including an unregistered casual taxable person**, other than the following recipients, namely :

- (a) any factory registered under or governed by the Factories Act, 1948; or
- (b) any society registered under the Societies Registration Act, 1860 or under any other law for the time being in force in any part of India; or
- (c) any co-operative society established by or under any law for the time being in force; or
- (d) any body corporate established, by or under any law for the time being in force; or
- (e) any partnership firm whether registered or not under any law including association of persons; and
- (f) any casual taxable person registered under the CGST Act or the IGST Act or the SGST Act or the UTGST Act.

[Entry No. 21A of NN. 12/2017 CT (R), inserted by NN. 32/2017 CT (R), dated 13.10.2017]



	<p><b>Analysis :</b></p> <ol style="list-style-type: none"> <li>(1) Any service provided by GTA to persons covered under aforesaid clauses (a) to (f) and to any registered person in GST, are chargeable to GST. Otherwise, it is exempt from GST.</li> <li>(2) If GST on GTA service is chargeable and if GTA is registered under GST, then, GTA has the choice to opt to pay GST under Forward Charge Mechanism by making a required declaration on the tax invoice issued by it.</li> <li>(3) Further, if GTA opts to pay GST under Forward Charge Mechanism, then, GTA has the choice to pay GST either at 5% (without any ITC on Inputs, Capital Goods &amp; Input Services used by GTA) or 12% (with ITC on Inputs, Capital Goods &amp; Input Services used by GTA).</li> <li>(4) Further, if GST on GTA service is chargeable and if GTA does not opt to pay GST under Forward Charge Mechanism, then, recipient will be liable to pay GST under Reverse Charge Mechanism and applicable rate of GST will be 5% in this case.</li> </ol>
11.	<p>Services provided by a <b>goods transport agency</b>, by way of transport of goods in a goods carriage, to, -</p> <ol style="list-style-type: none"> <li>(a) a Department or Establishment of the Central Government or State Government or Union territory; or</li> <li>(b) local authority; or</li> <li>(c) Governmental agencies,</li> </ol> <p>which has taken <b>registration</b> under the CGST Act, 2017 <b>only for</b> the purpose of deducting tax (TDS) u/s 51 and not for making a taxable supply of goods or services. <b>[Entry No. 21B of NN. 12/2017 CT (R)]</b></p>
12.	<p>Supply of services associated with <b>transit cargo to Nepal &amp; Bhutan</b> (landlocked countries). <b>[Entry No. 9B of NN. 12/2017 CT (R)]</b></p> <p><b>Analysis:</b> Transportation Services by any mode, Transit Insurance, Cargo Handling Services, etc. are covered here.</p> <p><b>A</b> <i>Clarification on applicability of GST on transportation of empty containers returning to India, from Nepal and Bhutan after delivery of transit cargo [Circular No. 177/09/2022 - GST, dated 03.08.2022]</i></p> <ul style="list-style-type: none"> <li>• <i>The opening sentence of the Agenda Item 7(ix) placed before the GST Council on the issue of this exemption, makes it clear that the proposal was to exempt supply of services associated with transit cargo both to and from Nepal and Bhutan.</i></li> <li>• <i>Accordingly, as recommended by the GST Council, it is clarified that exemption under Sl. No. 9B of NN. 12/2017 - CT (R) covers services associated with transit cargo both <u>to and from</u> Nepal and Bhutan.</i></li> <li>• <i>It is also clarified that movement of empty containers from Nepal and Bhutan, after delivery of goods there, is a service associated with the transit cargo to Nepal and Bhutan. Further, as per the regulations framed for transshipment of cargo to Nepal and Bhutan, it is verifiable that the empty container returning from Nepal or Bhutan is the same container which was used to deliver goods to Nepal or Bhutan. Therefore, return of empty containers is also covered by this exemption.</i></li> </ul>
13.	<p>Services by way of <b>giving on hire</b> -</p> <ol style="list-style-type: none"> <li>(a) to a state transport undertaking, a <b>motor vehicle</b> meant to carry <b>more than 12 passengers</b>; or</li> <li>(aa) to a local authority, an <b>Electrically operated vehicle</b> meant to carry <b>more than 12 passengers</b> [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 which is run solely on electrical energy derived from an external source or from one or more electrical batteries fitted to such road vehicle.]; or</li> <li>(b) to a goods transport agency, a <b>means of transportation of goods</b>; or</li> <li>(c) <b>motor vehicle for transport of students, faculty and staff</b>, 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.</li> </ol>

	<p><b>[Entry No. 22 of NN. 12/2017 CT (R)]</b></p> <p><b>Examples:</b></p> <p>(i) If a bus is given on hire to a state transport undertaking, then, GST is exempted on the hire charges.</p> <p>(ii) Similarly, if a truck is given on hire to a GTA, then, GST is exempted on the hire charges.</p> <p><b>Renting of vehicles to State Transport Undertakings and Local Authorities [Circular No. 164/20/2021 - GST, dated 06.10.2021]</b></p> <ol style="list-style-type: none"> <li>Representations have been received seeking clarification regarding eligibility of the service of renting of vehicles to State Transport Undertakings (STUs) and Local Authorities for exemption from GST under NN 12/2017 - CT (R). Sl. No. 22 of this notification exempts “services by way of <u>giving on hire</u> (a) to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers; or (aa) to a local authority, an Electrically Operate vehicle meant to carry more than twelve passengers”.</li> <li>This issue has arisen in the wake of ruling issued by an Authority for Advance Ruling that the entry at Sl. No. 22 of NN 12/2017 - CT (R) exempts services by way of giving on hire vehicles to a State Transport Undertaking or a local authority and not renting of vehicles to them. The ruling referred to certain case laws pertaining to erstwhile positive list based service tax regime.</li> <li>It is relevant to note in this context that Schedule II of CGST Act, 2017 declares supply of any goods without transfer of title as supply of service even if right to use is transferred. Transfer of right to use has been declared as a supply of service [Schedule II, Entry 5(f) refers]</li> <li>As recommended by the GST Council, it is clarified that the expression “<u>giving on hire</u>” in Sl. No. 22 of the NN 12/2017 - CT (R) <u>includes renting of vehicles</u>. Accordingly, services where the said vehicles are rented or given on hire to State Transport Undertakings or Local Authorities are eligible for the said exemption irrespective of whether such vehicles are run on routes, timings as decided by the State Transport Undertakings or Local Authorities and under effective control of State Transport Undertakings or Local Authorities which determines the rules of operation or plying of vehicles.</li> </ol>
<p>14.</p> <p><b>(A)</b></p>	<p>Service by way of access to a road or a bridge on payment of <b>toll charges</b>. <b>[Entry No. 23 of NN. 12/2017 CT (R)]</b></p> <p><b>Clarification regarding applicability of GST on overloading charges collected at Toll Plazas [Circular No. 164/20/2021 - GST, dated 06.10.2021]</b></p> <ol style="list-style-type: none"> <li>Vide notification dated 25.09.2018, issued by Ministry of Road Transport And Highways, overloaded vehicles were allowed to ply on the national highways after payment of fees with multiplying factor of 2/4/6/8/10 times the base rate of toll. Therefore, overloading fees are effectively higher toll charges.</li> <li>As recommended by the GST Council, it is clarified that overloading charges at toll plazas would get the same treatment as given to toll charges and hence, will be exempt from GST.</li> </ol> <p><b>Clarification regarding applicability of GST on additional toll fees collected in the form of higher toll charges from vehicles not having fastag [Circular No. 177/09/2022 - GST, dated 03.08.2022]</b></p> <ul style="list-style-type: none"> <li>Ministry of Road Transport &amp; Highways (MORTH) vide circular dated 16.02.2021 has directed to collect additional amount from the users of the road to the extent of two times of the fees applicable to that category of vehicle which is not having a valid functional Fastag.</li> <li>Essentially, the additional amount collected from the users of the road not having a functional Fastag, is in the nature of Toll Charges and should be treated as additional toll charges.</li> <li>Circular no. 164/20/2021 - GST, dated 06.10.2021, has already clarified that overloading charges at toll plazas would get the same treatment as given to toll charges.</li> <li>Therefore, it is clarified that additional fee collected in the form of higher toll charges from vehicles not having Fastag is essentially payment of toll for allowing access to roads or bridges to such vehicles and may be given the same treatment as given to toll charges and hence, will be exempt from GST.</li> </ul>
<p>15.</p>	<p>Service by way of <b>access to a road</b> or a bridge on payment of <b>annuity</b>. <b>[Entry No. 23A of NN. 12/2017 CT (R)]</b></p> <p><b>Clarification regarding applicability of GST on the activity of construction of road where considerations are</b></p>

**Conclusion [Common for Entry 41A and 41B]:**

Supply of **Transfer of Development Rights (TDR)** or **Floor Space Index (FSI)** (including additional FSI), Long Term Lease (premium) of land by a landowner to a developer are exempted subject to the condition that the constructed flats are sold before issuance of completion certificate and tax is paid on them.

Exemption of **Transfer of Development Rights (TDR)** or **Floor Space Index (FSI)** (including additional FSI) Long Term Lease (premium) shall be withdrawn in case of flats sold after issue of completion certificate. But, in this case, GST is payable only @ 1% of value in case of affordable houses and 5% of value in case of other than affordable houses.

**Notes [Common for Entry 41A and 41B]:**

- (a) Value of supply of service by way of transfer of development rights or FSI by a person to the promoter against consideration in the form of residential or commercial apartments shall be deemed to be equal to the value of similar apartments charged by the promoter from the independent buyers nearest to the date on which such development rights or FSI is transferred to the promoter.
- (b) Value of portion of residential or commercial apartments remaining un-booked on the date of issuance of completion certificate or first occupation, as the case may be, shall be deemed to be equal to the value of similar apartments charged by the promoter nearest to the date of issuance of completion certificate or first occupation, as the case may be.
- (c) The term "project" shall mean a Real Estate Project or a Residential Real Estate Project.
- (d) The terms "apartment", "promoter", "Real Estate Project (REP)" & "carpet area" shall have the same meanings as assigned to these in the Real Estate (Regulation and Development) Act, 2016.
- (e) The term "Residential Real Estate Project (RREP)" shall mean a REP in which the carpet area of the commercial apartments is not more than 15% of the total carpet area of all the apartments in the REP;
- (f) "an apartment booked on or before the date of issuance of completion certificate or first occupation of the project" shall mean an apartment which meets all the following three conditions, namely-
  - (i) part of supply of construction of the apartment service has time of supply on or before the said date; and
  - (ii) consideration equal to at least one installment has been credited to the bank account of the registered person on or before the said date; and
  - (iii) an allotment letter or sale agreement or any other similar document evidencing booking of the apartment has been issued on or before the said date.
- (g) "floor space index (FSI)" shall mean the ratio of a building's total floor area (gross floor area) to the size of the piece of land upon which it is built.

**Renting of Immovable Property Related Services**

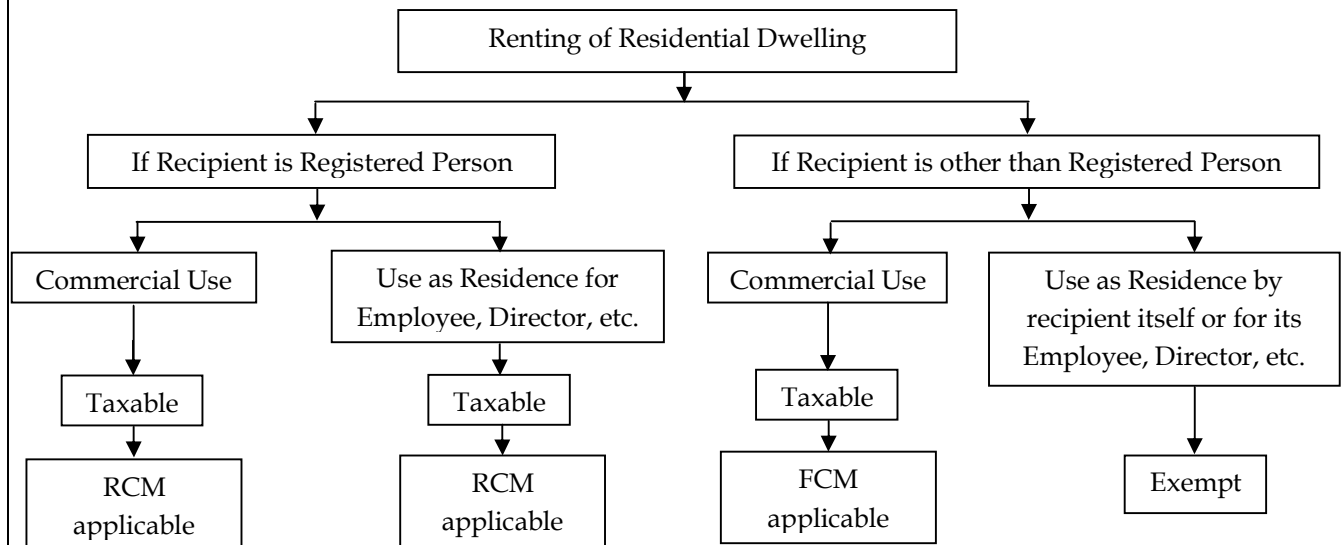
1. Services by way of **renting of residential dwelling for use as residence** *except where the residential dwelling is rented to a registered person.* [Bold & italic words inserted by NN 04/2022 - CT (R), w.e.f. 18.07.2022]

[Entry No. 12 of NN. 12/2017 CT (R)]

**Analysis :**

- (1) W.e.f. 18.07.2022, if the residential dwelling (house/flat) is taken on rent by a GST registered person, then, it will be chargeable to GST, irrespective of its use. Further, in this case, GST is payable by the recipient (i.e. registered person) under Reverse Charge Mechanism irrespective of the supplier of the service.
- (2) A residential dwelling given on rent which is used for commercial or non-residential use would not be covered in this entry irrespective of recipient of service and hence, would be taxable.
- (3) A residential dwelling given on rent to a person, other than registered person, which is used only for residential purpose is covered in this entry and hence, exempt from GST.

- (4) Renting of a residential dwelling to a person, other than registered person, which is used partly for residence and partly for non-residential purpose like an office of a lawyer or a clinic of a doctor in a rented house would be a case of bundled services as renting service is being provided both for residential use and for non-residential use. Taxability of such bundled services has to be determined in terms of the principles laid down in Sec. 8 of the Act. And, since, this is not naturally bundled service, therefore, it is a case of mixed supply and hence, entire rent would be chargeable to GST. And, if residential dwelling is rented to registered person, then, anyways it is chargeable to GST, irrespective of its use (that too under RCM).
- (5) If a house is given on rent and the same is used as a hotel or a lodge, such renting transaction is not covered in this exemption entry because the person taking it on rent is using it for commercial purpose. Renting of rooms in a hotel or a lodge let out whether or not for temporary stay would not be covered in this exemption entry because a hotel or a lodge is not a residential dwelling, hence, it is chargeable to GST.
- (6) Govt. department allotting owned houses to its employees for residential purpose and charging a license fee for such service would also be covered under this exemption entry and hence, not taxable.
- (7) Furnished flats (service apartments) given on rent for temporary stay are in the nature of lodges or guest houses and hence, not treatable as a residential dwelling, therefore, it will be taxable.
- (8) The phrase 'residential dwelling' is not defined under GST. It has therefore to be interpreted in terms of the normal trade parlance as per which it is any residential accommodation, but does not include hotel, motel, inn, guest house, campsite, lodge, house boat, or like places meant for temporary stay.
- (9) **Tabular Presentation for easy understandability:**



2. ~~Services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having Value of supply of a unit of accommodation below or equal to Rs. 1,000 per day or equivalent. [Entry No. 14 of NN. 12/2017 CT (R), omitted by NN. 04/2022 - CT (R), w.e.f. 18.07.2022]~~

**Analysis :**

- (1) W.e.f. 18.07.2022, Services by a hotel, inn, guest house, club or campsite, by whatever name called (including Dharmshala, Ashram, etc.), for residential or lodging purposes are made taxable, irrespective of the value of supply per day per room.
- (2) However, services by way of renting of rooms located within the precincts of a religious place are still exempt from GST, if room rent is below Rs. 1,000 per day per room (Discussed in next entry).

3. Services by a person by way of -
- (a) conduct of any **religious ceremony**;
- (b) **renting of precincts of a religious place** meant for general public, owned or managed by an entity registered as a charitable or religious trust under section 12AA or 12AB of the Income-tax Act, 1961 or a

trust or an institution registered under section 10(23C)(v) of the Income-tax Act or a body or an authority covered under section 10(23BBA) of the said Income-tax Act.

Provided that nothing contained in entry (b) of this exemption shall apply to -

- (i) renting of **rooms** where charges are **Rs. 1,000 or more per day**;
- (ii) renting of premises, **community halls**, kalyan mandapam or open area, and the like where charges are **Rs. 10,000 or more per day**;
- (iii) renting of **shops** or other spaces for business or commerce where charges are **Rs. 10,000 or more per month**.

**[Entry No. 13 of NN. 12/2017 CT (R)]**

**Notes :**

- (1) As per clause (zx) under this notification, '**Religious place**' means a place which is primarily meant for conduct of prayers or worship pertaining to a religion, meditation, or spirituality;
- (2) As per clause (zc) under this notification, '**General public**' means the body of people at large sufficiently defined by some common quality of public or impersonal nature;

**Analysis:**

- (1) Religious ceremonies are life cycle rituals including special religious poojas conducted in terms of religious texts by a person so authorized by such religious texts. Occasions like birth, marriage and death involve elaborate religious ceremonies.
- (2) The exemption of renting of precincts of a religious place is available only if the place is meant for general public and is owned and managed by trusts, etc. covered under income tax act, as aforesaid.
- (3) W.e.f. 18.07.2022, Services by a hotel, inn, guest house, club or campsite, by whatever name called (including Dharmshala, Ashram, etc.), for residential or lodging purposes are made taxable, irrespective of the value of supply per day per room. However, services by way of renting of rooms located within the precincts of a religious place as aforesaid are still exempt from GST, if room rent is below Rs. 1,000 per day per room.
- (4) The CBIC has clarified that the word 'precincts' should be considered as all immovable property of the religious place located within the outer boundary wall of the complex (of buildings and facilities) in which the religious place is located, as being located in the precincts of the religious place. The immovable property located in the immediate vicinity and surrounding of the religious place and owned by the religious place or under the same management as the religious place, may be considered as being located in the precincts of the religious place and the benefit of exemption under Entry No. 13 of NN. 12/2017 CT (R) should be extended. **[Circular no. 200/10/2016-S.T., dated 06.09.2016]**

**Illustration 16:**

Mr. Mangal, a priest, charged Rs. 51,000 for services provided to Mr. Rohit D'Souza for conducting his marriage ceremony at Church. Whether such services are liable to GST?

**Answer:**

Under Entry No. 13 of Exemption Notification No. 12/2017 CT (R), services by a person by way of conduct of any religious ceremony is exempt from GST. In the given case, Mr. Mangal provided services to Mr. Rohit D' Souza to conduct religious ceremony and hence, it is exempted from GST.

**Illustration 17:**

Mangal International Public School, rented its premises (ground) for marriage rituals and charged Rs. 1,50,000 for the same. Comment, whether the services provided are liable to GST or not.


**Answer:**

**Yes;** Since, premises (ground) of Mangal International School are not precincts of religious place, therefore, these services are not covered under entry No. 13 of Exemption Notification No. 12/2017 CT (R). Hence, such services are liable to GST.



	<p>Central government, State Government or Union territory to the industrial units or the developers in any industrial or financial business area.</p> <p><b>Conditions:</b></p> <p>(i) The leased plots shall be used for the purpose for which they are allotted, that is, for industrial or financial activity in an industrial or financial business area;</p> <p>(ii) The State Government concerned shall monitor and enforce the above condition as per the order issued by the State Government in this regard;</p> <p>(iii) In case of any violation or subsequent change of land use, due to any reason whatsoever, the original lessor, original lessee as well as any subsequent lessee or buyer or owner shall be jointly and severally liable to pay the amount of exempted GST, along with applicable interest &amp; penalty; and</p> <p>(iv) The lease agreement entered into by the original lessor with the original lessee or subsequent lessee, or sub-lessee, as well as any subsequent lease or sale agreements, for lease or sale of such plots to subsequent lessees or buyers or owners shall incorporate in the terms and conditions, the fact that the GST was exempted on the long term lease of the plots by the original lessor to the original lessee subject to above condition and that the parties to the said agreements undertake to comply with the same.</p> <p>[Entry No. 41 of NN. 12/2017 CT (R)]</p> <p><b>Analysis:</b></p> <p>(i) [Circular No. 101/20/2019 - GST, dated 30.04.2019]: This exemption is admissible irrespective of whether such upfront amount is payable or paid in one or more instalments, provided the amount is determined upfront.</p> <p>(ii) <b>Whether location charges or preferential location charges (PLC) collected in addition to the lease premium for long term lease of land constitute part of the lease premium or of upfront amount charged for long term lease of land and are eligible for the same tax treatment [Circular No. 177/09/2022 - GST, dated 03.08.2022]</b></p> <ul style="list-style-type: none"> <li>• <i>Allowing choice of location of plot is integral part of supply of long-term lease of plot and therefore, location charge is nothing but part of consideration charged for long term lease of plot. Being charged upfront along with the upfront amount for the lease, the same is exempt.</i></li> <li>• <i>Accordingly, as per recommendation of the GST Council, it is clarified that location charges or preferential location charges (PLC) paid upfront in addition to the lease premium for long term lease of land constitute part of upfront amount charged for long term lease of land and are eligible for the same tax treatment, and thus eligible for the above exemption.</i></li> </ul>
5.	Renting or leasing of agro machinery or <b>vacant land</b> with or without a structure incidental to its use for the purpose of <b>cultivation</b> of plants and <b>rearing of all life forms</b> of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products or agricultural produce. [Entry no. 54(d) of NN. 12/2017 CT (R)]
6.	Services provided by the Central Government, State Government, Union territory or local authority by way of assignment of <b>right to use natural resources to an individual farmer</b> for cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products. [Entry No. 63 of NN. 12/2017 CT (R)]
7.	Services by way of <b>loading, unloading, packing, storage or warehousing of agricultural produce</b> . [Entry No. 54(e) of NN 12/2017 CT(R)]
8.	Services by way of <b>loading, unloading, packing, storage or warehousing of rice</b> . [Entry No. 24 of NN. 12/2017 CT (R)] <b>Analysis:</b> Commission agent of rice is taxable.
9.	Services by way of <b>warehousing of minor forest produce</b> . [Entry No. 24A of NN 12/2017 C.T. (R.), inserted by NN 14/2018 - CT (R), w.e.f. 26.07.2018]



	<b>Examples of minor forest produce:</b> Trees and leaves, flowers and fruits, and all other parts or produce of trees, etc. brought from the forest.
10. 	Services by way of <b>storage or warehousing</b> of cereals, pulses, fruits, <del>nuts</del> and vegetables, <del>spices, copra, sugarcane, jaggery, raw vegetable fibres such as cotton, flax, jute etc., indigo, unmanufactured tobacco, betel leaves, tendu leaves, coffee and tea.</del> [Entry No. 24B of NN 12/2017 - CT (R)] [omitted words, omitted by NN 04/2022 - CT(R), w.e.f. 18.07.2022]

**Illustration 20:**

M/s. Maheshwari Properties registered under GST as taxable person is engaged in the business of renting various immovable properties owned by it. During the month ending 31-08-20XX, it collected a rent of Rs. 9,00,000. The said sum includes rent from-

S.N.	Particulars	Amount (Rs.)
(1)	Vacant land used for agriculture	1,00,000
(2)	Land used for Circus	50,000
(3)	Houses let out to individuals for residential purposes	1,00,000
(4)	Building let out to Hotel Vrindavan	1,20,000
(5)	Vacant land given on lease to ABC Pvt. Ltd. for construction of building at a later stage to be used for furtherance of business or commerce	1,80,000
(6)	Premises let out to a religious trust	90,000
(7)	Premises let out to a Agrawal coaching classes	1,40,000
(8)	Building let out to a theatre	1,20,000

Compute the taxable value of supply, assuming that the figures are exclusive of GST. Make suitable assumptions.

**Answer :****Computation of Taxable Value of Supply**

S.N.	Particulars	Amount (Rs.)
	Total Rent	9,00,000
(1)	Rent from vacant land used for agriculture [Exempt as per Entry No. 54 of Exemption NN. 12/2017 - CT (R)]	(1,00,000)
(2)	Rent from land used for Circus [Liable to GST]	Taxable
(3)	Houses let out to individuals for residential purposes [Exempt as per Entry No. 12 of Exemption NN. 12/2017 - CT (R)]	(1,00,000)
(4)	Building let out to hotel Vrindavan [Liable to GST]	Taxable
(5)	Vacant land given on lease to ABC Pvt. Ltd. for construction of building at a later stage to be used for furtherance of business or commerce [Liable to GST]	Taxable
(6)	Premises let out to a religious trust [Liable to GST]	Taxable
(7)	Premises let out to a Agrawal coaching classes [Liable to GST]	Taxable
(8)	Building let out to a theatre [Liable to GST]	Taxable
<b>Total Taxable Value of Supply</b>		<b>7,00,000</b>

**Illustration 21:**

Determine the taxable value of supply from the following particulars (all figures are exclusive of taxes, if any):


Particulars	Amount (Rs.)
Rent of the commercial building	18,00,000
Maintenance charges collected by local society from the owner and reimbursed by the tenant	2,50,000
Owner intends to charge GST on refundable advance, as GST is applicable on advance	6,00,000
Municipal taxes paid by the owner	3,00,000

**Solution :**

Particulars	Amount (Rs.)
Rent of the commercial building	18,00,000
Maintenance charges collected by the local society from the owner and reimbursed by the tenant [Note-1]	2,50,000
Refundable advance [Note-2]	Nil
Municipal taxes paid by the owner [Note-3]	Nil
<b>Total Taxable Value of supply</b>	<b>20,50,000</b>

**Notes:**

- Being reimbursed by the tenant, such charges ultimately form part of the rent paid by the tenant to the owner and thus, will form part of the value.
- Being refundable, the advance is in the nature of security deposit which does not constitute consideration in terms of section 2(31) of the CGST Act, 2017 and thus, is not includible in the value.
- Being an expenditure incurred by the supplier, the same is not includible in the value, assuming that such taxes are not charged to the recipient.

Government Related Services	
1.	<p><b>Services by Government :</b> Services by the Central Government, State Government, Union territory or local authority <b>excluding</b> the following services -</p> <p>(a) services by the <b>Department of Posts</b> <del>by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union territory; [Omitted words, omitted by NN 04/2022 - CT (R), w.e.f. 18.07.2022]</del> </p> <p>(b) services in relation to an <b>aircraft or a vessel</b>, inside or outside the precincts of a port or an airport;</p> <p>(c) <b>transport of goods or passengers</b>; or</p> <p>(d) <b>any service, other than</b> services covered under entries (a) to (c) above, <b>provided to business entities.</b></p> <p><b>[Entry No. 6 of NN. 12/2017 CT (R)]</b></p> <p><b>Analysis:</b></p> <p>(1) Any service provided by the Central Government, State Government, Union territory or local authority will not be chargeable to GST except aforesaid 4 categories of services [covered under (a) to (d) above] i.e. in case of these 4 categories of services, GST will be leviable.</p> <p>(2) The basic idea behind taxing certain activities of the Government or local authorities is to provide equal competition to private entities in these areas and to avoid break in Input Tax Credit chain as the taxable services provided by the Government are normally in the nature of intermediary services.</p> <p>(3) As per clause (d) of this entry, any service, (other than services covered under clauses (a) to (c) above), provided to business entities by Government or local authority, are taxable as these are excluded from the exemption list. But, in this case, if the service recipient is other than business entity, then, GST shall not be</p>

payable as it is not excluded from the exemption list.

- (4) As per clause (n) under this notification, '**Business entity**' means any person carrying out business.
- (5) Further, various other services of government and local authority are also exempted from GST by adding various other entries in this Exemption List, which is discussed in following paras of this chapter.
- (6) Furthermore, some services provided to Government, etc. are also exempt from GST by adding various other entries in this Exemption List, which is also discussed in following paras of this chapter.
- (7) As per the settled position of law, the term 'Government' include various departments of the Government (e.g. Income tax department, Police Department, etc.), but, various government companies registered under the Companies Act, 2013, corporations formed under Central Acts or State Acts or autonomous institutions set up by a special Act are not included in the term 'Government'. Therefore, services provided by/to such entities are not entitled for exemptions given in various exemption entries relating to the 'Government'. It would also not include regulatory bodies.
- (8) For the services provided by the Government to business entities [covered under clause (d) above, except Renting of Immovable Property to unregistered person], the government departments will not have to get themselves registered under GST for paying GST, because, in these services GST will be payable by the service recipient (i.e. the business entities receiving the service) under reverse charge mechanism. However, for the services covered under clauses (a), (b) & (c) above provided by the Government, etc. to any person and Renting of Immovable Property provided by the Government, etc. to business entities not registered in GST, the GST will be payable by the concerned department itself (i.e. by the service provider, as here reverse charge mechanism does not apply).
- (9) As per Section 2(114) of the CGST Act, **Union territory**: means the territory of -
- the Andaman and Nicobar Islands;
  - Lakshadweep;
  - Dadra and Nagar Haveli and Daman and Diu;
  - Ladakh;
  - Chandigarh; and
  - Other territory.
- Explanation :** For the purposes of this Act, each of the territories specified in sub-clauses (a) to (f) shall be considered to be a separate Union territory.
- (10) As per Section 2(69) of the CGST Act, "**local authority**" means -
- a "Panchayat" as defined in clause (d) of article 243 of the Constitution;
  - a "Municipality" as defined in clause (e) of article 243P of the Constitution;
  - a Municipal Committee, a Zilla Parishad, a District Board, and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund;
  - a Cantonment Board as defined in section 3 of the Cantonments Act, 2006;
  - a Regional Council or a District Council constituted under the Sixth Schedule to the Constitution;
  - a Development Board constituted under article 371 of the Constitution; or
  - a Regional Council constituted under article 371A of the Constitution;

**1A.** *Services by the Department of Posts by way of post card, inland letter, book post and ordinary post (envelopes weighing less than 10 grams).*



[Entry No. 24C of NN. 12/2017 CT (R), inserted by NN 04/2022 - CT (R), w.e.f. 18.07.2022]

**Analysis:**

- (1) W.e.f. 18.07.2022, all the services by the Department of Posts are taxable except the services by way of post

	card, inland letter, book post and ordinary post (envelopes weighing less than 10 grams), whether the services are provided to government entities or non-government entities.
(2)	Accordingly, following are the examples of the services provided by the Department of Posts which are taxable under GST: <ul style="list-style-type: none"> <li>• Speed post, express parcel post, life insurance and the agency services (i.e. intermediary services on commission basis, e.g. distribution of bonds, passport applications, collection of telephone and electricity bills, etc.);</li> <li>• Ordinary post (other than envelopes weighing less than 10 grams);</li> <li>• Transfer of money through money orders, operation of savings accounts, issue of postal orders, pension payments and other such services.</li> </ul>

**Illustration 22:** — (A)

Indian Post Office department provides you the following information for the month of February, 20XX:

1. Amount received towards speed post services to general public = Rs. 80,00,000
2. Amount received towards ordinary post (of envelopes weighing less than 10 grams) services = Rs. 50,00,000
3. Amount received towards post office life insurance services = Rs. 20,00,000
4. Amount received towards speed post services provided to BSNL for mailing telephone bills to various corporate clients = Rs. 10,00,000 [not included in (1) above]
5. Amount received towards speed post services provided to CBIC department for mailing various notices to various assesses = Rs. 2,50,000 [not included in (1) above]
6. Commission received from Reliance communication towards accepting payments of various mobile bills of their clients in rural area = Rs. 5,00,000
7. Commission received from state government for performing various agency services = Rs. 15,00,000

Compute the value of taxable services, assuming all figures are without taxes.

**Answer :** **Computation of Value of Taxable Services**

S.N.	Particulars	Amount (Rs.)
1	Amount received towards speed post services to general public - [Taxable]	80,00,000
2	Amount received towards ordinary post (of envelopes weighing less than 10 grams) services - [Exempt as per Entry 24C of NN. 12/2017 - CT(R)]	Nil
3	Amount received towards post office life insurance services - [Taxable]	20,00,000
4	Amount received towards speed post services provided to BSNL for mailing telephone bills to various corporate clients [not included in (1) above] - [Taxable]	10,00,000
5	Amount received towards speed post services provided to CBIC department for mailing various notices to various assesses [not included in (1) above] - [Taxable]	2,50,000
6	Commission received from Reliance communication towards accepting payments of various mobile bills of their clients in rural area - [Taxable, agency services by Post office is taxable]	5,00,000
7	Commission received from state government for performing various agency services - [Taxable, agency services by Post office is taxable]	15,00,000
	<b>Total Value of Taxable Services</b>	<b>1,32,50,000</b>

**Illustration 23:** — (A)

Mumbai Post Office provided the following services during the month of August, 20XX, all charges are exclusive of GST:

(A)

S.N.	Services rendered	Amount (Rs.)
1)	Operation of saving accounts	2,00,000
2)	Transfer of money through money orders	3,00,000
3)	Book Post services	2,50,000
4)	Rural postal life insurance services	1,00,000
5)	Distribution of mutual funds, bonds and passport applications	6,00,000
6)	Pension payment services	4,00,000
7)	Collection of telephone and electricity bills	1,50,000
8)	Post Card services	80,000
9)	Express parcel post services	5,20,000
10)	Speed post services	1,00,000

Compute the value of taxable supply for the month of August, 20XX.

**Answer :**

**Computation of Value of Taxable Supply**

S.N.	Particulars	Amount (Rs.)
1)	Operation of saving accounts [Taxable]	2,00,000
2)	Transfer of money through money orders [Taxable]	3,00,000
3)	Book Post services [Exempt as per Entry 24C of NN. 12/2017-CT(R)]	Nil
4)	Rural postal life insurance services [Taxable]	1,00,000
5)	Distribution of mutual funds, bonds and passport applications [Taxable]	6,00,000
6)	Pension payment services [Taxable]	4,00,000
7)	Collection of telephone and electricity bills [Taxable]	1,50,000
8)	Post Card services [Exempt as per Entry 24C of NN. 12/2017-CT(R)]	Nil
9)	Express parcel post services [Taxable]	5,20,000
10)	Speed post services [Taxable]	1,00,000
<b>Total Value of Taxable Supply</b>		<b>23,70,000</b>


2.	<p>Services provided by the Central Government, State Government, Union territory or local authority to a business entity with an aggregate turnover of up to <del>Rs. 20 lakhs</del> (Rs. 10 lakhs, in case of a Special Category States) in the preceding financial year such amount in the preceding financial year as makes it eligible for exemption from registration under the CGST Act, 2017 [as amended by NN 21/2019 - CT (R), w.e.f. 01.10.2019].</p> <p><b>Explanation :</b> For the purposes of this entry, it is hereby clarified that the provisions of this entry shall <b>not be applicable to</b> following services :</p> <p>(i) Clauses (a), (b) and (c) of Entry 6 above.</p> <p>(ii) Services by way of <b>renting of immovable property.</b></p> <p><b>[Entry No. 7 of NN. 12/2017 CT (R)]</b></p> <p><b>Analysis :</b></p> <p>(1) Since, all the services by government or local authority to a business entity are taxable (further, these are chargeable under Reverse Charge Mechanism), therefore, by making this entry in exemption list, Government has excluded small business from the purview of GST.</p>
----	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

	(2) As per clause (zy) under this notification, ' <b>Renting in relation to immovable property</b> ' means allowing, permitting or granting access, entry, occupation, use or any such facility, wholly or partly, in an immovable property, with or without the transfer of possession or control of the said immovable property and includes letting, leasing, licensing or other similar arrangements in respect of immovable property;
3.	<p>Services provided by Central Government, State Government, Union territory or a local authority <b>where the consideration for such services does not exceed Rs. 5,000.</b></p> <p>However, nothing contained in this entry shall apply to services referred in Clause (a), (b) and (c) of Entry 6 above.</p> <p>Further, in case where <b>continuous supply of service*</b> is provided by the Central Government, State Government, Union territory or a local authority, the exemption shall apply only where the consideration charged for such service does not exceed Rs. <b>5,000 in a F.Y.</b></p> <p><b>[Entry No. 9 of NN. 12/2017 CT (R)]</b></p> <p><b>Analysis :</b> *As per Sec. 2(33) of the CGST Act, 2017, "<b>continuous supply of services</b>" means a supply of services which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, for a period exceeding three months with periodic payment obligations and includes supply of such services as the Government may, subject to such conditions, as it may, by notification, specify.</p>
4.	<p>Services provided by the Central Government, State Government, Union territory or local authority <b>to another Central Government, State Government, Union territory or local authority.</b></p> <p>However, nothing contained in this entry shall apply to services referred in clauses (a), (b) and (c) of Entry 6 above.</p> <p><b>[Entry No. 8 of NN. 12/2017 CT (R)]</b></p>
5.	<p>Services provided by the Central Government, State Government, Union territory or local authority by way of <b>issuance of passport, visa, driving licence, birth certificate or death certificate.</b></p> <p><b>[Entry No. 61 of NN. 12/2017 CT (R)]</b></p>
6.	<p>Services provided <b>by</b> the Central Government, State Government, Union territory or local authority by way of -</p> <p>(a) <b>registration</b> required under any law for the time being in force;</p> <p>(b) <b>testing</b>, calibration, safety check or certification relating to protection or safety of workers, consumers or public at large, including fire license, required under any law for the time being in force.</p> <p><b>[Entry No. 47 of NN. 12/2017 CT (R)]</b></p> <p><b>GST applicability on Seed Certification Tags [Circular No. 100/19/2019-GST, dated 30.04.2019]</b></p> <p>Seed testing and certification is a multi-stage process, the charges for which are collected from the seed producers at different stages. Supply of seed tags to the seed producer is nothing but an element of the one integrated supply of seed testing and certification. All the charges, including those for issue of seed certificates/tags by the Seed Certification Agency of Tamil Nadu, Uttarakhand or any other state to the seed producing organization / companies are collected for the composite supply of seed testing and certification, which is exempt under NN 12/2017 - CT (R) - Entry No. 47.</p> <p><b>Author's Note:</b> This activity is also covered under Entry No. 54(a) of NN 12/2017 - CT (R) [Agriculture Related Exemption], which is also exempt from GST.</p>
7.	<p><del>Services by way of licensing, registration and analysis or testing of food samples supplied by the Food Safety and Standards Authority of India (FSSAI) to Food Business Operators.</del></p> <p><b>[Entry no. 47A of NN 12/2017 CT(R), omitted by NN 04/2022 CT (R), w.e.f. 18.07.2022]</b></p>
8.	<p>Services by the Employees' State Insurance Corporation [ESIC] to persons governed under the Employees' State Insurance Act, 1948. <b>[Entry No. 30 of NN. 12/2017 CT (R)]</b></p>
9.	<p>Services provided by the Employees Provident Fund Organisation [PF] to the persons governed under the Employees Provident Funds and the Miscellaneous Provisions Act, 1952. <b>[Entry No. 31 of NN. 12/2017 CT (R)]</b></p>



10.	Services by <b>Coal Mines Provident Fund Organisation</b> to persons governed by the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 (46 of 1948). [Entry No. 31A of the NN 12/2017]
11.	Services by <b>National Pension System (NPS) Trust</b> to its members against consideration in the form of administrative fee. [Entry No. 31A of the NN 12/2017]
12.	<i>Services provided by the Insurance Regulatory and Development Authority [IRDA] of India to insurers under the Insurance Regulatory and Development Authority of India Act, 1999.</i> [Entry No. 32 of NN. 12/2017 CT (R), omitted by NN 04/2022 CT (R), w.e.f. 18.07.2022]
13.	<i>Services provided by the Securities and Exchange Board of India [SEBI] set up under the Securities and Exchange Board of India Act, 1992 by way of protecting the interests of investors in securities and to promote the development of, and to regulate, the securities market.</i> [Entry No. 33 of NN. 12/2017 CT (R), omitted by NN 04/2022 CT (R), w.e.f. 18.07.2022]
14.	Services provided by the <b>National Centre for Cold Chain Development</b> under the Ministry of Agriculture, Co-operation and Farmer's Welfare by way of cold chain knowledge dissemination. [Entry No. 58 of NN. 12/2017 CT (R)]
15.	Services by way of providing information under the Right to Information Act, 2005 (RTI). [Entry No. 65A of NN 12/2017 CT (R)]
16.	Services by <del>Central Government, State Government, Union territory, local authority or</del> governmental authority by way of any activity in relation to <b>any function entrusted to a municipality</b> under article 243W of the Constitution are exempt. [Omitted words, omitted by NN 14/2018- C.T. (Rate), w.e.f. 27.07.2018] [Entry No. 4 of NN. 12/2017 CT (R)] <b>Note :</b> As per clause (zf) under this notification, " <b>Governmental Authority</b> " means an authority or a board or any other body - (i) set up by an Act of Parliament or a State Legislature; or (ii) established by any Government, with 90% or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution or to a Panchayat under article 243G of the Constitution. <b>Analysis of Amendment:</b> Services by Central Government, State Government, Union territory or local authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution are treated as neither supply of goods nor supply of services as per Section 7(2) of the CGST Act, 2017 as notified by NN 14/ 2017 - CT (R), as amended by NN 16/2018 - CT (R), w.e.f. 27.07.2018. Therefore, words "Central Government, State Government, Union territory or local authority" are omitted from this entry to avoid duplicacy.
17.	Services by a <del>Central Government, State Government, Union territory, local authority or</del> <b>Governmental Authority</b> by way of any activity in relation to <b>any function entrusted to a Panchayat under article 243G</b> of the Constitution. [Omitted words, omitted by NN 14/2018- C.T. (Rate), w.e.f. 27.07.2018] [Entry No. 5 of NN. 12/2017 CT (R)] <b>Analysis of Amendment:</b> Services by Central Government, State Government, Union territory or local authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution are treated as neither supply of goods nor supply of services as per Section 7(2) of the CGST Act, 2017 as notified by NN 14/ 2017 - CT (R), as amended by NN 16/2018 - CT (R), w.e.f. 27.07.2018. Therefore, words "Central Government, State Government, Union territory or local authority" are omitted from this entry to avoid duplicacy.
18.	Supply of service by a <b>Government Entity</b> to Central Government, State Government, Union territory, local authority or any person specified by Central Government, State Government, Union territory or local authority

26. Services supplied by a State Government to **Excess Royalty Collection Contractor (ERCC)** by way of assigning the right to collect royalty on behalf of the State Government on the mineral dispatched by the mining lease holders.
- Provided that at the end of the contract period, ERCC shall submit an account to the State Government and certify that the amount of goods and services tax deposited by mining lease holders on royalty is more than the goods and services tax exempted on the service provided by State Government to the ERCC of assignment of right to collect royalty and where such amount of goods and services tax paid by mining lease holders is less than the amount of goods and services tax exempted, the exemption shall be restricted to such amount as is equal to the amount of goods and services tax paid by the mining lease holders and the ERCC shall pay the difference between goods and services tax exempted on the service provided by State Government to the ERCC of assignment of right to collect royalty and goods and services tax paid by the mining lease holders on royalty.
- Explanation.- "mining lease holder" means a person who has been granted mining lease, quarry lease or license or other mineral concession under the Mines and Minerals (Development and Regulation) Act, 1957, the rules made thereunder or the rules made by a State Government u/s 15(1) of the Mines and Minerals (Development and Regulation) Act, 1957.
- [Entry no. 65B of NN 12/2017 CT(R), inserted by NN 14/2018 CT(R) w.e.f. 27.07.2018]**
- Note:** As per Rajasthan Minor Mineral Concession Rules, 2017, "Excess Royalty Collection Contract" means a contract to collect royalty in excess of annual dead rent and any other charges as may be specified in the contract, on behalf of the Government for specified mineral dispatched by the mining lessee, from the area specified in the contract.
27. **Upfront amount** (called as premium, salami, cost, price, development charges or by any other name) payable in respect of service by way of granting **long term lease of 30 years, or more of industrial plots or plots for development of infrastructure for financial business**, provided by the State Government Industrial Development Corporations or Undertakings or by any other entity having 20% or more ownership of Central Government, State Government, Union territory directly or through an entity which is wholly owned by the Central government, State Government or Union territory to the industrial units or the developers in any industrial or financial business area.
- Conditions:**
- (i) The leased plots shall be used for the purpose for which they are allotted, that is, for industrial or financial activity in an industrial or financial business area;
  - (ii) The State Government concerned shall monitor and enforce the above condition as per the order issued by the State Government in this regard;
  - (iii) In case of any violation or subsequent change of land use, due to any reason whatsoever, the original lessor, original lessee as well as any subsequent lessee or buyer or owner shall be jointly and severally liable to pay the amount of exempted GST, along with applicable interest & penalty; and
  - (iv) The lease agreement entered into by the original lessor with the original lessee or subsequent lessee, or sub-lessee, as well as any subsequent lease or sale agreements, for lease or sale of such plots to subsequent lessees or buyers or owners shall incorporate in the terms and conditions, the fact that the GST was exempted on the long term lease of the plots by the original lessor to the original lessee subject to above condition and that the parties to the said agreements undertake to comply with the same.
- [Entry No. 41 of NN. 12/2017 CT (R)]**
- Analysis:**
- (i) **[Circular No. 101/20/2019 - GST, dated 30.04.2019]:** This exemption is admissible irrespective of whether such upfront amount is payable or paid in one or more instalments, provided the amount is determined upfront.
  - (ii) **Whether location charges or preferential location charges (PLC) collected in addition to the lease premium for long term lease of land constitute part of the lease premium or of upfront amount charged for long term lease of land and are eligible for the same tax treatment [Circular No. 177/09/2022 - GST, dated 03.08.2022]**

	<ul style="list-style-type: none"> <li>• <i>Allowing choice of location of plot is integral part of supply of long-term lease of plot and therefore, location charge is nothing but part of consideration charged for long term lease of plot. Being charged upfront along with the upfront amount for the lease, the same is exempt.</i></li> <li>• <i>Accordingly, as per recommendation of the GST Council, it is clarified that location charges or preferential location charges (PLC) paid upfront in addition to the lease premium for long term lease of land constitute part of upfront amount charged for long term lease of land and are eligible for the same tax treatment, and thus eligible for the above exemption.</i></li> </ul>
28.	<p><b>Transmission or distribution of electricity</b> by an electricity transmission or distribution utility.  <b>[Entry No. 25 of NN. 12/2017 CT (R)]</b></p> <p><b>Notes :</b></p> <ol style="list-style-type: none"> <li>1. As per clause (z) under this notification, ‘<b>Electricity transmission or distribution utility</b>’ means the Central Electricity Authority; a State Electricity Board; the Central Transmission Utility or a State Transmission Utility notified under the Electricity Act, 2003 or a distribution or transmission licensee under the said Act, or any other entity entrusted with such function by the Central Government or, as the case may be, the State Government.</li> <li>2. As per clause (p) under this notification, ‘<b>Central Electricity Authority</b>’ means the authority constituted under section 3 of the Electricity (Supply) Act, 1948.</li> <li>3. As per clause (q) under this notification, ‘<b>Central Transmission Utility</b>’ shall have the same meaning as assigned to it in clause (10) of section 2 of the Electricity Act, 2003.</li> </ol> <p><b>Analysis:</b> Any person would be covered under this exemption entry, only if it is covered under the definition of “electricity transmission or distribution utility”.</p>
29.	<p>Services supplied by electricity distribution utilities by way of <b>construction</b>, erection, commissioning, or installation of infrastructure for extending <b>electricity distribution network upto the tube well</b> of the farmer or agriculturalist for agricultural use. <b>[Entry No. 10A of NN 12/2017 CT (R)]</b></p>
<p><b>Illustration 24 :</b></p> <p>Whether the activities carried by electricity distribution companies of India (DISCOMs) against recovery of charges from consumers under State Electricity Act are exempt from GST?</p> <p><b>Answer :</b> [Circular No. 34/ 8/2018 - GST, dated 01.03.2018]</p> <p>Service by way of transmission or distribution of electricity by an electricity transmission or distribution utility is exempt from GST under notification No. 12/2017- CT (R), Sl. No. 25.</p> <p>However, the other services such as, -</p> <ol style="list-style-type: none"> <li>i. Application fee for releasing connection of electricity;</li> <li>ii. Rental Charges against metering equipment;</li> <li>iii. Testing fee for meters/ transformers, capacitors etc.;</li> <li>iv. Labour charges from customers for shifting of meters or shifting of service lines</li> <li>v. Charges for duplicate bill;</li> </ol> <p>provided by DISCOMS to consumer are taxable, as these are not covered under the exemption entry.</p>	
30.	<p>Services by a foreign diplomatic mission located in India. <b>[Entry No. 59 of NN. 12/2017 CT (R)]</b></p>
31.	<p>Services by a specified organisation in respect of a <b>religious pilgrimage</b> facilitated by the Government of India, under bilateral arrangement. <b>[Entry No. 60 of NN. 12/2017 CT (R)]</b></p> <p><b>Note :</b> As per clause (zzf) under this notification, ‘<b>Specified organisation</b>’ shall mean, -</p> <ul style="list-style-type: none"> <li>• Kumaon Mandal Vikas Nigam Limited, a Government of Uttarakhand Undertaking; or</li> <li>• ‘Committee’ or ‘State Committee’ as defined in section 2 of the Haj Committee Act, 2002.</li> </ul>

	<p>1. Whether composite supply of service by way of milling of wheat into wheat flour, alongwith fortification (adding vitamins &amp; minerals to increase nutritional value), 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 NN 12/2017 - CT (R).</p> <p>2. Entry at Sl. No. 3A of NN 12/2017 - CT (R) exempts “composite supply of goods and services in which the value of supply of goods constitutes not more than 25% of the value of the said composite supply provided to the Central Government, State Government or Union territory or local authority 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”.</p> <p>3. Public Distribution is specifically covered under the scope of 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.</p> <p><b>Clarification on Applicability of GST on sanitation and conservancy services supplied to Army and other Central and State Government departments [Circular No. 177/09/2022 – GST, dated 03.08.2022]</b></p> <p>1. <i>The functions entrusted to Municipalities and Panchayats under articles 243W &amp; 243G of the Indian Constitution also include the activities of Sanitation and conservancy services.</i></p> <p>2. <i>If such services are provided to Indian Army or any other Government Ministry/Department, in the same manner as a local authority does for the general public, then, the same will be eligible for exemption under Sl. No. 3 and 3A of the exemption notification no. 12/2017 - CT (R). Otherwise, it will be chargeable to GST.</i></p>
34.	<p><del>Services of leasing of assets (rolling stock assets including wagons, coaches, locos) by the Indian Railways Finance Corporation to Indian Railways. [Entry No. 43 of NN. 12/2017 CT (R), omitted by NN 07/2021 – CT (R), w.e.f. 01.10.2021]</del></p>
35.	<p><del>Services provided by the Goods and Services Tax Network [GSTN] to the Central Government or State Governments or Union territories for implementation of Goods and Services Tax. [Entry No. 51 of NN. 12/2017 CT (R), omitted by NN 04/2022 CT (R), w.e.f. 18.07.2022]</del></p>
36.	<p>Services provided to the Central Government, State Government, Union territory under any <b>insurance scheme</b> for which <b>total premium is paid</b> by the Central Government, State Government, Union territory. [Entry No. 40 of NN. 12/2017 CT (R)]</p> <p><b>Clarifications regarding applicability of GST [Circular No. 16/16/2017-GST, dated 15.11.2017]</b></p> <p><b>Issue:</b> Is GST leviable on General Insurance policies provided by a State Government to employees of the State government/Police personnel, employees of Electricity Department or students of colleges/ private schools, etc.</p> <p>(a) where premium is paid by State Government and</p> <p>(b) where premium is paid by employees, students, etc.?</p> <p><b>Clarification:</b></p> <p>(a) It is hereby clarified that services provided to the Central Government, State Government, Union territory under any insurance scheme for which total premium is paid by the Central Government, State Government, Union territory are exempt from GST under entry no. 40 of NN. 12/2017 CT (R).</p> <p>(b) Further, services provided by State Government by way of general insurance (managed by government) to employees of the State government / Police personnel, employees of Electricity Department or students are also exempt vide entry no. 6 of NN. 12/2017 CT (R) which exempts Services by Central Government, State Government, Union territory or local authority to individuals.</p>
37.	<p>Services provided to the Central Government, State Government, Union territory administration under <b>any training programme</b> for which <b>75% or more of the total expenditure is borne by the Central Government,</b></p>

	<p>(a) <b>to a state transport undertaking</b>, a motor vehicle meant to carry <b>more than 12 passengers</b>; or</p> <p>(aa) <b>to a local authority</b>, an <b>Electrically operated vehicle</b> meant to carry <b>more than 12 passengers</b> [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 which is run solely on electrical energy derived from an external source or from one or more electrical batteries fitted to such road vehicle.]; or</p> <p>(b) <b>to a goods transport agency</b>, a means of transportation of goods; or</p> <p>(c) <b>motor vehicle for transport of students, faculty and staff</b>, 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.</p> <p>[Entry No. 22 of NN. 12/2017 CT (R)]</p> <p><b>Examples:</b></p> <p>(i) If a bus is given on hire to a state transport undertaking, then, GST is exempted on the hire charges.</p> <p>(ii) Similarly, if a truck is given on hire to a GTA, then, GST is exempted on the hire charges.</p>
44.	Services by way of <b>granting National Permit to a goods carriage</b> to operate through-out India/contiguous States. [Entry No. 61A of NN. 12/2017 CT (R)]

**Analytical Note :**

Services provided by **Police/security** agencies of Government to PSUs/corporate entities/sports events held by private entities

- Services provided by Police or security agencies of Government to PSU/private business entities are not exempt from GST.
- Such services are taxable supplies and the recipients are required to pay the tax under reverse charge mechanism on the amount of consideration paid to Government for such supply of services [See the reverse charge provisions as discussed in Chapter - 7].



**Example:** The Karnataka Cricket Association, Bangalore requests the Commissioner of Police, Bangalore to provide security in and around the Cricket Stadium for the purpose of conducting the cricket match. The Commissioner of Police arranges the required security for an agreed consideration. In this case, services of providing security by the police personnel are not exempt. As the services are provided by Government, Karnataka Cricket Association is liable to pay the tax on the consideration paid, albeit under reverse charge mechanism.

**Illustration 25 :**

Whether the guarantee provided by State Government to state owned companies against guarantee commission, is taxable under GST?

**Answer :**

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 are exempt from GST as per entry no. 34A of NN 12/2017.

Banking Related Services	
1. 	<b>Services by the Reserve Bank of India.</b> [Entry No. 26 of NN. 12/2017 CT (R), omitted by NN. 04/2022 CT (R), w.e.f. 18.07.2022]
2. 	<b>Services received by the RBI, from outside India in relation to management of foreign exchange reserves.</b> [Entry No. 42 of NN. 09/2017 IT (R), omitted by NN 04/2022 IT (R), w.e.f. 18.07.2022]
3.	Services by way of - <ul style="list-style-type: none"> <li>(a) extending deposits, loans or advances in so far as the consideration is represented by way of <b>interest or discount</b> (other than interest involved in credit card services);</li> <li>(b) inter se sale or purchase of <b>foreign currency amongst banks or authorized dealers</b> of foreign exchange or</li> </ul>



	<p>(vii) if the registered recipient <b>intends to aggregate supplies</b> from multiple registered suppliers and then export, then, the goods from each registered supplier shall move to a <b>registered warehouse</b> and after aggregation, the registered recipient shall move goods to the Port, Inland Container Depot, Airport or Land Customs Station from where they shall be exported;</p> <p>(viii) in case of situation referred to in condition (vii), the registered recipient shall <b>endorse receipt of goods</b> on the tax invoice and also <b>obtain acknowledgement</b> of receipt of goods in the registered warehouse from the warehouse operator and the endorsed tax invoice and the acknowledgment of the warehouse operator shall be provided to the registered supplier as well as to the jurisdictional tax officer of such supplier; and</p> <p>(ix) when goods have been exported, the registered recipient shall provide copy of shipping bill or bill of export containing details of Goods and Services Tax Identification Number (GSTIN) and tax invoice of the registered supplier along with <b>proof of export general manifest</b> or export report having been filed, to the registered supplier as well as jurisdictional tax officer of such supplier.</p> <p><b>Note :</b> The registered supplier shall <b>not be eligible</b> for the above mentioned exemption if the registered recipient <b>fails to export</b> the said goods within a period of <b>90 days</b> from the date of issue of tax invoice.</p>
5.	<p><b>Exemption to Central Government's share of Profit Petroleum from GST [NN 05/2018 - CT (R) and NN 05 2018 - IT (R), dated 25.01.2018]:</b></p> <p>The Central Government, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, has exempted the intra-State and inter-state supply of services by way of <b>grant of license or lease to explore or mine petroleum crude or natural gas</b> or both, from so much of the GST as is leviable on the consideration paid to the Central Government in the form of <b>Central Government's share of profit petroleum</b> as defined in the contract entered into by the Central Government in this behalf.</p>
6.	<p><b>Clarification regarding applicability of GST on Asian Development Bank (ADB) and International Finance Corporation (IFC) [Circular No. 83/02/2019- GST, dated 01-01-2019]</b></p> <ol style="list-style-type: none"> <li>1. The ADB Act, 1966 provides that notwithstanding anything to the contrary contained in any other law, the Bank, its assets, properties, income and its operations and transactions shall be exempt from all the taxation and from all customs duties. The Bank shall also be exempt from any obligation for payment, withholding or collection of any tax or duty [Section 5(1) of the ADB Act, 1966 read with Article 56(1) of the schedule thereto refers]. DEA has already conveyed vide letter No. 1/28/2002-ADB dated 22-01-2004 addressed to ADB that taxable services provided by ADB are exempted from service tax.</li> <li>2. Similarly, IFC Act, 1958 also provides that notwithstanding anything to the contrary contained in any other law, the Corporation, its assets, properties, income and its operations and transactions authorised by the Agreement, shall be immune from all taxation and from all customs duties. The Corporation shall also be immune from liability for the collection or payment of any tax or duty [Section 3 (1) of IFC Act, 1958 read with Article VI, Section 9 (a) of the Schedule thereto refers].</li> <li>3. CESTAT Mumbai vide final order dated 17-10-2016 in the case of M/s Coastal Gujarat Power Ltd. has held that when the enactments that honour international agreements specifically immunize the operations of the service provider from taxability, a law contrary to that in the form of Section 66A of Finance Act, 1994 will not prevail. With the provider being not only immune from taxation but also absolved of any obligation to collect and deposit any tax, there is no scope for subjecting the recipient to tax. There is no need for a separate exemption and existing laws enacted by the sovereign legislature of the Union suffice for the purpose of giving effect to Agreements.</li> <li>4. Accordingly, it is clarified that the services provided by IFC and ADB are exempt from GST in terms of provisions of IFC Act, 1958 and ADB Act. The exemption will be available only to the services provided by ADB and IFC and not to any entity appointed by or working on behalf of ADB or IFC.</li> </ol>
7.	<p><b>Clarification on applicability of GST on payment of Honorarium to the Guest Anchors [Circular No. 177/09/2022 - GST, dated 03.08.2022]</b></p> <ol style="list-style-type: none"> <li>1. <i>Sansad TV and other TV channels invite guest anchors for participating in their shows and pays remuneration to them in the form of honorarium. Some of the guest anchors have requested payment of GST @ 18% on the honorarium paid to them for such appearances.</i></li> <li>2. <i>It is clarified that supply of all goods &amp; services are taxable unless exempt or declared as 'neither a supply of goods nor a supply of service'. Services provided by the guest anchors in lieu of honorarium attract GST</i></li> </ol>



	<i>liability. However, guest anchors whose aggregate turnover in a financial year does not exceed Rs 20 lakhs (Rs 10 lakhs in case of special category states) shall not be liable to take registration and hence, will not be liable to pay GST.</i>
--	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

**Note:** Above services have been exempted from CGST, SGST and IGST (if any) by virtue of notifications issued under respective Acts.



**Clarification on GST applicability on Liquidated Damages, Compensation and Penalty arising out of breach of contract or other provisions of law - [Circular No. 178/10/2022 - GST, dated 03.08.2022]**

1. *“Agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act” has been specifically declared to be a supply of service in para 5(e) of Schedule II of CGST Act if the same constitutes a “supply” within the meaning of Sec. 7 of the Act. The said expression has following three limbs:*

**a. Agreeing to the obligation to refrain from an act**

*Example of activities that would be covered by this part of the expression would include non-compete agreements, where one party agrees not to compete with the other party in a product, service or geographical area against a consideration paid by the other party.*

*Another example of such activities would be a builder refraining from constructing more than a certain number of floors, even though permitted to do so by the municipal authorities, against a compensation paid by the neighbouring housing project, which wants to protect its sunlight, or an industrial unit refraining from manufacturing activity during certain hours against an agreed compensation paid by a neighbouring school, which wants to avoid noise during those hours.*

**b. Agreeing to the obligation to tolerate an act or a situation**

*This would include activities such as a shopkeeper allowing a hawker to operate from the common pavement in front of his shop against a monthly payment by the hawker, or an RWA tolerating the use of loud speakers for early morning prayers by a school located in the colony subject to the school paying an agreed sum to the RWA as compensation.*

**c. Agreeing to the obligation to do an act**

*This would include the case where an industrial unit agrees to install equipment for zero emission/discharge at the behest of the RWA of a neighbouring residential complex against a consideration paid by such RWA, even though the emission/discharge from the industrial unit was within permissible limits and there was no legal obligation upon the individual unit to do so.*

2. *The description “agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act” was intended to cover services such as described above. However, over the years doubts have persisted regarding various transactions being classified under the said description.*

*Some of the important examples of such cases are Service Tax/GST demands on -*

- i. Liquidated damages paid for breach of contract;*
- ii. Compensation given to previous allottees of coal blocks for cancellation of their licenses pursuant to Supreme Court Order;*
- iii. Cheque dishonour fine/penalty charged by a power distribution company from the customers;*
- iv. Penalty paid by a mining company to State Government for unaccounted stock of river bed material;*
- v. Bond amount recovered from an employee leaving the employment before the agreed period;*
- vi. Late payment charges collected by any service provider for late payment of bills;*
- vii. Fixed charges collected by a power generating company from State Electricity Boards (SEBs) or by SEBs/DISCOMs from individual customer for supply of electricity;*
- viii. Cancellation charges recovered by railways for cancellation of tickets, etc.*

*In some of these cases, tax authorities have initiated investigation and in some advance ruling authorities have upheld taxability.*

3. *An activity done without the express or implied contractual reciprocity of a consideration would not be an 'activity for consideration'. The element of contractual relationship, where one supplies goods or services at the desire of another, is an essential element of supply.*
4. *The description of the declared service in question is strikingly similar to the definition of contract in the Contract Act, 1872. A contract to do something or to abstain from doing something cannot be said to have taken place unless there are two parties, one of which expressly or impliedly agrees to do or abstain from doing something and the other agrees to pay consideration to the first party for doing or abstaining from such an act. There must be a necessary and sufficient nexus between the supply (i.e. agreement to do or to abstain from doing something) and the consideration.*
5. *To fall within the ambit of the term 'Supply', one of the parties to such agreement/contract must be under a contractual obligation to either (a) refrain from an act, or (b) to tolerate an act or a situation or (c) to do an act. Further some "consideration" must flow in return from the other party to this contract/agreement to the first party for such (a) refraining or (b) tolerating or (c) doing.*
6. *Agreement to do or refrain from an act should not be presumed to exist: Payments such as liquidated damages for breach of contract, penalties under the mining act for excess stock found with the mining company, forfeiture of salary or payment of amount as per the employment bond for leaving the employment before the minimum agreed period, penalty for cheque dishonour etc. are not a consideration for tolerating an act or situation. Such amounts are for preventing breach of contract or non-performance and are thus mere 'events' in a contract. Further, such amounts do not constitute payment (or consideration) for tolerating an act, because there cannot be any contract: (a) for breach thereof, or (b) for holding more stock than permitted under the mining contract, or (c) for leaving the employment before the agreed minimum period or (d) for doing something leading to the dishonour of a cheque. Hence, such activities will not constitute "supply".*

#### 6.1 Liquidated Damages

- *Breach or non-performance of contract by one party results in loss and damages to the other party. It is common for the parties entering into a contract, to specify in the contract itself, the compensation that would be payable in the event of the breach of the contract. Such compensation is referred to as liquidated damages.*
- *Payment of liquidated damages is stipulated in a contract to ensure performance and to deter non-performance, unsatisfactory performance or delayed performance. Liquidated damages are a measure of loss and damage that the parties agree would arise due to breach of contract. It is further argued that a contract is entered into for execution and not for its breach. The liquidated damages or penalty are not the desired outcome of the contract.*
- *There is no agreement, express or implied, by the aggrieved party receiving the liquidated damages, to refrain from or tolerate an act or to do anything for the party paying the liquidated damages, in such cases liquidated damages are mere a flow of money from the party who causes breach of the contract to the party who suffers loss or damage due to such breach. Such payments do not constitute consideration for a supply and are not taxable.*
- *Examples of such cases are damages resulting from damage to property, negligence, piracy, unauthorized use of trade name, copyright, etc. Other examples that may be covered here are the penalty stipulated in a contract for delayed construction of houses. Similarly, forfeiture of earnest money by a seller in case of breach of 'an agreement to sell' an immovable property by the buyer or by Government or local authority in the event of a successful bidder failing to act after winning the bid, for allotment of natural resources, is a mere flow of money, as the buyer or the successful bidder does not get anything in return for such forfeiture of earnest money. Forfeiture of Earnest money is stipulated in such cases not as a consideration for tolerating the breach of contract but as a compensation for the losses suffered and as a penalty for discouraging the non-serious buyers or bidders. Such payments being merely flow of money are not a consideration for any supply and are not taxable.*
- *If a payment constitutes a consideration for a supply, then it is taxable irrespective of by what name it is called. For example, a contract may provide that payment by the recipient of goods or services shall be made before a certain date and failure to make payment by the due date shall attract late fee or penalty. A contract for transport of passengers may stipulate that the ticket amount shall be partly or wholly forfeited if the passenger does not show up. A contract for package tour may stipulate forfeiture of security deposit in the event of cancellation of tour by the customer. Similarly, a contract for lease of movable or immovable property may stipulate that the lessee shall not terminate the lease before a certain period and if he does so he will have*

to pay certain amount as early termination fee or penalty. Some banks similarly charge pre-payment penalty if the borrower wishes to repay the loan before the maturity of the loan period. Such amounts paid for acceptance of late payment, early termination of lease or for pre-payment of loan or the amounts forfeited on cancellation of service by the customer as contemplated by the contract as part of commercial terms agreed to by the parties, constitute consideration for the supply of a facility, namely, of acceptance of late payment, early termination of a lease agreement, of pre-payment of loan and of making arrangements for the intended supply by the tour operator respectively. Therefore, such payments, even though they may be referred to as fine or penalty, are actually payments that amount to consideration for supply, and are subject to GST, in cases where such supply is taxable. Since these supplies are ancillary to the principal supply for which the contract is signed, they shall be eligible to be assessed as the principal supply.

#### 6.2 Compensation for Cancellation of Coal Blocks

- In the year 2014, coal block/mine allocations were cancelled by the Hon'ble Supreme Court. Prior (old) allottee of mines were given compensation in the year 2016 towards the transfer of their rights/ titles in the land, mine infrastructure, geological reports, consents, approvals etc. to the new entity (successful bidder) as per the directions of Hon'ble Supreme Court.
- There was no agreement between the prior allottees of coal blocks and the Government that the previous allottees shall agree to or tolerate cancellation of the coal blocks allocated to them if the Government pays compensation to them. No such promise or offer was made by the prior allottees to the Government. The allottees had no option but to accept the cancellation. Therefore, the compensation paid for cancellation of coal blocks pursuant to the order of the Supreme Court in the above case was not consideration for any supply of service and hence, not taxable.

#### 6.3 Cheque dishonor fine/ penalty

- No supplier wants a cheque given to him to be dishonoured. The fine or penalty that the supplier or a banker imposes, for dishonour of a cheque, is a penalty imposed for deterring and discouraging such an act or situation. Therefore, cheque dishonor fine or penalty is not a consideration for any service and not taxable.

#### 6.4 Penalty imposed for violation of laws

- Penalty imposed for violation of laws such as traffic violations, or for violation of pollution norms or other laws are also not consideration for any supply received and are not taxable, which are also not taxable. Same is the case with fines, penalties imposed by the mining Department of a Central or State Government or a local authority on discovering mining of excess mineral beyond the permissible limit or of mining activities in violation of the mining permit. Such penalties imposed for violation of laws cannot be regarded as consideration charged by Government or a Local Authority for tolerating violation of laws. Laws are not framed for tolerating their violation. They stipulate penalty not for tolerating violation but for not tolerating, penalizing and deterring such violations. There is no agreement between the Government and the violator specifying that violation would be allowed or permitted against payment of fine or penalty. Therefore, these fines or penalties cannot be considered as consideration and hence, no GST is not leviable.

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

- An employer carries out an elaborate selection process and incurs expenditure in recruiting an employee, invests in his training and makes him a part of the organization, privy to its processes and business secrets in the expectation that the recruited employee would work for the organization for a certain minimum period. Premature leaving of the employment results in disruption of work and an undesirable situation. The provisions for forfeiture of salary or recovery of bond amount in the event of the employee leaving the employment before the minimum agreed period are incorporated in the employment contract to discourage non-serious candidates from taking up employment. The said amounts are recovered by the employer not as a consideration for tolerating the act of such premature quitting of employment but as penalties for dissuading the non-serious employees from taking up employment and to discourage and deter such a situation. Further, the employee does not get anything in return from the employer against payment of such amounts. Therefore, such amounts recovered by the employer are not taxable as consideration for the service of agreeing to tolerate an act or a situation.

#### 7. Compensation for not collecting toll charges

- In the wake of demonetization, NHAI directed the concessionaires (toll operators) to allow free access of toll roads to the users from 8.11.2016 to 1.12.2016 for which the loss of toll charge was paid as compensation by NHAI as per the instructions of Ministry of Road Transportation and Highways. The toll reimbursements were calculated based on the average monthly collection of toll. A question arose whether the compensation paid to the concessionaire by project authorities (NHAI) in lieu of suspension of toll collection during the demonetization period (from 8.11.2016 to 1.12.2016) was taxable as a service by way of agreeing to refrain from collection of toll from users.
- It has been clarified vide Circular No. 212/2/2019-ST dated 21.05.2019 that the service that is provided by toll operators is that of access to a road or bridge, toll charges being merely a consideration for that service. During the period from 8.11.2016 to 1.12.2016, the service of access to a road or bridge continued to be provided without collection of toll from users. Consideration came from the project authority. The fact that for this period, for the same service, consideration came from a person other than the actual user of service does not mean that the service has changed.

#### 8. Late payment surcharge or fee

- The facility of accepting late payments with interest or late payment fee, fine or penalty is a facility granted by supplier naturally bundled with the main supply. It is common or natural for customers to sometimes miss the last date of payment of electricity, water, telecommunication services etc. Almost all service providers across the world provide the facility of accepting late payments with late fine or penalty. Even if this service is described as a service of tolerating the act of late payment, it is an ancillary supply naturally bundled and supplied in conjunction with the principal supply, and therefore should be assessed as the principal supply. Since it is ancillary to and naturally bundled with the principal supply such as of electricity, water, telecommunication, cooking gas, insurance etc. it should be assessed at the same rate as the principal supply. However, the same cannot be said of cheque dishonor fine or penalty as discussed in the preceding paragraphs.

#### 9. Fixed Capacity charges for Power

- The price charged for electricity by the power generating companies from the State Electricity Boards (SEBs)/DISCOMS or by SEBs/DISCOMs from individual customers has two components, namely, a minimum fixed charge (or capacity charge) and variable per unit charge. The minimum fixed charges have to be paid by the SEBs/DISCOMS/individual customers irrespective of the quantity of electricity scheduled or purchased by them during a month. They take care of the fixed cost of generating/ supplying electricity. The variable charges are charged per unit of electricity purchased and increase or decrease every month depending on the quantity of electricity consumed.
- The fact that the minimum fixed charges remain the same whether electricity is consumed or not or it is scheduled/consumed below the contracted or available capacity or a minimum threshold, does not mean that minimum fixed charge or part of it is a charge for tolerating the act of not scheduling or consuming the minimum the contracted or available capacity or a minimum threshold.
- Both the components of the price, the minimum fixed charges/capacity charges and the variable/energy charges are charged for sale of electricity and are thus not taxable as electricity is exempt from GST. Power purchase agreements may have provisions that the power producer shall not supply electricity to a third party without approval of buyer. Such agreements which ensure assured supply of power to State Electricity Boards/DISCOMS are ancillary arrangements; the contract is essentially for supply of electricity.

#### 10. Cancellation charges

- A supply contracted for, such as booking of hotel accommodation, an entertainment event or a journey, may be cancelled by a customer or may not proceed as intended due to his failure to show up for availing the same at the designated place and time. The supplier may allow cancellation of supply by the customer within a certain specified time period on payment of cancellation fee as per commercial terms of the contract. In case the customer does not show up for availing the service, the supplier may retain or forfeit part of the consideration or security deposit or earnest money paid by the customer for the intended supply.
- It is a common business practice for suppliers of services such as hotel accommodation, tour and travel, transportation etc. to provide the facility of cancellation of the intended supplies within a certain time period on payment of cancellation fee. Cancellation fee can be considered as the charges for the costs involved in





making arrangements for the intended supply and the costs involved in cancellation of the supply, such as in cancellation of reserved tickets by the Indian Railways.

- Services such as transportation travel and tour constitute a bundle of services. The transportation service, for instance, starts with booking of the ticket for travel and lasts at least till exit of the passenger from the destination terminal. All services such as making available an online portal or convenient booking counters with basic facilities at the transportation terminal or in the city, to reserve the seats and issue tickets for reserved seats much in advance of the travel, giving preferred seats with or without extra cost, lounge and waiting room facilities at airports, railway stations and bus terminals, provision of basic necessities such as soap and other toiletries in the wash rooms, clean drinking water in the waiting area etc. form part and parcel of the transportation service; they constitute the various elements of passenger transportation service, a composite supply. The facilitation service of allowing cancellation against payment of cancellation charges is also a natural part of this bundle. It is invariably supplied by all suppliers of passenger transportation service as naturally bundled and in conjunction with the principal supply of transportation in the ordinary course of business.
  - Therefore, facilitation supply of allowing cancellation of an intended supply against payment of cancellation fee or retention or forfeiture of a part or whole of the consideration or security deposit in such cases should be assessed as the principal supply. For example, cancellation charges of railway tickets for a class would attract GST at the same rate as applicable to the class of travel (i.e., 5% GST on first class or air-conditioned coach ticket and nil for other classes such as second sleeper class). Same is the case for air travel.
  - Accordingly, the amount forfeited in the case of non-refundable ticket for air travel or security deposit or earnest money forfeited in case of the customer failing to avail the travel, tour operator or hotel accommodation service or such other intended supplies should be assessed at the same rate as applicable to the service contract, say air transport or tour operator service, or other such services.
  - However, as discussed above, forfeiture of earnest money by a seller in case of breach of 'an agreement to sell' an immovable property by the buyer or such forfeiture by Government or local authority in the event of a successful bidder failing to act after winning the bid for allotment of natural resources, is a mere flow of money, as the buyer or the successful bidder does not get anything in return for such forfeiture of earnest money. Forfeiture of earnest money is stipulated in such cases not as a consideration for tolerating the breach of contract but as a compensation for the losses suffered and as a penalty for discouraging the non-serious buyers or bidders. Such payments being merely flow of money are not a consideration for any supply and are not taxable.
11. It is advised that while the taxability in each case shall depend on facts of that case, the above guidelines may be followed in determining whether tax on an activity or transaction needs to be paid treating the same as service by way of agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act.

**Sapne mat dekho ,**

**Sapne dekhe jate hai...**

**Aim rakho kyuki**

**AIM achieve kie jaate hai...**

from registration as it is engaged exclusively in making supplies, tax on which is liable to be paid on reverse charge basis.

Further, Manikaran Transporters supplies said service to Diwakar Manufacturing Pvt. Ltd. whose aggregate turnover does not exceed the applicable threshold limit. However, since Diwakar Manufacturing Pvt. Ltd. has to pay tax on GTA services [@ 5%] under reverse charge, it is required to obtain registration mandatorily irrespective of its aggregate turnover.

4. **\*\*Exemption from registration for any person engaged exclusively in supply of goods and whose aggregate turnover in the FY does not exceed Rs. 40 Lakhs [NN. 10/2019-CT, w.e.f. 01.04.2019]**

In exercise of the powers conferred by sub-section (2) of section 23 of the CGST Act, 2017, the Central Government, on the recommendations of the Council, hereby specifies the following category of persons, as the category of persons exempt from obtaining registration under the said Act, namely,-

Any person, who is engaged in exclusive supply of goods and whose aggregate turnover in the financial year does not exceed Rs. 40 lakhs, except, -

- (a) persons required to take compulsory registration under section 24 of the said Act;
- (b) persons engaged in making **supplies** of the following goods:

S. N.	Tariff	Description
1.	2105 00 00	Ice cream and other edible ice, whether or not containing cocoa
2.	2106 90 20	Pan masala
3.	24	All goods, i.e. Tobacco and manufactured tobacco substitutes
4.	6815* <span style="color: red; border: 1px solid red; border-radius: 50%; padding: 2px;">A</span>	<del>Fly ash bricks; fly ash aggregates with 90% or more fly ash content; Fly ash blocks</del> [omitted words, omitted by NN 15/2022 - CT, w.e.f. 18.07.2022]
5.	6901 00 10*	Bricks of fossil meals or similar siliceous earths
6.	6904 10 00*	Building bricks
7.	6905 10 00*	Earthen or roofing tiles

\*[inserted by NN 03/2022 - C.T., w.e.f. 01.04.2022]

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

**Explanation.-** For the this purpose, a person shall be considered to be engaged **exclusively in the supply of goods even if** he is engaged in exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of **interest** or discount. [Explanation inserted in Sec. 22(1) by Finance (No. 2) Act, 2019, w.e.f. 01.01.2020]

In view the above discussion, the registration requirements under GST can be summarised as follows:

		Threshold limit for persons engaged	
		exclusively in supply of goods	in supply of services / both goods & services
States other than Special Category	Puducherry	Rs. 20 lakh	Rs. 20 Lakh
	Telangana	Rs. 20 lakh	Rs. 20 Lakh



**B. Circumstances when the proper officer can cancel registration on his own :** In the following cases, registration can be cancelled by the proper officer from such date, including any retrospective date, as he may deem fit:

(i) Following contraventions done by the registered person **[Rule 21]** :

- (a) He does not conduct any business from the declared place of business; or
- (b) He issues invoice/bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder; or
- (c) If he violates the provisions of section 171 of the CGST Act (i.e. provisions relating to anti-profiteering measure); or
- (d) If he violates the provisions of Rule 10A [i.e. Furnishing of Bank Account Details]; or
- (e) avails input tax credit in violation of the provisions of section 16 of the Act or the rules made thereunder; or
- (f) furnishes the details of outward supplies in FORM GSTR-1 under section 37 for one or more tax periods which is in excess of the outward supplies declared by him in his valid return under section 39 for the said tax periods; or
- (g) violates the provision of rule 86B [i.e. Restriction on use of amount available in electronic credit ledger in excess of 99% of the output tax liability]; or

(h) *a registered person (who is required to furnish returns on monthly basis) has not furnished returns for a continuous period of 6 months; or [inserted by NN 19/2022 - CT, w.e.f. 01.10.2022]*

(i) *a registered person (who is required to furnish returns on quarterly basis) has not furnished returns for a continuous period of 2 tax periods. [inserted by NN 19/2022 - CT, w.e.f. 01.10.2022]*

(ii) A registered person who has opted for composition levy, has not furnished *the return for a financial year beyond 3 months from the due date of furnishing the said return* ~~returns for 3 consecutive tax periods~~ [as amended by Finance Act, 2022, w.e.f. 01.10.2022]

(iii) Voluntarily registered person has not commenced the business within 6 months from the date of registration.

(iv) Registration was obtained by means of fraud, willful misstatement or suppression of facts.

However, during pendency of the proceedings relating to cancellation of registration, the proper officer may suspend the registration for such period and in such manner as may be prescribed.

## 2. Procedure for cancellation of registration : [Rule 20, 21A and 22]

- A registered person seeking cancellation of registration shall electronically submit the **application** for cancellation of registration in prescribed form **within 30 days** of occurrence of the event warranting cancellation.
- He is required to furnish in the application the details of inputs held in stock or inputs contained in semi-finished/finished goods held in **stock** and of capital goods held in stock on the date from which cancellation of registration is sought, liability thereon, details of the payment, if any, made against such liability and may furnish relevant documents thereof.
- **Where a person who has submitted an application for cancellation of his registration** is no longer liable to be registered, proper officer shall issue the **order** of cancellation of registration **within 30 days** from the date of submission of application for cancellation.
- **Rule 22(1): Where the proper officer cancels the registration suo-motu**, he shall not cancel the same without giving a **show cause notice** and without giving a reasonable opportunity of being heard, to the registered

person. The **reply** to such show cause notice (SCN) has to be submitted **within 7 days** of service of notice [Rule 22(2)].

- If reply to the SCN furnished u/r 22(2) or in response to the notice issued u/r 21A(2A) is **satisfactory** proper officer shall **drop the proceedings** and pass an order in prescribed form. Where registration of a person is liable to be cancelled, proper officer shall issue the **order of cancellation** of registration within **30 days** from the date of **reply** to SCN issued u/r 22(1) or u/r 21A(2A).
- Provided that where the person, **instead of replying** to the notice, **furnishes all the pending returns** and makes full payment of the tax dues along with applicable interest and late fee, the proper officer shall **drop the proceedings** and pass an order in prescribed form.
- **Rule 21A. Suspension of registration [inserted by NN 03/2019 – CT, w.e.f. 01.02.2019] :**

(1) **Period of Suspension:** Where a registered person has applied for cancellation of registration, the registration shall be deemed to be suspended from the date of submission of the application or the date from which the cancellation is sought, whichever is later, pending the completion of proceedings for cancellation of registration.

(2) **Suspension by Department:** Where the proper officer has reasons to believe that the registration of a person is liable to be cancelled under section 29 or under rule 21, he may, ~~after affording the said person a reasonable opportunity of being heard,~~ suspend the registration of such person with effect from a date to be determined by him, pending the completion of the proceedings for cancellation of registration [Omitted words, omitted by NN 94/2020 – CT, w.e.f. 22.12.2020, giving power to the proper officer to suspend the registration without giving opportunity of being heard to the registered person].

(2A) **Analysis by Department leading to Suspension:** Where, a comparison of the returns (i.e. GSTR – 3B) furnished by a registered person under section 39 with

- (a) the details of outward supplies furnished in FORM GSTR-1; or
- (b) the details of inward supplies derived based on the details of outward supplies furnished by his suppliers in their FORM GSTR-1,

or such other analysis, as may be carried out on the recommendations of the Council, show that there are **significant differences or anomalies** indicating contravention of the provisions of the Act or the rules made thereunder, leading to cancellation of registration of the said person, his registration shall be **suspended** and the said person shall be intimated electronically, on the common portal, or by sending a communication to his e-mail address, highlighting the said differences and anomalies and asking him to **explain**, within a period of **30 days**, as to why his registration shall not be cancelled.

(3) **No Taxable Supply/Return during Suspension:** A registered person, whose registration has been suspended under sub-rule (1) or sub-rule (2) or sub-rule (2A), shall not make any taxable supply during the period of suspension and shall not be required to furnish any return under section 39.

**Explanation:** For the purposes of this sub-rule, 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.

(3A) **No Refund during Suspension:** A registered person, whose registration has been suspended under sub-rule (2) or sub-rule (2A), shall not be granted any refund under section 54, during the period of suspension of his registration.

(4) **Revocation of Suspension:** The suspension of registration under sub-rule (1) or sub-rule (2) or sub-rule (2A) shall be deemed to be revoked upon completion of the proceedings by the proper officer and such revocation shall be effective from the date on which the suspension had come into effect.

P. T. O.

However, the suspension of registration under this rule may be revoked by the proper officer, anytime during the pendency of the proceedings for cancellation, if he deems fit.



*Further, where the registration has been suspended under sub-rule (2A) for contravention of the provisions contained in section 29(2) clause (b) or clause (c) (i.e. due to non-furnishing of returns by regular or composition taxpayer for prescribed tax periods) and the registration has not already been cancelled by the proper officer under rule 22, the suspension of registration shall be deemed to be revoked upon furnishing of all the pending returns. [proviso inserted by NN 14/2022 - CT, w.e.f. 05.07.2022]*

(5) **Tax Invoice/Returns after Revocation of Suspension:** Where any order having the effect of revocation of suspension of registration has been passed, the provisions of section 31(3)(a) [i.e. **Revised Tax Invoice**] and section 40 [i.e. **First Return**] in respect of the supplies made during the period of suspension and the procedure specified therein shall apply.

- The cancellation of registration shall be effective from a date to be determined by the proper officer. He will direct the taxable person to pay arrears of any tax, interest or penalty including the amount liable to be paid under section 29(5) [as discussed in the subsequent paras].

### 3. Reversal of credit [Section 29(5) & (6)] [also discussed in Chapter 5, Topic 5.8] :

- A registered person whose registration is cancelled will have to debit the electronic credit or cash ledger by an amount equal to

(1) **input tax credit (ITC)** in respect of :

stock of inputs and inputs contained in semi-finished/finished goods stock and capital goods or plant and machinery on the day immediately preceding the date of cancellation,

or

(2) the **output tax payable** on such goods,

**whichever is higher**, calculated in such manner as may be prescribed.

- However, in case of capital goods or plant and machinery, the taxable person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery, reduced by such percentage points as **may be prescribed** or the tax on the transaction value of such capital goods or plant and machinery under section 15, **whichever is higher**.

- The manner of determination of amount of credit to be reversed is prescribed under rule 44 of the CGST Rules, 2017. On conjoint reading of section 29(5) and rule 44, it can be inferred as follows:

- **Amount of credit to be reversed in respect of INPUTS:**

(1) ITC in respect of inputs calculated in accordance with rule 44 of the CGST Rules, 2017 (i.e. ITC on inputs computed proportionately on the basis of corresponding invoices\* on which credit had been availed on such inputs) or

(2) Output tax payable on such goods,

**whichever is higher**

\*If tax invoices are not available, the ITC to be reversed will be based on the prevailing market price of such goods on the date of cancellation.

- **Amount of credit to be reversed in respect of CAPITAL GOODS OR PLANT & MACHINERY:**

(1) ITC in respect of capital goods or plant & machinery calculated in accordance with rule 44 of the CGST Rules, 2017 (i.e. ITC involved in the remaining useful life in months of the capital goods will be reversed on pro-rata basis, taking the useful life as 5 years) or

(2) Tax on the transaction value of such capital goods or plant and machinery under section 15,

**whichever is higher**

	<p>recorded in writing, by notification, extend the time limit for furnishing the annual statement for such class of registered persons as may be specified therein:</p> <p>Provided further that any extension of time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.</p>
(6)	<p>If any operator after furnishing a statement under sub-section (4) discovers any <b>omission or incorrect</b> particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall <b>rectify</b> such omission or incorrect particulars in the statement to be furnished for the month during which such omission or incorrect particulars are <b>noticed</b>, subject to <b>payment of interest</b>, as specified in sub-section (1) of section 50:</p> <p><b>(A)</b> Provided that <b>no such rectification</b> of any omission or incorrect particulars shall be <b>allowed</b> after the <b>due date for furnishing of statement for the month of September 30<sup>th</sup> day of November</b> following the end of the financial year <b>or the actual date of furnishing of the relevant annual statement</b>, whichever is <b>earlier</b>. <i>[words "due date for furnishing of statement for the month of September" are substituted by "30<sup>th</sup> day of November" by Finance Act, 2022, w.e.f. 01.10.2022]</i></p>
(7)	The supplier who has supplied the goods or services or both through the operator shall claim credit, in his <b>electronic cash ledger</b> , of the amount collected and reflected in the statement of the operator furnished under sub-section (4), in such manner as may be prescribed.
(8)	The <b>details of supplies</b> furnished by every operator under sub-section (4) shall be <b>matched</b> with the corresponding details of outward supplies furnished by the concerned <b>supplier</b> registered under this Act in such manner and within such time as may be prescribed.
(9)	Where the details of outward supplies furnished by the operator under sub-section (4) <b>do not match</b> with the corresponding details furnished by the supplier under section 37 or Section 39, the <b>discrepancy</b> shall be <b>communicated to both persons</b> in such manner and within such time as may be prescribed.
(10)	The amount in respect of which any <b>discrepancy</b> is communicated under sub-section (9) and which is <b>not rectified by the supplier</b> in his valid return <b>or the operator</b> in his statement for the month in which discrepancy is communicated, shall be <b>added to the output tax liability</b> of the <b>said supplier</b> , where the value of <b>outward supplies furnished by the operator is more</b> than the value of outward supplies furnished by the supplier, in his return for the month succeeding the month in which the discrepancy is communicated in such manner as may be prescribed.
(11)	The concerned <b>supplier</b> , in whose output tax liability any amount has been added under sub-section (10), shall <b>pay the tax payable</b> in respect of such supply <b>along with interest</b> , at the rate specified under sub-section (1) of section 50 on the amount so added from the date such tax was due <b>till the date of its payment</b> .
(12)	Any authority not below the rank of <b>Deputy Commissioner</b> may serve a <b>notice</b> , either before or during the course of any proceedings under this Act, <b>requiring the operator to furnish</b> such <b>details</b> relating to
	(a) <b>supplies</b> of goods or services or both effected through such operator during any period; or
	(b) <b>stock</b> of goods held by the suppliers making supplies through such operator <b>in the godowns or warehouses</b> , by whatever name called, managed by such operator and <b>declared as additional places of business</b> by such suppliers, as may be specified in the notice.
(13)	Every <b>operator</b> on whom a notice has been served under sub-section (12) shall <b>furnish</b> the required information <b>within fifteen working days</b> of the date of service of such notice.
(14)	Any person who fails to furnish the information required by the notice served under sub-section (12) shall, without prejudice to any action that may be taken under section 122, be liable to a <b>penalty</b> which may extend to <b>Rs. 25,000/-</b> .
<b>Explanation :</b> For the purposes of this section, the expression "concerned supplier" shall mean the supplier of goods or services or both making supplies through the operator.	

**Net Value of the Taxable Supplies**

Net Value of the Taxable Supplies	=	Aggregate value of taxable supplies of goods and /or services [other than notified services u/s 9(5) by all registered persons through ECO]	(-)	Taxable supplies returned to suppliers
-----------------------------------	---	---------------------------------------------------------------------------------------------------------------------------------------------	-----	----------------------------------------

**Deposit of TCS by ECO to Government**

The TCS amount collected by the ECO has to be remitted to the Government Treasury within 10 days after the end of the month in which the collection was made. [Sub-section (3)]

**Example:** If the TCS has been collected in the month of December, the amount has to be remitted into the government Treasury on or before 10<sup>th</sup> January.

**Filing of Monthly & Annual Statement by ECO**

- An electronic statement has to be filed by ECO containing details of the outward supplies of the goods/or services effected through it, including the supplies returned through it and the amount collected by it as TCS during the month within 10 days after the end of each month in which supplies are made. [Sub - section(4)]
- Additionally, the ECO is also mandated to file an Annual Statement on or before 31<sup>st</sup> day of December following the end of financial year. [Sub-section (5)]
- However, the Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing the monthly and / or annual statement for such class of registered persons as may be specified therein. Further, any extension of time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner of Central Tax.

**Rectification in Monthly Statement by ECO**

If the ECO discovers any discrepancy on his own, not being the result of any scrutiny, inspection or enforcement proceeding, he has to rectify the statement along with payment of applicable interest.

However the limit for rectification is the :

1. ~~Due date for filing statement for the month of September~~ <sup>A</sup> 30<sup>th</sup> day of November following the end of the financial year
- Or
2. The actual date of furnishing of relevant annual statement,

**Whichever is earlier.** [words “due date for furnishing of statement for the month of September” are substituted by “30<sup>th</sup> day of November” by Finance Act, 2022, w.e.f. 01.10.2022]

**Claim of TCS amount by the supplier**

The supplier who has supplied the goods or services or both through the e-commerce operator shall claim credit, in his electronic cash ledger, of the amount collected and reflected in TCS Statement (viz. the TCS amount) furnished in Form GSTR-8 by such operator.

**Matching of the Details of Supplies**

Every electronic commerce operator (ECO), required to collect TCS under section 52, would furnish TCS Statement in Form GSTR-8 containing the details of outward supplies of goods or services effected through it, including the supplies of goods or services returned through it, and the amount of tax collected during a month, within 10 days after the end of such month.

In return, the supplier is also required to furnish the details of outward supplies made though e-commerce operator in GSTR-1.

The details of supplies furnished by every e-commerce operator in his statement for the month will be matched with the corresponding details of outward supplies furnished by the concerned supplier in his valid return for the same month or any preceding month.

**Details to be matched:** The following details shall be matched:



- (a) State of place of supply; and
- (b) Net taxable value

Where the details of outward supplies declared by the operator in his statement do not match with the corresponding details declared by the supplier, the discrepancy shall be communicated to both persons.

The amount in respect of which any discrepancy is communicated and which is not rectified by the supplier in his valid return or the operator in his statement for the month in which discrepancy is communicated shall be added to the output tax liability of the said supplier (where the value of outward supplies furnished by the operator is more than the value of outward supplies furnished by the supplier) in his return for the month succeeding the month in which the discrepancy is communicated.

The concerned supplier in whose output tax liability any amount has been added, shall be liable to pay the tax along with interest @ 18% p.a. on the amount so added from the date such tax was due till the date of its payment.

### Notice to Operator


- An officer not below the rank of deputy commissioner can issue notice to an operator, asking him to furnish detail relating to volume of the goods/services supplied, stock of the goods lying in the warehouse/godowns, etc. [Sub-section (12)].
- The operator is required to furnish such details within 15 working days [Sub-section (13)].
- In case an operator fails to furnish the information, besides being liable for penal action under section 122, it shall also be liable for penalty up to Rs. 25,000 (CGST) [Sub-section (14)].

### Other Key Points Relating to TCS

**Registration:** The e-commerce operator who is required to collect tax at source as well as the supplier supplying goods through an operator need to compulsorily register under GST. The threshold limit of Rs. 20 lakhs (Rs. 10 lakhs for special category states) is not applicable to them. Section 24(x) of CGST Act 2017 makes it mandatory for every e-commerce operator who is required to collect tax at source to get registered under GST. Similarly, section 24(ix) of the CGST Act, 2017 makes it mandatory for every person who supplies goods through such operator to get registered under GST.

**TCS statement Form GSTR-8 by 10<sup>th</sup> of the following month:** The amount of tax collected by the operator is required to be deposited by the 10<sup>th</sup> of the following month, during which such collection is made. The operator is also required to furnish the monthly statement in Form GSTR-8 by 10<sup>th</sup> of the following month. The operator is also required to file an Annual statement in prescribed form by 31<sup>st</sup> of December following the end of every financial year. The operator can rectify errors in the statement filed, if any, latest by the due date of return to be filed for the month of September, following the end of every financial year or actual date of filing of annual statement, whichever is earlier.

The details furnished by the operator in GSTR-8 shall be made available electronically to each of the supplier on the common portal after filing of FORM GSTR-8 for claiming the amount of tax collected in his electronic cash ledger after validation.

~~Rule 79 – Communication and rectification of discrepancy in details furnished by the e-commerce operator and the supplier – [Omitted by NN 19/2022 – CT, w.e.f. 01.10.2022] —~~ 

### Clarification regarding Collection of tax at source by Tea Board of India [Circular No. 74/48/2018 – GST, dated 05.11.2018]

1. Tea Board of India (hereinafter referred to as the, “Tea Board”), being the operator of the electronic auction system for trading of tea across the country including for collection and settlement of payments, admittedly falls under the category of electronic commerce operator liable to collect Tax at Source (TCS) in accordance with the provisions of section 52 of the CGST Act.
2. The participants in the said auction are the sellers i.e. the tea producers and auctioneers who carry out the auction on behalf of such sellers and buyers.
3. It has been represented that the buyers in the said auction make payment of a consolidated amount to an escrow Account maintained by the Tea Board. The said consolidated amount is towards the value of the tea, the selling and

# Payment of Tax

## 11.1 Introduction

In the GST regime, for any intra-state supply, taxes to be paid are the Central GST (CGST), going into the account of the Central Government and the State/UTGST (SGST), going into the account of the concerned State Government. For any interstate supply, tax to be paid is Integrated GST (IGST) which will have components of both CGST and SGST. In addition, certain categories of registered persons will be required to pay TDS (Tax Deducted at Source) and TCS (Tax Collected at Source) to the government account. In addition, wherever applicable, interest, penalty, fees and any other payment will also be required to be made.

The introduction of E-ledgers (Electronic Ledgers) is a unique feature under the GST regime. E-Ledgers are statements of cash and input tax credit in respect of each registered taxpayer. In addition, each taxpayer shall also have an electronic tax liability register. Once a taxpayer is registered on common portal (GSTN), two e-ledgers (Electronic Cash Ledger & Electronic Credit ledger) and an electronic liability register will be automatically opened and displayed on his dash board at all times.

Chapter X of the CGST Act prescribes the provisions relating to payment of tax containing sections 49 to 53. While section 49 discusses the three ledgers namely the electronic cash ledger, electronic credit ledger and electronic liability register, section 50 discusses about the interest on delayed payment of tax. Section 51 lays down the circumstances in which tax deduction at source (TDS) becomes mandatory. Section 52 deals with the circumstances when tax is to be collected at source (TCS) by the Electronic Commerce Operator. Further, the manner of utilization of ITC is laid down in section 53.

Chapter IX of CGST Rules deals with provisions relating to payment of tax.

## 11.2 Payment of Tax, Interest, Penalty And Other Amounts [Sec. 49]

### (a) **Electronic Cash Ledger [Sec. 49(1) & (3) Read With Rule 87 of CGST Rules]**

The Electronic Cash Ledger contains a summary of all the deposits/payments made by a tax payer. Electronic Cash Ledger is maintained on the GST Portal. The Electronic Cash Ledger has to be maintained in prescribed form on the common portal by a person liable to pay tax.

#### I. **Mode of Deposit in Electronic Cash Ledger**

##### 1. Online Payment (without any limit)

(i) Internet Banking;

(ii) **Unified Payment Interface (UPI) from any bank; [inserted by NN 14/2022 - CT, w.e.f. 05.07.2022]**

(iii) **Immediate Payment Services (IMPS) from any bank; [inserted by NN 14/2022 - CT, w.e.f. 05.07.2022]**

(iv) Credit cards/Debit cards

##### 2. Offline Payment

(i) NEFT (National Electronic Fund Transfer)/RTGS (Real Time Gross Settlement) - No limits

(ii) Over the counter (OTC) - Rs. 10,000 per challan, per tax period by cash, cheque or demand draft

(iii) Any other mode as may be prescribed

##### 3. Non applicability of limit of Over the Counter payment on deposit to be made by -

**Example:** A taxpayer made a cash deposit of Rs. 1,000 to IGST – Tax, through net banking. The tax payer can utilise this cash deposit of Rs. 1,000 in the cash ledger to make payment ONLY of the IGST – Tax liability, by debiting the Cash Ledger.

**VIII. Is transfer of funds between the major and minor heads permissible? [Sec. 49(10) & (11) of CGST Act, 2017]**

**A** A registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under this Act (i.e. CGST), to the electronic cash ledger for,--

(a) integrated tax, central tax, State tax, Union territory tax or cess; or

(b) integrated tax or central tax of a distinct person as specified in Sec. 25 (4) or (5),

in such form and manner and subject to such conditions and restrictions as may be prescribed and such transfer shall be deemed to be a refund from the electronic cash ledger under this Act.

However, no such transfer under clause (b) (i.e. to distinct person) shall be allowed if the said registered person has any unpaid liability in his electronic liability register. [Sec. 49(10) substituted by Finance Act, 2022, w.e.f. 05.07.2022]

**Analysis of Amendment made by Finance Act, 2022:**

This amendment has given relief to the taxpayers by allowing transfer of the amount available in Electronic Cash Ledger of one GSTIN to another GSTIN of the same PAN. However, such amount cannot be transferred, if there is any unpaid liability in the Electronic Liability register of the transferor.

Where any amount has been transferred to the electronic cash ledger under this Act (i.e. CGST), the same shall be deemed to be deposited in the said ledger.

[Note: Same provisions are applicable for IGST & SGST respectively also]

**Analysis:**

- (i) Major head refers to - Integrated tax, Central tax, State/UT tax and Cess.
- (ii) Minor head refers to - tax, interest, penalty, fee and others.
- (iii) The amount from one major / minor head can be transferred to another major / minor head.
- (iv) The amount from one minor head can also be transferred to another minor head under the same major head.
- (v) The amount from one major head can also be transferred to another major head.
- (vi) Further, the amount from one minor head of a major head can be transferred to any minor head of any major head.
- (vii) Amount can be transferred from the head only if balance under that head is available at the time of transfer.
- (viii) Further, the registered person is also allowed to transfer the amount available in any minor head of CGST or IGST to any of the minor head of the CGST or IGST of the distinct person also (i.e. from one GSTIN to another GSTIN of the same PAN), if there is no unpaid liability in the Electronic Liability register of the transferor.

**Illustration 1 :**

M/s. Daksha Enterprises has made a cash deposit of Rs. 10,000 under minor head 'tax' of major head 'SGST'. It has a liability of Rs. 2,000 for minor head 'Interest' under the major head 'SGST'. State whether M/s. Daksha Enterprises can utilise the amount available for payment of interest?

**Answer :**

The Registered person is allowed to transfer the amount available under any minor head of a major head to any of the minor head of the same or other major head as per Section 49(10) of the CGST Act. Therefore, in the given case, amount available under minor head 'tax' of major head 'SGST' can be transferred to minor head 'interest' of the same major head and then, liability of interest can be paid.

**Illustration 1A :** - **A**

M/s. Daksha Enterprises has Rs. 1,00,000 as cash balance under minor head 'tax' of major head 'CGST' in the electronic cash ledger of GSTIN of the office located in Rajasthan. It has a liability of Rs. 20,000 for minor head

'Interest' under the major head 'IGST' of GSTIN of the office located in Madhya Pradesh. State whether M/s. Daksha Enterprises can utilise the available amount for payment of Interest? Further, there is no unpaid liability in the Electronic Liability register of the Rajasthan office.

**Answer :** — 

As per Section 49(10) of the CGST Act, the registered person is allowed to transfer the amount available in any minor head of CGST or IGST to any of the minor head of the CGST or IGST of the distinct person also. Therefore, in the given case, the amount available under minor head 'tax' of major head 'CGST' of GSTIN of the office located in Rajasthan can be transferred to minor head 'Interest' under the major head 'IGST' of GSTIN of the office located in Madhya Pradesh. And then, interest liability of Madhya Pradesh office can be paid.

#### **IX. Transfer of Certain Amounts [Inter - Government Account Fund Transfer]**

Where any amount has been transferred from the electronic cash ledger under this Act (i.e. CGST) to the electronic cash ledger under the SGST Act or the UTGST Act, the Government shall, transfer to the State tax account or the Union territory tax account, an amount equal to the amount transferred from the electronic cash ledger, in such manner and within such time as may be prescribed.

#### **(b) Electronic Credit Ledger [Section 49(2),(4) & (5) Read With Rule 86 Of CGST Rules]**

Sub-section (2) of section 49 of the CGST Act provides that the self-assessed input tax credit (ITC) by a registered person shall be credited to its Electronic Credit Ledger or Electronic Input Tax Credit Ledger. This is to be maintained in the prescribed form.

Input Tax Credit as self-assessed in monthly returns will be reflected in the ITC ledger. The credit in this ledger can be used to make payment of tax only and not other amount such as interest, penalty, fees, etc.

#### **I. Manner of utilisation of ITC**

The electronic credit ledger can be debited only to the extent of the discharge of any liability in accordance with section 49 or section 49A or section 49B.

- The input tax credit available under the head IGST in the electronic credit ledger will first be utilized against IGST payment.
- Remaining amount if any, will be utilized for payment of CGST/SGST/UGST in any order.
- Available CGST Credit in the credit ledger shall first be utilized for payment of CGST.
  - Remaining amount if any, will be utilized for payment of IGST
- Available SGST/UTGST credit in the credit ledger shall first be utilized for payment of SGST/UTGST.
  - Remaining amount if any, will be utilized for payment of IGST

CGST Credit cannot be utilized for payment of SGST/UTGST.

Similarly, SGST/UTGST credit cannot be utilized for payment of CGST.

#### **II. Order of utilisation of ITC for payment of liabilities:**

- **For payment of liability of IGST** - First ITC of IGST, then, ITC of CGST and then, ITC of SGST / UTGST will be utilised.
- **For payment of liability of CGST** - First ITC of IGST, and then, ITC of CGST will be utilised. But, ITC of SGST / UTGST will never be utilised for payment of liability of CGST.
- **For payment of liability of SGST/UTGST** - First ITC of IGST, and then, ITC of SGST/UTGST will be utilised. But, ITC of CGST will never be utilised for payment of liability of SGST/UTGST.

However, the Government may, on the recommendations of the Council, prescribe the order and manner of utilisation of the ITC on account of IGST, CGST, SGST or UTGST, as the case may be, towards payment of any such tax.

#### **III. Order of Utilisation of ITC [Rule 88A]**

CGST	(V)	(IV)	Not permitted
SGST / UTGST	(VII)	Not permitted	(VI)

5. The following illustration would further amplify the impact of newly inserted rule 88A of the CGST Rules:

**Illustration 2:**

**Amount of Input tax Credit available and output liability under different tax heads**

Head	Output Liability	Input tax Credit
Integrated tax	1000	1300
Central tax	300	200
State tax / Union Territory tax	300	200
Total	1600	1700

**Option 1:**

Input tax Credit on account of	Discharge of output liability on account of IGST	Discharge of output liability on account of CGST	Discharge of output liability on account of SGST/UTGST	Balance of Input Tax Credit
IGST	1000	200	100	0
Input tax Credit on account of IGST has been completely exhausted				
CGST	0	100	-	100
SGST/UTGST	0	-	200	0
Total	1000	300	300	100

**Option 2:**

Input tax Credit on account of	Discharge of output liability on account of IGST	Discharge of output liability on account of CGST	Discharge of output liability on account of SGST / UTGST	Balance of Input Tax Credit
IGST	1000	100	200	0
Input tax Credit on account of IGST has been completely exhausted				
CGST	0	200	-	0
SGST/UTGST	0	-	100	100
Total	1000	300	300	100

**Clarification in respect of Utilisation of the amounts available in the electronic credit ledger and the electronic cash ledger for payment of tax and other liabilities [Circular No. 172/04/2022 - GST, dated 06.07.2022]**

**Issue 1: Whether the amount available in the electronic credit ledger can be used for making payment of any tax under the GST Laws?**

**A**

**Clarification:**

- In terms of Sec. 49(4) of CGST Act, the amount available in the electronic credit ledger may be used for making any payment towards output tax under the CGST Act or the IGST Act, subject to the provisions relating to the order of utilisation of input tax credit as laid down in section 49B of the CGST Act read with rule 88A of the CGST Rules.*
- Accordingly, it is clarified that any payment towards output tax, whether self-assessed in the return or payable as a consequence of any proceeding instituted under the provisions of GST Laws, can be made by utilization of the amount available in the electronic credit ledger of a registered person.*



- Further, as output tax does not include tax payable under reverse charge mechanism, implying thereby that the electronic credit ledger cannot be used for making payment of any tax which is payable under reverse charge mechanism.

**Issue 2:** Whether the amount available in the electronic credit ledger can be used for making payment of any liability other than tax under the GST Laws?

**Clarification:** As per Sec. 49(4), the electronic credit ledger can be used for making payment of output tax only under the CGST Act or the IGST Act. It cannot be used for making payment of any interest, penalty, fees or any other amount payable under the said acts. Similarly, electronic credit ledger cannot be used for payment of erroneous refund sanctioned to the taxpayer, where such refund was sanctioned in cash.

**Issue 3:** Whether the amount available in the electronic cash ledger can be used for making payment of any liability under the GST Laws?

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

#### **IV. Transfer of input tax credit [Inter - Government Account Fund Transfer - Sec. 53]**

Section 53 of CGST Act provides simple but important modus operandi in respect of post CGST utilisation towards IGST liability. Under section 49(5)(b),(c) and (d) of the Act, CGST/SGST/UTGST credits can be utilised by a tax payer on priority basis to respective CGST/SGST/UTGST dues first. Then, in case of CGST, balance, if any, can be used to pay towards IGST. If used so, there shall be reduction in central tax caused by Central Government and equal credit shall be ensured to IGST in the prescribed manner.

In other words, if CGST is utilised to pay towards dues of IGST, there shall be reduction in CGST on such utilisation and the Central Government shall transfer equivalent amount to the credit of IGST account. Thus, in this manner the Central Government shall ensure due credit to IGST.

Such treatment shall be ensured by the Central Government for UTGST and SGST also in respective cases.

It may be noted that equivalent provision is there in Section 18 of IGST Act, 2017.

#### **V. What happens if the taxable person files the return but does not make payment of tax?**

In such cases, the return is not considered as a valid return. Section 2(117) defines a valid return to mean a return furnished u/s 39(1) on which self-assessed tax has been paid in full. It is only the valid return that would be used for allowing ITC to the recipient. In other words, unless the supplier has paid the entire self-assessed tax and filed his return and the recipient has filed his return, the ITC of the recipient would not be confirmed.

#### **VI. Common Points for Electronic Cash & Credit Ledger**

- Where a person has claimed refund of any amount from the electronic cash or credit ledger, the said amount shall be debited to the electronic cash or credit ledger.
- If the refund so claimed is rejected, either fully or partly, the amount debited earlier, to the extent of rejection, shall be credited to the electronic cash or credit ledger by the proper officer by an order made in prescribed form.

#### **VII. Rule 86(4A) [inserted by NN 16/2020 - CT, w.e.f. 23.03.2020]**

Where a registered person has claimed refund of any amount paid as tax wrongly paid or paid in excess for which debit has been made from the electronic credit ledger, the said amount, if found admissible, shall be re-credited to the electronic credit ledger by the proper officer by an order made in prescribed form.

#### **VIII. Rule 86(4B) [inserted by NN 14/2022 - CT, w.e.f. 05.07.2022]**

Where a registered person deposits the amount of erroneous refund (refund of unutilised ITC or of IGST paid on export of goods) sanctioned to him, along with applicable interest and penalty through FORM GST DRC-03, by debiting the electronic cash ledger, on his own or on being pointed out, then, an amount equivalent to the amount of erroneous refund deposited by the registered person shall be re-credited to the electronic credit ledger by the proper officer by an order made in FORM GST PMT-03A.

**(c) Electronic Liability Register [Sec. 49(7), (8) & (9) Read With Rule 85 of CGST Rules]**

Sub-section (7) of section 49 speaks about the third kind of ledger to be maintained by a taxable person viz. **Electronic Liability Register**. While the terms “Electronic Cash Ledger” and “Electronic Credit Ledger” are defined in the Act, the term “Electronic Liability Register” is not defined. The Section lays down that all liabilities of a taxable person will be maintained in a separate register.

Electronic liability register will reflect the total tax liability of a taxpayer (after netting) for the particular month.

**I. Order of discharge of tax and other dues**

Sub-section (8) prescribes the chronological order in which the liability of a taxable person has to be discharged:

- self -assessed tax and other dues for the **previous tax periods** have to be discharged first.
- the self -assessed tax and other dues for the **current period** have to be discharged next.
- Once these two steps are exhausted, thereafter any other amount payable including **demand determined under section 73 or section 74** to be discharged. In other words, the liability if any, arising out of demand notice and adjudication proceedings comes last. This sequence has to be mandatorily followed.

The expression “**other dues**” referred above mean interest, penalty, fee or any other amount payable under the Act or the rules made thereunder.

**II. Presumption that incidence of tax is passed on**

Sub-section (9) contains a deeming clause. This part of the section provides that when a taxable person has paid the GST under the corresponding Act, the taxable person is deemed to have passed on the incidence of such payment of tax to the recipient of such goods and /or services. Thus, if tax has been paid under the CGST Act, then the taxable person is deemed to have passed on the incidence of such payment of CGST to the recipient. This is subject to the contrary being proved.

**III. Chapter IX of CGST Rules provide the following:****(1) Debit to electronic liability register:**

- all amounts payable towards tax, interest, late fee and any other amount as per return filed;
- all amounts payable towards tax, interest, penalty and any other amount determined in a proceeding by an Assessing authority or as ascertained by the taxable person; or
- **(A) ~~the amount of tax and interest payable as a result of mismatch u/s 42 or 43 or 50; [omitted by NN 19/2022 - CT, w.e.f. 01.10.2022]~~**
- any interest amount that may accrue from time to time.

**(2) Debit to Electronic Credit/Cash ledger:**

Debit to Electronic Credit Ledger and Credit to Electronic Liability Register	Debit to Electronic Cash Ledger and Credit to Electronic Liability Register
Payment of all the liabilities of a registered person as per his return subject to Sec. 49.	Payment of all the liabilities of a registered person as per his return subject to Sec. 49.
	Payment of TDS deducted u/s 51, TCS deducted by e-commerce operator u/s 52, amount payable under reverse charge basis, amount payable u/s 10, amount payable towards payment of interest, penalty, fee or any other amount under the Act.

**IV. How do the new payment systems benefit the taxpayer and the Commercial Tax Department?**

- No more queues and waiting for making payments as payments can be made online 24 x 7.
- Instant online receipts for payments made online.
- Tax Consultants can make payments on behalf of the clients.
- Single Challan form to be created online, replacing the three or four copy Challan.
- Revenue will come earlier into the Government Treasury as compared to the old system.
- Greater transparency.

- Online payments made after 8 pm will be credited to the taxpayer's account on the same day.

### 11.3 Interest on Delayed Payment of Tax [Sec. 50]

Statutory Provisions	
Sec. 50 : Interest on delayed payment of tax	
(1)	Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent, as may be notified by the Government on the recommendations of the Council.  Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be payable on that portion of the tax which is paid by debiting the electronic cash ledger.
(2)	The interest under sub-section (1) shall be calculated, in such manner as may be prescribed, from the day succeeding the day on which such tax was due to be paid.
(3)	<i>Where the input tax credit has been wrongly availed and utilised, the registered person shall pay interest on such input tax credit wrongly availed and utilised, at such rate not exceeding twenty-four per cent. as may be notified by the Government, on the recommendations of the Council, and the interest shall be calculated, in such manner as may be prescribed. [Sub-Sec. (3), substituted by Finance Act, 2022 retrospectively w.e.f. 01.07.2022]</i>

#### ANALYTICAL VIEW OF THE TOPIC

##### When Interest is Payable ?

Interest is payable in following 2 circumstances:

- Delay in payment of tax, in full or in part, within the prescribed period. [Sec. 50(1)]
- **A** *Utilisation of wrongly availed Input Tax Credit. [If ITC is wrongly availed, but, not utilized, then, interest will not be payable] [Sec. 50(3), as substituted by Finance Act, 2022 retrospectively w.e.f. 01.07.2022]*

##### Rate of Interest

The rate of interest shall be notified by the Government on the basis of recommendation of the Council. However, such rate to be notified shall not exceed-

- (a) **18% in case of belated payment of tax** i.e. on failure to pay tax (or part of tax) to the Government's account

Notification No. 13/2017 - CT has **notified** the rate of interest as **18%** per annum.

- (b) **18% on utilisation of wrongly availed input tax credit** — **A**

Notification No. 13/2017 - CT has **notified** the rate of interest as **18% ~~24%~~** per annum [**24% p.a. substituted by 18% p.a. retrospectively w.e.f. 01.07.2017 by Finance Act, 2022**]. **A**

##### Computation of Period for Calculation of Interest — **A**

**In case of belated payment of tax [Rule 88(1) & (2) inserted by NN. 14/2022 - CT, retrospectively w.e.f. 01.07.2017]:** The period of interest will be from the date following the due date of payment to the actual date of payment of tax.

**In case of utilisation of wrongly availed ITC [Rule 88(3) inserted by NN. 14/2022 - CT, retrospectively w.e.f. 01.07.2017]:** The period starting from the date of utilisation of such wrongly availed ITC till the date of reversal of such credit or payment of tax in respect of such amount.

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

*Further, the date of utilisation of such ITC shall be taken to be,*

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

### **Amount on which interest is payable**

**In case of belated payment of tax [Rule 88(1) & (2) inserted by NN. 14/2022 – CT, retrospectively w.e.f. 01.07.2017]:**

The interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, shall be payable only on that portion of the tax which is paid by debiting the electronic cash ledger (i.e. only on net cash tax liability payable after adjusting ITC).

**Exceptions:** The benefit of this provision is not available in following 2 cases (i.e. in such cases, interest will be payable on the gross total tax liability):

- (i) If return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period.
- (ii) If any tax liability of a particular tax period is declared in the return for any subsequent tax period.

Further, the aforesaid provision of interest payable on net cash tax liability shall be applicable retrospectively from 01.07.2017 [as per Finance Act, 2021].

**In case of utilisation of wrongly availed ITC [Rule 88(3) inserted by NN. 14/2022 – CT, retrospectively w.e.f. 01.07.2017]:** *The interest shall be payable on the amount by which the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed.*

### **Other Relevant Points Relating to Interest**

- The term “tax” here means the tax payable under the Act or Rules made thereunder.
- The payment of interest in case of belated payment of tax should be made voluntarily i.e. even without a demand.
- The interest payable under this section shall be debited to the Electronic Liability Register.
- The liability for interest can be settled by adjustment with balance in Electronic Cash Ledger **but not with balance in electronic credit ledger.**

### **Illustration 3 :**

Mr. Alok, a registered supplier of taxable goods, filed GSTR-3B for the month of January, 2021 on 15<sup>th</sup> April, 2021. The prescribed due date to file the said GSTR-3B was 20<sup>th</sup> February, 2021. The amount of net GST payable, in Cash i.e. Electronic Cash Ledger on supplies made by him for the said month worked out to be Rs. 36,500 which was paid on 15<sup>th</sup> April, 2021. Briefly explain the related provisions and compute the amount of interest payable under the CGST Act, 2017 by Mr. Alok.

**Solution:** Interest is payable in case of delayed payment of tax @ 18% per annum from the date following the due date of payment to the actual date of payment of tax.

Thus, the amount of interest payable by Mr. Alok is as under:

Period of delay = 21<sup>st</sup> February, 2021 to 15<sup>th</sup> April, 2021 = 54 days

Hence, amount of interest =  $36,500 \times 18\% \times 54/365 = \text{Rs. } 972$

### **Illustration 4 :**

M/s ABC Ltd., have filed their GSTR-3B for the month of July, 2021 within the due date prescribed under Section 39 i.e. 20.08.2021. Post filing of the return, the registered person has noticed during September, 2021 that tax dues for the month of July, 2021 have been short paid for Rs. 40,000. M/s ABC Ltd., has paid the above shortfall of Rs. 40,000, through GSTR-3B of September 2021, filed on 20.10.2021 [payment through Cash ledger - Rs. 30,000 and Credit ledger Rs. 10,000]. Examine the Interest payable under the CGST Act, 2017.

(vi)	taxable value, rate and amount of the credit to be transferred; and
(vii)	signature or digital signature of the registered person or his authorised representative.

(b) The taxable value in the invoice issued under clause (a) shall be the same as the value of the common services.

## 12.3 Credit And Debit Notes [Section 34]

Statutory Provisions	
Sec. 34 : Credit and Debit Notes	
(1)	<del>Where a tax invoice</del> Where one or more tax invoices have [substituted by CGST (Amendment) Act, 2018, w.e.f. 01.02.2019] been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to exceed the taxable value or tax payable in respect of such supply, or where the goods supplied are returned by the recipient, or where goods or services or both supplied are found to be deficient, the registered person, who has supplied such goods or services or both, may issue to the recipient <del>a credit note</del> one or more credit notes for supplies made in a financial year [substituted by CGST (Amendment) Act, 2018, w.e.f. 01.02.2019] containing such particulars as may be prescribed.
(2)	Any registered person who issues a credit note in relation to a supply of goods or services or both shall declare the details of such credit note in the return for the month during which such credit note has been issued but not later than <u>September the thirtieth day of November</u> following the end of the financial year in which such supply was made, or the date of furnishing of the relevant annual return, whichever is earlier, and the tax liability shall be adjusted in such manner as may be prescribed: [ <i>Word 'September' is substituted by words 'the thirtieth day of November' by Finance Act, 2022, w.e.f. 01.10.2022</i> ]
	Provided that no reduction in output tax liability of the supplier shall be permitted, if the incidence of tax and interest on such supply has been passed on to any other person.
(3)	<del>Where a tax invoice has</del> Where one or more tax invoices have [substituted by CGST (Amendment) Act, 2018, w.e.f. 01.02.2019] been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to be less than the taxable value or tax payable in respect of such supply, the registered person, who has supplied such goods or services or both, shall issue to the recipient <del>a debit note</del> one or more debit notes for supplies made in a financial year [substituted by CGST (Amendment) Act, 2018, w.e.f. 01.02.2019] containing such particulars as may be prescribed.
(4)	Any registered person who issues a debit note in relation to a supply of goods or services or both shall declare the details of such debit note in the return for the month during which such debit note has been issued and the tax liability shall be adjusted in such manner as may be prescribed.
	Explanation : For the purposes of this Act, the expression "debit note" shall include a supplementary invoice.

### ANALYTICAL VIEW OF THE TOPIC

1. **Issuance of Credit Note:** A supplier of goods or services or both is mandatorily required to issue a tax invoice. However, during the course of trade or commerce, after the invoice has been issued there could be situations like:
  - The supplier has erroneously declared a value which is more than the actual value of the goods or services provided.
  - The supplier has erroneously declared a higher tax rate than what is applicable for the kind of the goods or services or both supplied.
  - The quantity received by the recipient is less than what has been declared in the invoice.



- The quality of goods or services or both supplied is not to the satisfaction of the recipient thereby necessitating a partial or total reimbursement on the invoice value.

In order to regularize these kind of situations, the supplier is allowed to issue what is called as credit note to the recipient. Once the credit note has been issued, the tax liability of such supplier will reduce.

Where one or more tax invoices have been issued for supply of any goods or services or both

- Taxable value in invoice > Taxable value in respect of such supply
- Tax charged in invoice > Tax payable in respect of such supply

OR

- where the goods supplied are returned by the recipient

OR

- where goods or services or both supplied are found to be deficient
- Registered Supplier of goods or services or both may issue one or more credit notes for supplies made in a financial year to Recipient of goods or services or both.

2. **Issuance of Debit Note:** Where one or more tax invoices have been issued for supply of any goods or services or both.

- Taxable value in invoice < Taxable value in respect of such supply
- Tax charged in invoice < Tax payable in respect of such supply
- Registered Supplier of goods or services or both may issue one or more debit notes for supplies made in a financial year to Recipient of goods or services or both.
- **Important Note:** By making amendment in section 34 of the CGST Act, the Government has permitted a registered person to issue consolidated credit / debit notes as prescribed under Section 34 of the CGST Act in respect of multiple invoices issued in a Financial Year without linking the same to individual invoices.

3. **Details of Debit Note/Credit Note to be declared in Return**

(i) **Credit Note :**

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

**A**

- ~~September~~ 30<sup>th</sup> November following the end of the financial year in which such supply was made,

OR

- the date of furnishing of the relevant annual return,

**whichever is earlier.** [Word 'September' is substituted by words '30<sup>th</sup> November' by Finance Act, 2022, w.e.f. 01.10.2022]

- The tax liability shall be adjusted in such manner as may be prescribed. However, no reduction in output tax liability of the supplier shall be permitted, if the incidence of tax and interest on such supply has been passed on to any other person.

(ii) **Debit Note:**

- Any registered person who issues a debit note in relation to a supply of goods or services or both shall declare the details of such debit note in the return for the month during which such debit note has been issued.

issuing an invoice for the same (hereinafter referred to as the, "return supply"). The value of the said goods as shown in the invoice on the basis of which the goods were supplied earlier may be taken as the value of such return supply. The wholesaler or manufacturer, as the case may be, who is the recipient of such return supply, shall be eligible to avail Input Tax Credit (hereinafter referred to as "ITC") of the tax levied on the said return supply subject to the fulfilment of the conditions specified in Section 16 of the CGST Act.

- b) In case the person returning the time expired goods is a composition taxpayer, he may return the said goods by issuing a bill of supply and pay tax at the rate applicable to a composition taxpayer. In this scenario there will not be any availability of ITC to the recipient of return supply.
- c) In case the person returning the time expired goods is an unregistered person, he may return the said goods by issuing any commercial document without charging any tax on the same.
- d) Where the time expired goods which have been returned by the retailer/wholesaler are destroyed by the manufacturer, he/she is required to reverse the ITC availed on the return supply in terms of the provisions of clause (h) of sub-section (5) of section 17 of the CGST Act. It is pertinent to mention here that the ITC which is required to be reversed in such scenario is the ITC availed on the return supply and not the ITC that is attributable to the manufacture of such time expired goods.

**Illustration:** Supposedly, manufacturer has availed ITC of Rs. 10/- at the time of manufacture of medicines valued at Rs. 100/-. At the time of return of such medicine on the account of expiry, the ITC available to the manufacturer on the basis of fresh invoice issued by wholesaler is Rs. 15/-. So, when the time expired goods are destroyed by the manufacturer he would be required to reverse ITC of Rs. 15/- and not of Rs. 10/-.

**(B) Return of time expired goods by issuing Credit Note:**

- a) As per sub-section (1) of Section 34 of the CGST Act the supplier can issue a credit note where the goods are returned back by the recipient. Thus, the manufacturer or the wholesaler who has supplied the goods to the wholesaler or retailer, as the case may be, has the option to issue a credit note in relation to the time expired goods returned by the wholesaler or retailer, as the case may be. In such a scenario, the retailer or wholesaler may return the time expired goods by issuing a delivery challan. It may be noted that there is no time limit for the issuance of a credit note in the law except with regard to the adjustment of the tax liability in case of the credit notes issued prior to the 30<sup>th</sup> November following the end of the financial year or date of furnishing of relevant annual return, whichever is earlier, and those issued after it.

(A)

- b) It may further be noted that if the credit note is issued within the time limit specified in sub-section (2) of section 34 of the CGST Act, the tax liability may be adjusted by the supplier, subject to the condition that the person returning the time expired goods has either not availed the ITC or if availed has reversed the ITC so availed against the goods being returned.
- c) However, if the time limit specified in sub-section (2) of section 34 of the CGST Act has lapsed, a credit note may still be issued by the supplier for such return of goods but the tax liability cannot be adjusted by him in his hands. It may further be noted that in case time expired goods are returned beyond the time period specified in the sub-section (2) of section 34 of the CGST Act and a credit note is issued consequently, there is no requirement to declare such credit note on the common portal by the supplier (i.e. by the person who has issued the credit note) as tax liability cannot be adjusted in this case.
- d) Further, where the time expired goods, which have been returned by the retailer/wholesaler, are destroyed by the manufacturer, he/she is required to reverse the ITC attributable to the manufacture of such goods, in terms of the provisions of Sec. 17(5)(h) of the CGST Act. This has been illustrated in table below:

Case	Date of Supply of goods from manufacturer/	Date of return of time expired goods from	Treatment in terms of tax liability & credit
------	--------------------------------------------	-------------------------------------------	----------------------------------------------

	wholesaler to wholesaler / retailer	retailer/wholesaler to wholesaler/manufacturer	note
1	1 <sup>st</sup> July, 2022	<u>20<sup>th</sup> September, 2023</u>	Credit note will be issued by the supplier (manufacturer / wholesaler) and the same to be furnished by him on the common portal. Subsequently, tax liability can be adjusted by such supplier, provided the recipient (wholesaler/ retailer) has either not availed the ITC or if availed has reversed the ITC.
2	1 <sup>st</sup> July, 2022	<u>15<sup>th</sup> December, 2023</u>	Credit note will be issued by the supplier (manufacturer/wholesaler) but there is no requirement to furnish the same on the common portal. Subsequently, tax liability cannot be adjusted by such supplier.

A

4. It may be noted that though this circular discusses the scenarios in relation to return of goods on account of expiry of the same, it may be applicable to such other scenarios where the goods are returned on account of reasons other than the one detailed above.

**Clarification in respect of Credit Notes and Refund Vouchers in case of cancellation of contract, etc. [Circular No. 137/07/2020 - GST, dated 13.04.2020]**

S.N.	Issue	Clarification
1.	An advance is received by a supplier for a Service contract which subsequently got cancelled. The supplier has issued the invoice before supply of service and paid the GST thereon. Whether he can claim refund of tax paid or is he required to adjust his tax liability in his returns ?	In case GST is paid by the supplier on advances received for a future event which got cancelled subsequently and for which invoice is issued before supply of service, the supplier is required to issue a "credit note" in terms of section 34 of the CGST Act. He shall declare the details of such credit notes in the return for the month during which such credit note has been issued. The tax liability shall be adjusted in the return subject to conditions of section 34 of the CGST Act. There is no need to file a separate refund claim. However, in cases where there is no output liability against which a credit note can be adjusted, registered persons may proceed to file a claim under "Excess payment of tax, if any" through FORM GST RFD-01.
2.	An advance is received by a supplier for a Service contract which got cancelled subsequently. The supplier has issued receipt voucher and paid the GST on such advance received. Whether he can claim refund of tax paid on advance or he is required to adjust his tax liability in his returns ?	In case GST is paid by the supplier on advances received for an event which got cancelled subsequently and for which no invoice has been issued in terms of section 31 (2) of the CGST Act, he is required to issue a "refund voucher" in terms of section 31 (3) (e) of the CGST Act read with rule 51 of the CGST Rules. The taxpayer can apply for refund of GST paid on such advances by filing FORM GST RFD-01 under the category "Refund of excess payment of tax".
3.	Goods supplied by a supplier under cover of a tax invoice are returned by the recipient. Whether he can claim refund of tax paid or is he required to adjust his tax liability in his returns ?	In such a case where the goods supplied by a supplier are returned by the recipient and where tax invoice had been issued, the supplier is required to issue a "credit note" in terms of section 34 of the CGST Act. He shall declare the details of such credit notes in the return for the month during which such credit note has been issued. The tax liability shall be adjusted in the return subject to conditions of section 34 of the CGST Act. There is no need to file a separate refund claim in such a case.

		However, in cases where there is no output liability against which a credit note can be adjusted, registered persons may proceed to file a claim under "Excess payment of tax, if any" through FORM GST RFD-01.
--	--	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

**Illustration 9:**

Kartik & Co., a registered supplier under GST, provides the following information regarding various tax invoices issued by it during the month of March:

- (i) Value of supply charged in invoice no. 1 was Rs. 2,50,000 against the actual taxable value of Rs. 2,30,000.
- (ii) Tax charged in invoice no. 4 was Rs. 32,000 against the actual tax liability of Rs. 68,000 due to wrong HSN code being chosen while issuing invoice.
- (iii) Value charged in invoice no. 8 was Rs. 3,20,000 as against the actual value of Rs. 4,20,000 due to wrong quantity considered while billing.

Kartik & Co. asks you to answer the following:

- (1) Who shall issue a debit/credit note under CGST Act?
- (2) Whether debit note or credit note has to be issued in each of the above circumstances?
- (3) What is the maximum time-limit available for declaring the credit note in the GST Return?

**Answer:**

- (1) The debit/credit note shall be issued by the registered person who has supplied the goods and/or services, i.e. Kartik & Co.
- (2) Yes, debit/credit note need to be issued in each of the circumstances as under:
  - (i) A credit note is required to be issued as the taxable value in invoice no. 1 exceeds the actual taxable value.
  - (ii) A debit note is required to be issued as the tax charged in the invoice no. 4 is less than the actual tax payable.
  - (iii) A debit note is required to be issued as the value of supply charged in the invoice no. 8 is less than the actual value.
- (3) The details of the credit note cannot be declared later than ~~the return for the month of September~~ <sup>(A) ——— 30<sup>th</sup> November</sup> following the end of the financial year in which such supply was made or the date of furnishing of the relevant annual return, whichever is earlier.

## 12.4 E-invoice through Govt. notified website [Sub-rules (4), (5) & (6) of Rule 48, applicable w.e.f. 01.10.2020]

As per Rule 48(4) of the CGST Rules, the registered person whose aggregate turnover ~~in any preceding financial year from 2017-18 onwards exceeds Rs. 500 Rs. 100 Rs. 50 crores Rs. 20 crores Rs. 10 crores~~ <sup>(A)</sup> shall, in respect of supply of goods or services or both to a registered person (i.e. B2B) or for exports, prepare invoice and other prescribed documents, by including such particulars contained in FORM GST INV-01 after obtaining an Invoice Reference Number by uploading information contained therein on the Common GST Electronic Portal. [Aggregate Turnover limit reduced from Rs. 500 crores to Rs. 100 crores w.e.f. 01.01.2021 by NN 88/2020 - CT, which is further reduced to Rs. 50 crores w.e.f. 01.04.2021 by NN 05/2021 - CT, which is further reduced to Rs. 20 crores w.e.f. 01.04.2022 by NN 01/2022 - CT, which is further reduced to Rs. 10 crores w.e.f. 01.10.2022 by NN 17/2022 - CT]

However, this provision is not applicable to the following persons:

- (i) A Special Economic Zone unit [Not SEZ Developer];
- (ii) Insurer, Banking Company, financial institution including a NBFC;
- (iii) Goods Transport Agency;
- (iv) Passenger Transport Service Supplier;

- (v) Supplier of services by way of admission or exhibition of cinematograph films in multiplex screens;
- (vi) A Government Department or a Local Authority.

However, the Commissioner may, on the recommendations of the Council, by notification, exempt a person or a class of registered persons from issuance of invoice under this sub-rule for a specified period, subject to such conditions and restrictions as may be specified in the said notification.

Further, as per rule 48(5) of the CGST Rules, if any person to whom sub-rule (4) applies, issues any invoice in any manner other than the manner specified in the said sub-rule, then, such invoice shall not be treated as an invoice.

Further, as per rule 48(6) of the CGST Rules, the provisions of sub-rules (1) and (2) [i.e. issue of invoice in triplicate / duplicate copies] shall not apply to an invoice prepared in the manner specified in sub-rule (4).

*Further, as per clause (s) of Rule 46 of the CGST Rules, if any person to whom Rule 48(4) applies, issues any invoice in any manner other than the manner specified in the said sub-rule, then, the following declaration is also required to be given on the invoice:*

(A)

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

[clause (s) of Rule 46 inserted by NN 14/2022 - CT, w.e.f. 05.07.2022]

### **Analytical Discussion:**

#### **What is 'e-invoicing' and How e-invoice is generated?**

E-invoicing is not generation of invoice by a Government portal. Taxpayers will continue to create their GST invoices on their own Accounting/Billing/ERP Systems as per e-invoice schema (standard notified format - in Form GST INV-1). These invoices will then be reported to 'Invoice Registration Portal (IRP)' by uploading the details of the invoices. On such reporting, IRP will generate a unique 'Invoice Reference Number (IRN)', will digitally sign it and will add a QR Code (Quick Response Code). And then, IRP will return the e-invoice to the supplier. Then, the supplier shares the e-invoice with the receiver (along with QR Code). A GST e-invoice will be valid only with a valid IRN.

Presently, invoices, credit notes and debit notes, when issued by notified persons (to registered persons (B2B) or for the purpose of exports) are covered under e-invoice. Though different documents are covered, for ease of reference and understanding, the system is referred as 'e-invoicing'.

#### **Advantages of e-invoicing**

E-invoice has many advantages for businesses. Under e-invoicing, business has to report the B2B invoice data only once in the e-invoice form and the same is reported in multiple forms (GSTR-1, e-way bill, etc.). E-way bill can be auto-generated using e-invoice data. GSTR-1 can also be auto-populated with the e-invoice data.

Consequently, there will be a substantial reduction in transcription errors as same data will get reported to tax department as well as to the buyer.

### **Important terms**

#### **Invoice Registration Portal (IRP)**

IRP is the website for uploading/reporting of invoices by the notified persons. Following IRPs have been notified for the purpose of preparation of the e-invoice:

[www.einvoice1.gst.gov.in](http://www.einvoice1.gst.gov.in) ; [www.einvoice2.gst.gov.in](http://www.einvoice2.gst.gov.in) ; [www.einvoice3.gst.gov.in](http://www.einvoice3.gst.gov.in) ; [www.einvoice4.gst.gov.in](http://www.einvoice4.gst.gov.in) ;

[www.einvoice5.gst.gov.in](http://www.einvoice5.gst.gov.in) ; [www.einvoice6.gst.gov.in](http://www.einvoice6.gst.gov.in) ; [www.einvoice7.gst.gov.in](http://www.einvoice7.gst.gov.in) ; [www.einvoice8.gst.gov.in](http://www.einvoice8.gst.gov.in) ;

[www.einvoice9.gst.gov.in](http://www.einvoice9.gst.gov.in) ; [www.einvoice10.gst.gov.in](http://www.einvoice10.gst.gov.in)



## Invoice Reference Number

As seen earlier, GST invoice will be valid only with a valid IRN. IRN is different from invoice number. Invoice no. (e.g. ABC/1/2019-20) is assigned by supplier and is internal to business. Its format can differ from business to business and also governed by relevant GST rules. IRN, on other hand, is a unique reference number (hash) generated and returned by IRP, on successful registration of e-invoice, for instance, 35054cc24d97033afc24f49ec4444dbab81f542c555f9d30359dc75794e06bbe

## Quick Response (QR) code

Upon successful registration of invoice on IRP, it will return a signed e-invoice to the supplier with IRN and QR Code. IRN is embedded in the QR Code which shall be extracted and printed on the invoice. The QR code enables quick view, validation and access of the invoices from the GST system from hand-held devices. The digitally signed QR code will have a unique IRN which can be verified on the central portal as well as by an offline app by the officer. This will be helpful for tax officers checking the invoice offline on the roadside where internet may not be available all the time.

### Other points:

- The e-invoicing system is also available for the E-Commerce Operators (ECO) to report the invoices to the Invoice Registration portal, generated by them on behalf of the suppliers.
- Bulk uploading of invoices to IRP is also possible.
- Further, e-invoicing is also not applicable to invoices issued by Input Service Distributor (ISD).
- If the invoice issued by a notified person is in respect of supplies made by him tax on which is payable under reverse charge under section 9(3), e-invoicing is applicable.

**Example:** A taxpayer (say a firm of advocates) having aggregate turnover in a FY of more than Rs. 10 crores is supplying services to a company (who will be discharging tax liability as recipient under reverse charge mechanism), such invoices have to be reported by said tax payer (since it is a notified person) to IRP.

- On the other hand, where specified category of supplies are received by notified person from unregistered persons [attracting reverse charge under section 9(4)] or through import of services, e-invoicing doesn't arise/ not applicable. E-invoicing is also not applicable for import of goods (Bills of Entry).
- **Example:** Maharaja Private Limited has an SEZ unit and a regular DTA unit (both having same PAN). The aggregate total turnover of Maharaja Private Limited is more than Rs. 10 crores (considering both the GSTINs). However, the turnover of DTA unit is below Rs. 5 crores for FY 2021-22. In this scenario, SEZ unit is exempt from e-invoicing. However, e-invoicing will be applicable to DTA Unit because the aggregate turnover of the legal entity in this case is > Rs. 10 crores. The eligibility is based on aggregate annual turnover on the common PAN.

## 12.5 Tax invoice to have Dynamic Quick Response (QR) code

The Government may, by notification, on the recommendations of the Council, and subject to such conditions and restrictions as mentioned therein, specify that the tax invoice shall have Quick Response (QR) code. [6<sup>th</sup> proviso in rule 46]

Using this power, vide NN 14/2020 - CT, w.e.f. 01.12.2020, the Government has notified that an invoice issued by a registered person, whose aggregate turnover in any preceding financial year from 2017-18 onwards exceeds Rs. 500 crores, to an unregistered person (i.e. B2C invoice), shall have Dynamic Quick Response (QR) code.

However, this provision is not applicable to the following persons:

- Insurer, Banking Company, financial institution including a NBFC;
- Goods Transport Agency;
- Passenger Transport Service Supplier;

Section 41	Availment of Input Tax Credit
Section 42	<del>Matching, reversal and re-claim of input tax credit</del>
Section 43	<del>Matching, reversal and re-claim of reduction in output tax liability</del>
Section 44	Annual Return
Section 45	Final Return
Section 46	Notice to return defaulters
Section 47	Levy of late fee
Section 48	Goods and services tax practitioners

The provisions relating to form and manner, in which information is to be furnished through returns, are given under Chapter VIII of the CGST Rules [Rules 59-84]. State GST laws also prescribe identical provisions in relation to filing of returns.

**Note :** The basic features of the return mechanism in GST include electronic filing of returns, uploading of invoice level information and auto-population of information relating to ITC from returns of supplier to that of recipient, invoice-level information matching and auto-reversal of ITC in case of mismatch. The returns mechanism is designed to assist the taxpayer to file returns and avail ITC.

**All the returns under GST laws are to be filed electronically.** Taxpayers can file the statements and returns by various modes. Firstly, they can file their statement and returns directly on the GST common portal online (i.e. www.gst.gov.in). However, this may be tedious and time consuming for taxpayers with large number of invoices. For such taxpayers, offline utilities have been provided by GSTN that can be used for preparing the statements offline after downloading the auto populated details and uploading them on the common portal. GSTN has also developed an ecosystem of GST Suvidha Providers (GSP) that will integrate with the common portal.

The details furnished by the taxpayer in the form of returns shall be consolidated and stored at the common portal which will be common for both, i.e. Central Government and State Governments.

## 13.2 Furnishing Details of Outward Supplies [Section 37]

- Who is required to furnish details of outward supplies? [Section 37(1) read with rule 59(1) of CGST Rules] :** The details of outward supplies of both goods and services are required to be furnished by every registered person including casual taxable person, except the following:
  - input service distributor (ISD)
  - non-resident taxable person
  - person paying tax under composition scheme
  - person deducting tax at source (TDS)
  - E-commerce operator (ECO) who is liable to collect tax at source (TCS)
  - Supplier of online information and database access or retrieval services (OIDAR) located in non-taxable territory.
- What is the form for submission of details of outward supplies? [Section 37(1) read with rule 59(1) of CGST Rules] :** The details of outward supplies are required to be furnished, electronically, in **Form GSTR-1**.
- What is the duration & due date of submission of GSTR-1? [Section 37(1) read with rule 59 as amended by NN 82/2020 - CT, NN 83/2020 - CT and NN 84/2020 - CT] :**
  - GSTR-1 is required to be filed on Monthly basis. GSTR-1 for a particular month is required to be filed on or before the 10<sup>th</sup> day of the immediately succeeding month. However, w.e.f. 01.01.2021, the Commissioner has

It is re-iterated that said facility is not mandatory and is only an optional facility made available to the registered persons under the QRMP Scheme.

The details of invoices furnished using the said facility in the first two months are not required to be furnished again in FORM GSTR-1. Accordingly, the details of outward supplies made by such a registered person during a quarter shall consist of details of invoices furnished using IFF for each of the first two months and the details of invoices furnished in FORM GSTR-1 for the quarter. At his option, a registered person may choose to furnish the details of outward supplies made during a quarter in FORM GSTR-1 only, without using the IFF.

Further, the following details of outward supplies of goods or services or both may be furnished using the IFF:

- (i) invoice wise details of inter-State and intra-State supplies made to the registered persons;
- (ii) debit and credit notes, if any, issued during the month for such invoices issued previously.

7. **Communication of details of GSTR-1, etc. to the recipient of supply [Rule 60]** : The details of documents (invoices, etc.) furnished in Form GSTR-1/IFF/GSTR-5/GSTR-6, the details of the TDS/TCS furnished in Form GSTR-7/GSTR-8, and the details of the IGST paid on the import of goods or goods brought in domestic Tariff Area from SEZ unit or a SEZ developer on a bill of entry, shall be made available electronically (auto populated) to the respective recipient(s) in Form GSTR- 2A or Form GSTR-4A (in case of registered person opting for composition levy) or Form GSTR-6A (in case of Input Service Distributors) through the common portal.

8. **Communication of details of Inward Supplies and Input Tax Credit [Section 38, as substituted by Finance Act, 2022, w.e.f. 01.10.2022]** :

(1) *The details of outward supplies furnished by the registered persons under sub-section (1) of section 37 and of such other supplies as may be prescribed, and an auto-generated statement containing the details of input tax credit shall be made available electronically to the recipients of such supplies in such form and manner, within such time, and subject to such conditions and restrictions as may be prescribed.*

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

(a) *details of inward supplies in respect of which credit of input tax may be available to the recipient; and*

(b) *details of supplies in respect of which such credit cannot be availed, whether wholly or partly, by the recipient, on account of the details of the said supplies being furnished under sub-section (1) of section 37,-*

(i) *by any registered person within such period of taking registration as may be prescribed; or*

(ii) *by any registered person, who has defaulted in payment of tax and where such default has continued for such period as may be prescribed; or*

(iii) *by any registered person, the output tax payable by whom in accordance with the statement of outward supplies furnished by him under the said sub-section during such period, as may be prescribed, exceeds the output tax paid by him during the said period by such limit as may be prescribed; or*

(iv) *by any registered person who, during such period as may be prescribed, has availed credit of input tax of an amount that exceeds the credit that can be availed by him in accordance with clause (a), by such limit as may be prescribed; or*

(v) *by any registered person, who has defaulted in discharging his tax liability in accordance with the provisions of sub-section (12) of section 49 subject to such conditions and restrictions as may be prescribed; or*

(vi) *by such other class of persons as may be prescribed.*

8A. **FORM GSTR-2B [Sub-rules (7) & (8) of Rule 60]** : An auto-generated ~~auto-drafted~~ statement containing the details of input tax credit shall be made available to the registered person in FORM GSTR-2B, for every month, electronically through the common portal, and shall consist of [Words 'auto-drafted' substituted by words 'auto-generated' by NN 19/2022 - CT, w.e.f. 01.10.2022] -

- (i) the details of outward supplies furnished by his supplier, other than a supplier required to furnish return for every quarter under proviso to sub-section (1) of section 39, in FORM GSTR-1, between the day immediately after the due date of furnishing of FORM GSTR-1 for the previous month to the due date of furnishing of FORM GSTR-1 for the month;
- (ii) the details of invoices furnished by a non-resident taxable person in FORM GSTR- 5 and details of invoices furnished by an Input Service Distributor in his return in FORM GSTR-6 and details of outward supplies furnished by his supplier, required to furnish return for every quarter under proviso to sub-section (1) of section 39, in FORM GSTR-1 or using the IFF, as the case may be,-
  - (a) for the 1<sup>st</sup> month of the quarter, between the day immediately after the due date of furnishing of FORM GSTR-1 for the preceding quarter to the due date of furnishing details using the IFF for the 1<sup>st</sup> month of the quarter;
  - (b) for the 2<sup>nd</sup> month of the quarter, between the day immediately after the due date of furnishing details using the IFF for the first month of the quarter to the due date of furnishing details using the IFF for the 2<sup>nd</sup> month of the quarter;
  - (c) for the 3<sup>rd</sup> month of the quarter, between the day immediately after the due date of furnishing of details using the IFF for the second month of the quarter to the due date of furnishing of FORM GSTR-1 for the quarter;
- (iii) the details of the IGST paid on the import of goods or goods brought in the domestic Tariff Area from SEZ unit or developer on a bill of entry in the month.

The Statement in FORM GSTR-2B for every month shall be made available to the registered person,-

- (i) for the 1<sup>st</sup> and 2<sup>nd</sup> month of a quarter, a day after the due date of furnishing of details of outward supplies for the said month, in the IFF by a registered person required to furnish return for every quarter, or in FORM GSTR-1 by a registered person required to furnish return for every month, whichever is later;
- (ii) in the 3<sup>rd</sup> month of the quarter, a day after the due date of furnishing of details of outward supplies for the said month, in FORM GSTR-1 by a registered person required to furnish return for every quarter.

#### 9. How are the details of outward supply furnished in prior periods amended? [Section 37(3)] :

- (a) **Scope of amendment / correction entries :** Tables 9, 10 and 11(II) provide for amendments in details of taxable outward supplies furnished in earlier periods (hereinafter referred to as "Amendment Table"). The supplier can make amendments in the particulars furnished in GSTR-1 filed by him for the prior periods.

The details of original debit notes/credit notes /refund vouchers issued by the tax-payer in the current tax period as also the revision in the debit notes/credit notes/refund vouchers issued in the earlier tax periods are required to be shown in Table 9 of the GSTR-1.

Ordinarily in Amendment Table the supplier is required to give details of original invoice (No. & Date), the particulars of which have been wrongly entered in GSTR-1 of the earlier months and are now sought to be amended. However, it may happen that, a supplier altogether forgets to include the entire original invoice while furnishing the GSTR-1 for a particular month. In such cases also, he would be required to show the details of the said missing invoice which was issued in earlier month in the Amendment Table only, as such type of errors would also be regarded as data entry error.

- (b) **Rectification of errors :** ~~Consequent to the mismatch report communicated to the supplier u/s 42 or 43 [Omitted words, omitted by Finance Act, 2022, w.e.f. 01.10.2022]~~, If the supplier discovers any error or omission, he shall rectify the same in the tax period during which such error or omission is noticed, and pay the tax and interest, if any, in case there is short payment, in the return to be furnished for such tax period.

**Example :** GSTR-1 for the month of August, 2022 was filed on 10<sup>th</sup> September, 2022 and the return u/s 39 pertaining to the month of August, 2022 was filed on 20<sup>th</sup> September, 2022. If the supplier discovers any error or omission in the month of October, 2022, the supplier has to rectify the said errors in GSTR-1 for the month of October, 2022 (due date of submission of which is 11<sup>th</sup> November, 2022). If there is any tax liability because

of the said amendment/ rectification, it will be payable along with interest in his return u/s 39 for the month of October, 2022.

- (c) **Time limit for Rectification** : Suppose for some reason, supplier could not make correction at the time of filing of GSTR-1 for the month of October, 2022 then he can make such amendments in the subsequent periods.

However, the maximum time limit within which such amendments are permissible is earlier of the following dates:

- ~~Date of filing of monthly return u/s 39 for the month of September~~ <sup>(A)</sup> 30<sup>th</sup> November following the end of the financial year to which such details pertain [*as amended by Finance Act, 2022, w.e.f. 01.10.2022*] or
- Date of filing of the relevant annual return

**Example** : In the above example, the last day upto which a supplier can make amendments/ corrections pertaining to financial year 2022-23 will be 30<sup>th</sup> November, 2023 or the date of filing annual return for the financial year 2022-23, whichever is earlier.

#### 10. Nil GSTR-1 :

Filing of GSTR-1 is mandatory for all normal and casual taxpayers, even if there is no business activity in any particular tax period. For such tax period(s), a Nil GSTR-1 is required to be filed.

A Nil GSTR-1 does not have any entry. For example, a Nil GSTR-1 for a tax period cannot be filed, if the taxpayer has made any outward supply (including exempt, nil rated or non-GST supplies), or it has received supplies on which tax is payable under reverse charge or an amendment needs to be made to any of the supplies declared in an earlier return or any credit or debit notes is to be declared / amended etc.

A Nil GSTR-1 can be filed through an SMS using the registered mobile number of the taxpayer. GSTR-1 submitted through SMS is verified by registered mobile number-based OTP facility.

A taxpayer can file Nil GSTR-1, anytime from 1st of the month subsequent of the tax period onwards. For example, GSTR-1 for the calendar month of April, can be filed from 1st May onwards. GSTR-1 for the quarter of April to June can be filed from 1st July onwards.

#### 11. What are the precautions that a taxpayer is required to take for a hassle-free compliance under GST :

One of the most important things under GST is the timely uploading of the details of outward supplies in GSTR-1. How best this can be ensured will depend on the number of B2B invoices that the taxpayer issues. If the number is small, the taxpayer can upload all the information in one go. However, if the number of invoices is large, the invoices (or debit/ credit notes) should be uploaded on a regular basis.

#### 12. Regular uploading of invoices :

GST common portal allows regular uploading of invoices. Till the statement is actually submitted, the system also allows the taxpayer to modify the uploaded invoices. Therefore, it would always be beneficial for the taxpayers to regularly upload the invoices. Last minute rush makes uploading difficult and comes with higher risk of possible failure and default.

#### 13. Follow up with suppliers to upload the invoices of inward supplies :

The second thing would be to ensure that taxpayers follow up on uploading the invoices of their inward supplies by their suppliers. This would be helpful in ensuring that the ITC is available without any hassle and delay. Recipients can also encourage their suppliers to upload their invoices on a regular basis instead of doing it on or close to the due date. The system would allow recipients to see if their suppliers have uploaded invoices pertaining to them.

#### 14. Notes :

- <sup>(A)</sup> *Furnishing of GSTR-1 for the current tax period is not allowed, if GSTR-1 for any of the previous tax periods has not been furnished. However, the Government may allow a registered person or a class of registered persons to furnish GSTR-1, even if he has not furnished GSTR-1 for one or more previous tax periods. [inserted by Finance Act, 2022, w.e.f. 01.10.2022]*



- All values like invoice value, taxable value and tax amounts in GSTR-1 are to be declared up to 2 decimal digits. The rounding off of the self-declared tax liability to the nearest rupee will be done in GSTR 3B.
- Taxpayer opting for voluntary cancellation of GSTIN will have to file GSTR-1 for active period.
- In cases where a taxpayer has been converted from a normal taxpayer to composition taxpayer, GSTR 1 will be available for filing only for the period during which the taxpayer was registered as normal taxpayer. The GSTR 1 for the said period, even if filed with delay would accept invoices for the period prior to conversion.

### Illustration 1 :

Mr. Anand Kumar, a regular taxpayer, furnished his statement of outward supply (GSTR-1) for the month of August, 2022 before the due date. Later on, in February, 2023 he discovered error in the GSTR-1 of August, 2022 and wants to revise it. You are required to advise him as to the future course of action to be taken by him according to statutory provisions. [CA Final, May 2018 - New] (5 Marks)

### Solution :

(A)

Any registered person, who has furnished the details in GSTR-1 u/s 37 for any tax period, shall, upon discovery of any error or omission therein, rectify such error or omission, and shall pay the tax and interest, if any, in case there is a short payment of tax on account of such error or omission, in the return to be furnished for such tax period.

However, no rectification of error or omission in respect of the details furnished in GSTR-1 shall be allowed after:

30<sup>th</sup> November following the end of the financial year to which such details pertains i.e. 30.11.2023 or Furnishing of the relevant annual return (due date 31.12.2023), whichever is earlier.

Since mistake or omission is found in February, 2018, hence, he may rectify the same, as it is within time.

**No revision:** There is no provision for revision of return. It is a mere rectification.


**Interest:** Interest would also be payable.

## 13.3 Furnishing of Returns [Sec. 39]

### ANALYTICAL VIEW OF THE TOPIC

#### 1. List of Statements>Returns under GST:

S. N.	Section and Rule	Type of Taxable Person	Form No.	Periodicity	Due Date
1.	Section 37(1) Read with Rule 59	Registered Persons having an aggregate turnover of upto Rs. 5 crores in the preceding financial year and who have opted to furnish return (i.e. GSTR-3B) on quarterly basis (including a casual taxable person)	GSTR-1	Quarterly statement of outward supplies of goods or services or both	13 <sup>th</sup> of the month succeeding the quarter
		Other Registered Persons (including a casual taxable person)		Monthly statement of outward supplies of goods or services or both	11 <sup>th</sup> of the next month
		GSTR-1 is not required to be filed by following category of persons: (a) Supplier of OIDAR services located in non-taxable territory (b) Composition taxpayer			

		(c) Non-resident taxable person (d) Input Service Distributor (ISD) (e) Person deducting tax at source (TDS) (f) ECO, requiring to collect TCS			
2.	Section 39(1) and rule 61(1)	Registered Persons having an aggregate turnover of upto Rs. 5 crores in the preceding financial year and who have opted to furnish return (i.e. GSTR-3B) on quarterly basis (including a casual taxable person)	GSTR-3B	Quarterly Return (or a part of quarter)	22 <sup>nd</sup> / 24 <sup>th</sup> day of the month succeeding such quarter (depending on prescribed States/UT)
		Other Registered Persons (including a casual taxable person)		Monthly Return (or a part of month)	20 <sup>th</sup> of the next month
		GSTR-3B is not required to be filed by following category of persons: (a) Supplier of OIDAR services located in non-taxable territory (b) Composition taxpayer (c) Non-resident taxable person (d) Input Service Distributor (ISD) (e) Person deducting tax at source (TDS) (f) ECO, requiring to collect TCS			
3.	Section 39(2) and Rule 62	Registered person paying tax under Composition Scheme	Statement GST CMP - 08 (For payment of liability)	Quarterly (or a part of quarter) • Even if no supplies have been effected, a nil return is required to be filed mandatorily.	18 <sup>th</sup> of the month next to relevant Quarter
			GSTR - 4 (Return)	• Even if no supplies have been effected, a nil return is required to be filed mandatorily.	30 <sup>th</sup> day of April following the end of the F.Y.
4.	Section 39(5) and rule 63	Registered non-resident taxable person	GSTR-5	Monthly (or a part of month) 	<del>20<sup>th</sup></del> <u>13<sup>th</sup></u> of the next month or 7 <sup>th</sup> day after the last day of the validity of registration, whichever is earlier. <i>[20<sup>th</sup> substituted by 13<sup>th</sup> by Finance Act, 2022, w.e.f.</i>

**Illustration 1**

A registered person, who has opted for the Scheme, had paid a total amount of Rs. 100/- in cash as tax liability in the previous quarter of October to December. He opts to pay tax under fixed sum method. He therefore pays Rs. 35/- each on 25<sup>th</sup> February and 25<sup>th</sup> March for discharging tax liability for the first two months of quarter viz. January and February. In his return for the quarter, it is found that liability, based on the outward and inward supplies, for January was Rs. 40/- and for February it was Rs. 42/-. No interest would be payable for the lesser amount of tax (i.e. Rs. 5 and Rs. 7 respectively) discharged in these two months provided that he discharges his entire liability for the quarter in the FORM GSTR-3B of the quarter by the due date.

**Illustration 2**

A registered person, who has opted for the Scheme, had paid a total amount of Rs. 100/- in cash as tax liability in the previous quarter of October to December. He opts to pay tax under fixed sum method. He therefore pays Rs. 35/- each on 25<sup>th</sup> February and 25<sup>th</sup> March for discharging tax liability for the first two months of quarter viz. January and February. In his return for the quarter, it is found that total liability for the quarter net of available credit was Rs. 125 but he files the return on 30<sup>th</sup> April. Interest would be payable at applicable rate on Rs. 55 [Rs. 125 - Rs. 70 (deposit made in cash ledger in M1 and M2)] for the period between due date of quarterly GSTR 3B and 30<sup>th</sup> April.

- (b) For registered person making payment of tax by opting Self-Assessment Method

Interest amount would be payable as per the provision of Section 50 of the CGST Act for tax or any part thereof (net of ITC) which remains unpaid / paid beyond the due date for the first two months of the quarter.

- (c) Interest payable, if any, shall be paid through FORM GSTR-3B.

- (ix) Applicability of Late Fee - Late fee is applicable for delay in furnishing of return/details of outward supply as per the provision of Section 47 of the CGST Act. As per the Scheme, the requirement to furnish the return under the proviso to sub-section (1) of Section 39 of the CGST Act is quarterly. Accordingly, late fee would be the applicable for delay in furnishing of the said quarterly return/details of outward supply. It is clarified that no late fee is applicable for delay in payment of tax in first two months of the quarter.

6. **Rectification of errors/omissions [Section 39(9)]:** Omission or incorrect particulars discovered in the returns filed u/s 39 can be rectified in the return to be filed for the month/quarter during which such omission or incorrect particulars are noticed.

Any tax payable as a result of such error or omission will be required to be paid along with interest.

**Exception:** It is important to note that section 39(9) does not permit rectification of error or omission discovered on account of scrutiny, audit, inspection or enforcement activities by the tax authorities. Hence, assessee may not be able to pass on the ITC to the receiver in respect of tax payments made by him in pursuance of account of any of the aforementioned situations.

**Time limit for making rectification:** The maximum time limit within which the rectification of errors/omissions is permissible is earlier of the following dates:

- ~~Due date of filing of return for the month of September/quarter ending September~~ <sup>(A)</sup> 30<sup>th</sup> November following the end of the financial year to which such details pertain [as amended by Finance Act, 2022, w.e.f. 01.10.2022] or
- Actual date of filing of the relevant annual return.

Hence, if annual return for the year 2022-23 is filed before 30<sup>th</sup> November 2023, then no rectification of errors/omissions in returns pertaining to F.Y. 2022-23 would be permitted thereafter.

7. **Nil GSTR-3B:** Filing of GSTR-3B is mandatory for all normal and casual taxpayers, even if there is no business activity in any particular tax period. For such tax period(s), a Nil GSTR-3B is required to be filed. A taxpayer may file Nil Form GSTR-3B, anytime on or after the 1<sup>st</sup> of the subsequent month for which the return is being filed for.
8. **Rule 67A - Manner of furnishing of return or details of outward supplies by short messaging service facility:** Notwithstanding anything contained in this Chapter, for a registered person who is required to furnish a Nil return

under section 39 in FORM GSTR-3B or a Nil details of outward supplies under section 37 in FORM GSTR-1 or a Nil statement in FORM GST CMP-08 for a tax period, any reference to electronic furnishing shall include furnishing of the said return or the details of outward supplies or statement through a short messaging service using the registered mobile number and the said return or the details of outward supplies or statement shall be verified by a registered mobile number based One Time Password (OTP) facility.

**Explanation** - For the purpose of this rule, a Nil return or Nil details of outward supplies or Nil statement shall mean a return under section 39 or details of outward supplies under section 37 or statement under rule 62, for a tax period that has nil or no entry in all the Tables in FORM GSTR-3B or FORM GSTR-1 or FORM GST CMP-08, as the case may be.

#### 9. **Signing the Return while filing:**

- A taxpayer needs to electronically sign the submitted returns otherwise it will be considered not-filed.
- Taxpayers can electronically sign their returns using a DSC (~~mandatory for all types of companies~~), E-sign (Aadhaar-based OTP verification), or EVC (Electronic Verification Code sent to the registered mobile number and E-mail ID of the authorized signatory). [omitted words, omitted by NN 32/2021 - CT, w.e.f. 01.11.2021]

10. **Sec. 39(10) [as amended by Finance Act, 2022, w.e.f. 01.10.2022]:** A registered person shall not be allowed to furnish a return for a tax period if the return for any of the previous tax periods *or the details of outward supplies u/s 37(1) for the said tax period has not been furnished by him.*

*However, the Government may allow a registered person or a class of registered persons to furnish the return, even if he has not furnished the returns for one or more previous tax periods or has not furnished the details of outward supplies u/s 37(1) for the said tax period.*

#### **Illustration 2:**

Ms. Pragya, a taxpayer registered under regular scheme (Section 9), furnished GSTR-1 & GSTR-3B for the month of October. After furnishing the same, she discovers that the value of a taxable supply has been under-reported therein. Ms. Pragya now wants to file a revised GSTR-1 & GSTR-3B. Examine the scenario and give your comments.

#### **Answer:**

Under GST law, a statement/return once filed cannot be revised. However, the details of those transactions that are required to be amended can be amended in any of the future GSTR-1s. For this purpose, specific tables are provided in GSTR-1 to amend previously declared details.

Thus, Ms. Pragya cannot revise GSTR-1 & GSTR-3B filed by her for the month of October. However, she can amend the details of the taxable supply, which was under-reported, in GSTR-1 for the month of November. The tax payable on account of such error will be paid along with interest in GSTR-3B for the month of November.

#### **Illustration 3:**

Explain the provisions of section 39(9) of the CGST Act, 2017 with reference to rectification of returns. [RTP, May 2019]

#### **Answer:**

As per section 39(9) of the CGST Act, 2017, if any registered person after furnishing a return discovers any omission or incorrect particulars therein, he shall rectify such omission or incorrect particulars in the return to be furnished for the month or quarter during which such omission or incorrect particulars are noticed, subject to payment of interest.

However, section 39(9) does not permit rectification of error or omission discovered on account of scrutiny, audit, inspection or enforcement activities by tax authorities. Further, no such rectification of any omission or incorrect particulars shall be allowed after 30<sup>th</sup> day of November following the end of the financial year, or the actual date of furnishing of relevant annual return, whichever is earlier.

## **13.4 Special Returns**

As discussed above, a regular taxpayer has to file GSTR-1 and GSTR-3B. However, there are certain specified category of taxpayers for whom a simplified return is specified owing to the nature of their activities. They are taxpayers under

Non-Resident Taxable Persons (NRTPs) are those suppliers who do not have a business establishment in India and have come for a short period to make supplies in India. They would normally import their products into India and make local supplies.

A. **Monthly return:** A registered NRTP is not required to file separately the Statement of Outward Supplies, Statement of Inward Supplies and Return for a normal tax payer. In place of the same, a simplified monthly tax return has been prescribed in **Form GSTR-5** for a NRTP for every calendar month or part thereof. NRTP shall incorporate the details of outward supplies and inward supplies in GSTR-5.

B. **Last date of filing return:** The details in GSTR-5 should be furnished within 20 13 days after the end of the calendar month or within 7 days after the last day of validity period of the registration, whichever is earlier. [20 substituted by 13 by Finance Act, 2022, w.e.f. 01.10.2022]

C. **Payment of interest, penalty, fees or any other amount payable:** NRTP shall pay the tax, interest, penalty, fees or any other amount payable under the CGST Act or the provisions of the Returns Chapter under CGST Rules, 2017 till the last date of filing return.

### 3. Details of inward supplies of persons having UIN [Rule 82 of CGST Rules, 2017]

A. **UIN issued for claiming refund of taxes paid on his inward supplies of a person:** Such person shall furnish the details of those inward supplies of taxable goods and/or services on which refund of taxes has been claimed in **Form GSTR-11, along with application for such refund claim.**

B. **UIN issued for purposes other than refund of taxes paid:** Such person shall furnish the details of inward supplies of taxable goods and/or services as may be required by the proper officer in **Form GSTR-11.**

### 4. Filing of Returns by person required to deduct tax at source (TDS) [Sec. 39(3) read with sec. 51 and rule 60(6) and rule 66 of CGST Rules, 2017]

Whenever taxable goods or services or both are supplied to a Central/ State Government's Department/ establishment or, local authority, or Governmental agencies, recipient is required to deduct tax at source under section 51. Such deductor [person deducting TDS] is required to be compulsorily registered and deduct tax @ 2% [1% CGST + 1% SGST] of the payment made to the supplier (the deductee) of taxable goods or services or both, where the total value of such supply, under a contract, exceeds Rs. 2,50,000 (excluding the amount of CGST, SGST, IGST, UTGST and cess indicated in the invoice).

A. **Monthly return :** Deductor shall furnish a monthly return in Form GSTR-7 electronically through the common portal.

B. **Last date of filing return :** The details in GSTR-7 should be furnished on / before 10<sup>th</sup> of the month succeeding the calendar month in which tax has been deducted at source.

C. **TDS details made available to deductees :** 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 validated.

The deductees can take this amount as credit in his Electronic Cash Register and use the same for payment of tax liability.

D. **Tax Deduction at Source (TDS) Certificate :** A TDS certificate is required to be issued by deductor (the person who is deducting tax) in Form GSTR-7A to the deductee (the supplier from whose payment, TDS is deducted), within 5 days of crediting the amount to the Government. It contains the details pertaining to value on which tax has been deducted, rate of deduction, amount of tax deducted at source and amount paid to the Government.

### 5. Filing of Statement of Supplies effected through an e-commerce operator (TCS Statement) [ Sec. 52(4) read with rule 60(7) and rule 67 of CGST Rules, 2017]

When a supplier supplies some goods or services to the consumer through the portal of an electronic commerce operator (ECO), the consideration for the product/ service is collected by the ECO from the consumer and passed on to the actual supplier after the deduction of its commission.



taxes paid. The ISD itself cannot discharge any tax liability (as person liable to pay tax) and remit tax to Government account. ISD will have late fee and any other liability only.

- E. **Details of GSTR-6 to be available in GSTR-2A of the recipients** : The details of invoices furnished by an ISD in his return will be made available to the respective registered recipients of credit in their GSTR 2A (Form GSTR 4A in case of composition supplier). The recipients may include these in their GSTR-2 (Form GSTR 4 in case of composition supplier) and take credit.

### 13.5 First Return [Sec. 40]

When a person becomes liable to registration as per provisions of section 22 or 24, he may apply for registration within 30 days of so becoming liable. Thus, there might be a time lag between a person becoming liable to registration and grant of registration certificate.

During the intervening period, such person might have made the outward supplies, i.e. after becoming liable to registration but before grant of the certificate of registration. Now, in order to enable such registered person to declare the taxable supplies made by him for the period between the date on which he became liable to registration till the date on which registration has been granted so that ITC can be availed by the recipient on such supplies, firstly, the registered person may issue Revised Tax Invoices against the invoices already issued during said period within 1 month from the date of issuance of certificate of registration [Section 31(3)(a) read with rule 53 of CGST Rules, 2017]. Further, section 40 provides that registered person shall declare his outward supplies made during said period in the first return furnished by him after grant of registration. The format for this return is the same as that for regular return.

### 13.6 Annual Return [Sec. 44 read with Rule 80]


#### 1. Who are required to furnish Annual Return...?

Every registered person shall furnish an annual return for every financial year. However, the following persons are not required to furnish annual return:

- (i) Casual Taxable Persons;
- (ii) Non- resident taxable person;
- (iii) Input Service Distributors;
- (iv) Persons authorized to deduct/collect tax at source under section 51/52;
- (v) Any department of the Central Government or a State Government or a local authority, whose books of account are subject to audit by the Comptroller and Auditor-General of India or an auditor appointed for auditing the accounts of local authorities under any law for the time being in force; and
- (vi) Persons supplying online information and data base access or retrieval services from a place outside India to a person in India [inserted by NN 30/2019 - CT, dated 28-06-2019].

Further, the Commissioner may, on the recommendations of the Council, by notification, exempt any class of registered persons from filing annual return under this section.

Using this power, the Commissioner, on the recommendations of the Council, has exempted the registered persons whose aggregate turnover in the financial year 2020-21 is upto Rs. 2 Crores, from filing annual return for the said financial year. [NN 31/2021 - CT, w.e.f. 01.08.2021]

 Using this power, the Commissioner, on the recommendations of the Council, has exempted the registered persons whose aggregate turnover in the financial year 2021-22 is upto Rs. 2 Crores, from filing annual return for the said financial year. [NN 10/2022 - CT, w.e.f. 05.07.2022]

#### 2. What is the due date of furnishing Annual Return...?

This return needs to be furnished by 31<sup>st</sup> December of the next Financial Year.

However, for the financial year 2020-2021, the said annual return shall be furnished on or before the 28.02.2022. [Rule 80(1A) inserted by NN 40/2021 - CT, dated 29.12.2021]

#### 3. What is the prescribed form for Annual Return...?

- (A) Statement of Outward Supplies [Section 37];
- (B) Returns [Section 39];
- (C) Final Return [Section 45] or
- (A) (D) **TCS Statement by ECO [Section 52] [inserted by Finance Act, 2022, w.e.f. 01.10.2022]**

shall pay a late fee = Rs. 100 per day (CGST Act) during which such failure continues or Rs. 5,000/- (CGST Act), whichever is lower.

However, the late fees is reduced by the Government as under:

S.N.	Class of Registered Person	FORM	Late Fee per day [CGST]	Max. Fee [CGST]
1.	Registered persons who have NIL outward supplies in the tax period	GSTR-1	Rs. 10/-	Rs. 250
	Registered persons whose total amount of CGST payable in the said return is NIL	GSTR-3B/ GSTR-4		
2.	Registered persons having an aggregate turnover of upto Rs. 1.5 crores in the preceding FY, other than those covered under S. No. 1	GSTR-1/ GSTR-3B/ GSTR-4	Rs. 25/-	Rs. 1,000
3.	Registered persons having an aggregate turnover of more than Rs. 1.5 crores and upto Rs. 5 crores in the preceding FY, other than those covered under S. No. 1	GSTR-1/ GSTR-3B	Rs. 25/-	Rs. 2,500
4.	Registered persons required to deduct TDS u/s 51	GSTR-7	Rs. 25/-	Rs. 1,000
5.	Input Service Distributors	GSTR-6	Rs. 25/-	Rs. 5,000
6.	Registered Non - Resident Taxable Persons whose total amount of CGST payable in the said return is NIL	GSTR-5	Rs. 10/-	Rs. 5,000
	Registered Non - Resident Taxable Persons who have CGST liability payable in the said return		Rs. 25/-	Rs. 5,000

3. **Late fees levied for delay in filing annual return [Section 47(2)]:** Any registered person who fails to furnish the Annual Return by the due date shall be liable to pay a late fee = Rs. 100 per day (CGST Act) during which such failure continues or 0.25% (CGST Act) of the turnover of registered person in the State/UT, whichever is lower.
4. It may be noted that the late fee payable by a registered person for delayed filing of a return and/or annual return, as mentioned above, is with reference to only the CGST Act. An equal amount of late fee would be payable by such person under the respective SGST/UTGST Act as well.

### 13.9 Goods and Services Tax Practitioners [Sec. 48]

Section 48 provides for the authorisation of an eligible person to act as approved Goods and Services Tax Practitioner (GSTP). A registered person may authorize an approved GSTP to furnish information, on his behalf, to the Government. The manner of approval of GSTPs, their eligibility conditions, duties and obligations, manner of removal and other conditions relevant for their functioning have been prescribed in the rules 83 and 84 of the CGST Rules, 2017.

GSTN will provide separate user ID and Password to GSTP to enable him to work on behalf of his clients without asking for their user ID and passwords. They can do all the work on behalf of taxpayers as allowed under GST Law. A taxpayer may choose a different GSTP by simply unselecting the previous one and then choosing a new GSTP on the GST portal.

Standardised formats from GST PCT-1 to GST PCT-5 have been prescribed for making application for enrolment as GSTP, certificate of enrolment, show cause notice for disqualification, order of rejection of application of enrolment, list of approved GSTPs, authorisation letter and withdrawal of authorisation.

A GSTP enrolled in any State or Union Territory shall be treated as enrolled in the other States/Union territories.

### 1. What is the eligibility criteria for GSTP?

- (i) A person who is
  - Indian citizen
  - Person of sound mind
  - Not adjudicated as insolvent
  - Not been convicted by a competent court
- (ii) Satisfies any of the condition
  - Retired officer of Commercial Tax Department of any State Govt./CBIC who, during service under Government had worked in a post not lower than the rank of a Group-B gazetted officer for a period  $\geq$  2 years.
  - Enrolled as a Sales Tax Practitioner or Tax Return Preparer under the earlier indirect tax law for a period of not less than 5 years.
  - Has acquired any of the prescribed qualifications (mentioned below).

#### Prescribed Qualification :

- (i) Graduate or postgraduate degree or its equivalent examination having a degree in Commerce, Law, Banking including Higher Auditing, or Business Administration or Business Management from any Indian University established by any law for the time being in force.
  - (ii) Degree examination of any Foreign University recognised by any Indian University as equivalent to the degree examination mentioned in sub-clause (i).
  - (iii) Any other examination notified by the Government, on the recommendation of the Council, for this purpose.
  - (iv) Any degree examination of an Indian University or of any Foreign University recognized by any Indian University as equivalent of the degree examination.
  - (v) Has passed final examination of ICAI/ ICSI/ Institute of Cost Accountants of India.
- ### 2. What are the activities which can be undertaken by a GSTP?

A GSTP can undertake any/all of the following activities on behalf of a registered person, if so authorised by him:

- (a) Furnish details of outward supplies ~~and inward supplies~~ [Omitted words, omitted by Finance Act, 2022 and NN 19/2022 - CT, w.e.f. 01.10.2022] A
- (b) Furnish monthly, quarterly, annual or final return
- (c) Make deposit for credit into the electronic cash ledger
- (d) File a claim for refund
- (e) File an application for registration amendment/cancellation
- (f) furnish information for generation of e-way bill;
- (g) furnish details of challan in FORM GST ITC-04;
- (h) file an application for amendment or cancellation of enrolment under rule 58; and
- (i) file an intimation to pay tax under the composition scheme or withdraw from the said scheme.

# Relevant Date for Refund

	(iii) Goods are exported by post	Date of dispatch of goods by the Post Office concerned to a place outside India
2.	In case of supply of goods regarded as <b>deemed exports</b> where a refund of tax paid is available in respect of the goods	Date on which the return relating to such deemed exports is furnished
3.	In case of <b>services exported</b> out of India where a refund of tax paid is available in respect of services themselves or the inputs or input services used in such services, and	
	(i) the supply of services had been completed prior to the receipt of such payment	Date of receipt of payment in convertible foreign exchange or in Indian rupees wherever permitted by the RBI
	(ii) Payment for the services had been received in advance prior to the date of issue of the invoice	Date of issue of Invoice
3A.	<i>In case of zero-rated supply of goods or services or both to a SEZ developer or a SEZ unit where a refund of tax paid is available in respect of such supplies themselves, or the inputs or input services used in such supplies</i>	<i>Due date for furnishing of return u/s 39 in respect of such supplies [inserted by Finance Act, 2022, w.e.f. 01.10.2022]</i>
4.	Where tax becomes refundable as a consequence of <b>judgment</b> , decree, order or direction of the Appellate Authority, Appellate Tribunal or any court	Date of <b>communication</b> of such judgment, decree, order or direction
5.	In case of refund of unutilized ITC in case of <del>zero-rated supplies</del> or accumulated ITC on account of <b>inverted duty structure</b>	Due date for furnishing of return u/s 39 for the period in which such claim for refund arises.
6.	In the case where tax is paid <b>provisionally</b> under this Act or the rules made there under	Date of <b>adjustment of tax</b> after the final assessment thereof
7.	In the case of a person, <b>other than the supplier</b>	Date of <b>receipt of such goods</b> or services or both by such person
8.	Any other case	Date of <b>payment of tax</b>

### 14.2.4 DOCUMENTS FOR FILING REFUND CLAIM

Documents required for filing refund claim has been provided under the provisions of section 54(4) read with rule 89(2).

Section 54(4) of the CGST Act stipulates that the application shall be accompanied by –

- (a) such documentary evidence as may be prescribed to establish that a refund is due to the applicant; and
- (b) such documentary or other evidence (including the documents referred to in section 33) as the applicant may furnish to establish that there is no unjust enrichment (i.e. the amount of tax and interest, if any, paid on such tax or any other amount paid in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such tax and interest had not been passed on to any other person).

However, where the amount claimed as **refund is upto Rs. 2 lakh**, it shall not be necessary for the applicant to furnish any documentary and other evidences but he may file a **declaration**, based on the documentary or other evidences available with him, **certifying that there is no unjust enrichment** i.e. the incidence of such tax and interest had not been passed on to any other person.

However, where the amount of refund claimed **exceeds Rs. 2 lakh**, a Certificate in Annexure 2 of Form GST RFD-01 by a **Chartered Accountant or a Cost Accountant** to the effect that there is not unjust enrichment in the case of the

- Rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempted)
- Except supplies of goods or services or both as may be notified by the Government.

**Nil-rated/Exempt supplies not covered here [Analysis]:** The nil-rated/exempted supplies cannot claim benefit of inverted tax structure and therefore, cannot claim benefit of input tax borne by tax. Inverted tax means there is same tax but it is lower than input tax.

**No refund on exports, if export liable to export duty:** No refund of unutilized input tax credit shall be allowed in cases where the goods exported out of India are subject to export duty.

---

**Clarification in respect of refund of unutilized ITC, in case of exports of goods which are having NIL rate of export duty under Customs [Circular No. 160/16/2021-GST, dated 20.09.2021]**

---

The term 'subjected to export duty' used in second 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, 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. Goods, which are not subject to any export duty and 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, would not be covered by the restriction imposed under the second proviso to section 54(3) of the CGST Act for the purpose of availment of refund of accumulated ITC.

**No refund, if drawback of CGST or refund of IGST claimed:** No refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central GST or has availed refund of integrated tax paid on such supplies.

---

**Clarification in respect of Refund of ITC u/s 54(3) restricted to the extent of credit reflected in Form GSTR-2B [Circular No.135/05/2020 - GST, dated 31.03.2020]**

---

In wake of insertion of sub-rule (4) to rule 36 of the CGST Rules, 2017 [Refer Chapter 5 - Input Tax Credit], it has been decided that the refund of accumulated ITC shall be restricted to the ITC as per those invoices, the details of which are uploaded by the supplier in Form GSTR-1 and are reflected in the Form GSTR-2B of the applicant.

Further, it is clarified that the aforesaid circular does not in any way impact the refund of ITC availed on the invoices / documents relating to imports, ISD invoices and the inward supplies liable to Reverse Charge (RCM supplies) etc.. It is hereby clarified that the treatment of refund of such ITC relating to imports, ISD invoices and the inward supplies liable to Reverse Charge will continue to be same as it was before the issuance of Circular No. 135/05/2020-GST, because these invoices are not uploaded by the suppliers in Form GSTR-1. [Circular No. 139/09/2020 - GST, dated 10.06.2020]

## 14.9 Refund of Inverted-tax Structure [Rule 89(5)]

As per Rule 89(5) of the CGST Rules, 2018, in the case of refund on account of inverted duty structure, refund of input tax credit shall be granted as per the following formula:-

Maximum Refund Amount =  $\frac{\text{((Turnover of inverted rated supply of goods and services) \times \text{Net ITC} \div \text{Adjusted Total Turnover}) - [\text{Tax payable on such inverted rated supply of goods and services} \times (\text{Net ITC} \div \text{ITC availed on inputs and input services})]}{1}$  [as amended by NN 14/2022 - CT, w.e.f. 05.07.2022]

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

- Net ITC shall mean input tax credit availed on **inputs** during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both; and



- (b) "Adjusted Total Turnover" means the sum total of the value of-
- (i) the turnover in a State or a Union territory, as defined under clause (112) of section 2, excluding the turnover of services; and
  - (ii) the turnover of zero-rated supply of services determined in terms of clause (D) above and non-zero-rated supply of services,
- excluding-
- (i) the value of exempt supplies other than zero-rated supplies; and
  - (ii) the turnover of supplies in respect of which refund is claimed under sub-rule (4A) or sub-rule (4B) or both, if any, during the relevant period.
- (c) "Relevant period" means the period for which the claim has been filed.

**Note:** No refund permissible for accumulated ITC on input services in cases of Inverted duty structure.

**Analysis of Amendment made by NN 14/2022 - CT, w.e.f. 05.07.2022:**



*Rule 89(5) of the CGST Rules is amended vide NN. 14/2022 - CT, dated 05.07.2022, to change the formula for calculation of Maximum Refund Amount under this rule. This change is done to take into account utilization of ITC on account of inputs as well as input services for payment of output tax on inverted rated supplies in the same ratio in which ITC has been availed on inputs and input services during the said period. This would help those taxpayers who are availing ITC on input services also.*

**Analytical Example:** M/s Yash Enterprises is a registered manufacturer in Mumbai, Maharashtra indulged in the business of processing of woven fabrics which is taxable @ 5%. The inputs used for making such product are taxable @ 12%. The company wants to determine the amount of input tax credit eligible for refund.

Following are the information provided by the company during the period January to March, 2023:

S. N.	Particulars	Amount (Rs. in Lakhs)	Tax Amount (Rs. in Lakhs)
1	Raw materials used (inward supply) @12%	500	60
2	Woven fabrics (outward supply) @ 5%	300	15
3	Consultancy service @18% (other inward supply)	100	18

**Solution:**

Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services) x Net ITC Adjusted Total Turnover} - tax payable on supply of goods and services x (Net ITC - ITC availed on inputs and input services)

Maximum Refund amount =  $\{(300 \times 60) / 300\} - \{15 \times (60 / 78)\} = 60 - 11.53 = 48.47$  Lakhs

Prior to the amendment in formula for calculation of refund under this rule, the maximum refund amount would be calculated as under:

Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services) x Net ITC - Adjusted Total Turnover} - tax payable on such inverted rated supply of goods and services.

Maximum Refund Amount =  $\{(300 \times 60) / 300\} - 15 = 45$  lakhs

**Clarification on refund related issues [Circular No. 79/53/2018-GST, dated 31-12-2018]**

**1. Refund of accumulated ITC of input services and capital goods arising on account of inverted duty structure:**

Section 54(3) of the CGST Act provides that refund of any unutilized ITC may be claimed where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies). Further, section 2(59) of the CGST Act defines inputs as any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business. Thus, inputs do not include services or capital goods. Therefore, clearly, the intent of the law is not to allow refund of tax paid on

- iv. If we assume that Input A, having value of Rs. 500/- and Input B, having value of Rs. 2,000/-, have been purchased in the relevant period for the manufacture of Y, then Net ITC shall be equal to Rs. 385/- (Rs. 25/- and Rs. 360/- on Input A and Input B respectively).
- v. Therefore, multiplying Net ITC by the ratio of turnover of inverted rated supply of goods and services to the adjusted total turnover will give the figure of Rs. 385/-.

From this, if we deduct the tax payable on such inverted rated supply of goods or services, which is Rs. 360/-, we get the maximum refund amount, as per rule 89(5) of the CGST Rules which is Rs. 25/-.

---

**Refund of accumulated ITC on account of reduction in GST rate on goods, not available [Circular No. 135/05/2020 - GST, dated 31.03.2020] [As further clarified by Circular No. 173/05/2022 - GST, dated 06.07.2022]**

---

The issue which arose for consideration is whether an applicant can seek refund of unutilized ITC on account of inverted duty structure, under section 54(3)(iii) of the CGST Act, 2017, in a case where the inversion is due to change in the GST rate on the same goods. For example, an applicant trading in goods has purchased, say goods "X" attracting 18% GST. However, subsequently, the rate of GST on "X" has been reduced to, say 12%.

It is clarified that, in such cases, the input and output being the same, though attracting different tax rates at different points in time, do not get covered under section 54(3)(ii) of the CGST Act, 2017. Thus, refund of accumulated ITC under said clause would not be applicable in cases where the input and the output supplies are the same.

*Further, there may however, be cases where though inputs and output goods are same but the output supplies are made under a concessional notification due to which the rate of tax on output supplies is less than the rate of tax on inputs. In such cases, as the rate of tax of output supply is less than the rate of tax on inputs at the same point of time due to supply of goods by the supplier under such concessional notification, the credit accumulated on account of the same is admissible for refund under the provisions of clause (ii) of the first proviso to section 54(3) of the CGST Act.*

*However, no refund shall be allowed in cases where output supply is either Nil rated or fully exempted.*

*Further, no refund shall be allowed in case of supply of such goods or services which are notified by the Government for their exclusion from refund of accumulated ITC under this clause. [Circular No. 173/05/2022 - GST, dated 06.07.2022]*

**Illustration 2:**

Super Engineering Works, a registered supplier in Haryana, is engaged in supply of taxable goods within the State. Given below are the details of the turnover and applicable GST rates of the final products manufactured by Super Engineering Works as also the input tax credit (ITC) availed on inputs used in manufacture of each of the final products and GST rates applicable on the same, during a tax period:

Products	Turnover* (Rs.)	Output GST Rates	ITC availed (Rs.)	Input GST Rates
A	500,000	5%	54,000	18%
B	350,000	5%	54,000	18%
C	100,000	18%	10,000	18%

\*excluding GST

Determine the maximum amount of refund of the unutilized input tax credit that Super Engineering Works is eligible to claim under section 54(3)(ii) of the CGST Act, 2017 provided that Product B is notified as a product, in respect of which no refund of unutilised input tax credit shall be allowed under said section.

**Answer:**

Section 54(3)(ii) of the CGST Act, 2017 allows refund of unutilized input tax credit (ITC) at the end of any tax period to a registered person where the credit has accumulated on account of inverted duty structure i.e. rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council.

In the given case, the rates of tax on inputs used in Products A and B (18% each) are higher than rates of tax on output supplies of Products A and B (5% each). However, Product B is notified as a product, in respect of which no refund of unutilised ITC shall be allowed under section 54(3)(ii) of the CGST Act, 2017. Therefore, only Product A is eligible for refund under section 54(3)(ii).

(A)

Maximum Refund Amount =  $\{(\text{Turnover of inverted rated supply of goods and services}) \times \text{Net ITC} \div \text{Adjusted Total Turnover}\} - [\text{Tax payable on such inverted rated supply of goods and services} \times (\text{Net ITC} \div \text{ITC availed on inputs and input services})]$  [as amended by NN 14/2022 - CT, w.e.f. 05.07.2022].

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

- (a) Net ITC shall mean input tax credit availed on inputs during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both; and
- (b) Adjusted Total turnover shall have the same meaning as assigned to it in sub-rule (4). [Rule 89(5), as substituted retrospectively by NN 26/2018 - CT, w.e.f. 01.07.2017]

As per sub-rule (4) "Adjusted Total Turnover" means the sum total of the value of-

- (a) the turnover in a State or a Union territory, as defined under clause (112) of section 2, excluding the turnover of services; and
- (b) the turnover of zero-rated supply of services determined in terms of clause (D) above and non-zero-rated supply of services,

excluding-

- (i) the value of exempt supplies other than zero-rated supplies; and
- (ii) the turnover of supplies in respect of which refund is claimed under sub-rule (4A) or sub-rule (4B) or both, if any, during the relevant period. [This definition as substituted by NN 39/2018 - CT, w.e.f. 04.09.2018]

Tax payable on inverted rated supply of Product A = Rs. 5,00,000 × 5% = Rs. 25,000

Net ITC = Rs. 1,18,000 (Rs. 54,000 + Rs. 54,000 + Rs. 10,000) [Net ITC availed during the relevant period needs to be considered irrespective of whether the ITC pertains to inputs eligible for refund of inverted rated supply of goods or not]

Adjusted Total Turnover = Rs. 9,50,000 (Rs. 5,00,000 + Rs. 3,50,000 + Rs. 1,00,000) Turnover of inverted rated supply of Product A = Rs. 5,00,000

Maximum refund amount for Super Engineering Works is as follows:

=  $[(\text{Rs. } 5,00,000 \times \text{Rs. } 1,18,000) / \text{Rs. } 9,50,000] - \text{Rs. } 25,000 = \text{Rs. } 37,105$  (rounded off)

## 14.10 Refund to UN Bodies, Embassies, etc. [Section 55 read with Section 54(2) of CGST Act]

Supplies made to UN bodies and embassies may be exempted from payment of GST as per international obligations. However, this exemption has been operationalized by way of a refund mechanism. So, a taxable person making supplies to such bodies would charge the tax due and remit the same to Government account.

(A)

However, the UN bodies and other entities notified under section 55 of the CGST Act, 2017 can claim refund of the taxes paid by them on their purchases. The claim has to be made before the expiry of 2 years 6 months 18 months [as amended by Finance Act, 2022, w.e.f. 01.10.2022] from the last day of the quarter in which such supply was received. Detailed provisions have been discussed hereunder:

### A. WHO IS ENTITLED TO REFUND UNDER SECTION 55?

Government may, on the recommendations of the Council, by notification, specify:

- (i) any specialized agency of the United Nations Organization; or

- (ii) any Multilateral Financial Institution and Organization notified under the United Nations (Privileges and Immunities) Act, 1947; or
- (iii) Consulate or Embassy of foreign countries;
- (iv) Retail outlets established in departure area of an international Airport, beyond the immigration counters, making tax free supply to an outgoing international tourist [specified by NN 11/2019 - CT (R), w.e.f. 01.07.2019]; and
- (v) any other person or class of persons as may be specified in this behalf,

who shall, subject to such conditions and restrictions as may be prescribed, be entitled to claim a refund of taxes paid on the notified inward supplies of goods or services or both received by them.

**Note:** To provide for a parity between the IGST applicable on the domestic supplies of goods and the IGST applicable u/s 3(7) of the Customs Tariff Act, 1975 on imported goods, the specialised agencies will also get the refund of the IGST paid on imported goods. [Circular No. 23/2019 - Customs, dated 01.08.2019]

---

**Clarifications [Circular no. 36/10/2018-GST, dated 13-03-2018 & 43/17/2018-GST, dated 13-4-2018]:**

---

- Entities having UINs are not covered under registered person and are granted UINs to enable them to claim refund of GST paid on inward supplies. Therefore, if any such entity is making outward supply, then, it will have to apply for GSTIN.
- Entity may opt to have single UIN all over India or may seek more than one UIN.
- Recording of UIN on the invoice is a necessary condition under Rule 46 of the CGST Rules, 2017. If suppliers / vendors are not recording the UINs, action may be initiated against them under the provisions of the CGST Act, 2017.

**B. TIME LIMIT FOR FILING REFUND CLAIM [SECTION 54(2) READ WITH RULE 95(1)]**

Persons eligible to claim refund under section 55 [as mentioned in point A above], entitled to a refund of tax paid by it on inward supplies of goods or services or both, may make an application for such refund, in such form and manner as may be prescribed, once in every quarter, but before the expiry of 2 years ~~6 months~~ from the last day of the quarter in which such supply was received. [Time Period of claiming refund extended to '2 years' from '6 months' by Finance Act, 2022, w.e.f. 01.10.2022]

~~Extension of time to 18 months [NN. 20/2018 C.T., dated 28/03/2018]:~~ The said persons shall make application for refund of tax paid by it on inward supplies of goods or services or both, to the jurisdictional tax authority, in such form and manner as may be specified, before the expiry of 18 months from the last date of the quarter in which such supply was received. [Omitted by NN 20/2022 - CT, w.e.f. 01.10.2022]

---

**Notifications issued under CGST Act, 2017 are also applicable to GST (Compensation to States) Act, 2017 [Circular No. 68/42/2018-GST, dated 05.10.2018]**

---

1. Section 11 of the Goods and Services Tax (Compensation to States) Act, 2017 (hereinafter referred to as 'the Compensation Cess Act'), provides that provisions of CGST Act and IGST Act apply in relation to levy and collection of Compensation Cess. Further, section 9(2) of the Compensation Cess Act provides that for all the purposes of claiming refunds, except the form to be filed, the provisions of the CGST Act and the rules made thereunder, shall apply in relation to the levy and collection of Compensation Cess. Therefore, notifications issued under the CGST Act except those prescribing rate or granting exemptions, are applicable for the purpose of the Compensation Cess Act.
2. In view of the above, it is clarified that **UN and specified international organizations, foreign diplomatic missions** or consular posts in India, or diplomatic agents or career consular officers posted therein, having being specified under section 55 of the CGST Act, 2017, are entitled to refund of Compensation Cess payable on intra-State and inter-State supply of goods or services or both received by them subject to the same conditions and restrictions, mutatis mutandis, as prescribed in Notifications issued in the CGST Act.

**14.11 Rule 97A - Manual Filing and Processing**

**A. Interest on amount refundable consequent to order passed by Proper Officer under section 54(5)**

- Where any tax ordered to be refunded under section 54(5) to any applicant is not refunded within 60 days from the date of receipt of application under section 54(1), interest shall be payable to the applicant.
- Interest is payable on such refund @ 6% p.a. [as notified vide NN. 13/2017 CT dated 28.06.2017].
- Interest is payable from the date immediately after the expiry of 60 days from the date of receipt of application under the section 54(1) till the date of refund of such tax [Section 56 of CGST Act].

**B. Interest on amount refundable consequent to order passed in an appeal or further proceedings**

- Where any claim of refund arises from an order passed by an Adjudicating Authority or Appellate Authority or Appellate Tribunal or Court which has attained finality and the same is not refunded within 60 days from the date of receipt of application filed consequent to such order, interest shall be payable on such refund.
- Interest is payable on such refund @ 9% p.a. [as notified vide NN. 13/2017 CT dated 28.06.2017]
- Interest is payable from the date immediately after the expiry of 60 days from the date of receipt of application till the date of refund. [Proviso to Section 56 of CGST Act].

**Note:** For the purpose of this section, the order of refund made by an Appellate Authority, Appellate Tribunal or any court against an order of the proper officer under section 54(5), shall also be deemed to be an order passed under the said section 54(5) [Explanation to section 56].

**C. Order sanctioning interest on delayed refunds [Rule 94]**

- Where any interest is due and payable to the applicant under section 56, the proper officer shall make an order along with a payment order in prescribed form.
- Such order shall specify therein:
  - the amount of refund which is delayed,
  - the period of delay for which interest is payable and
  - the amount of interest payable.
- Such interest shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund.

**D. [Circular No. 125/44/2019 - GST, dated 18.11.2019]:** Any tax shall be considered to have been refunded only when the amount has been credited to the bank account of the applicant. Accordingly, all tax authorities are advised to issue the final sanction order and the payment order within 45 days of the date of generation of ARN, so that the disbursement is completed within 60 days.

## 14.14 Refund of Integrated Tax Paid on Supply of Goods to Tourist Leaving India [Section 15 of IGST Act]

The integrated tax paid by tourist leaving India on any supply of goods taken out of India by him shall be refunded in such manner and subject to such conditions and safeguards as may be prescribed.

The term "tourist" means a person not normally resident in India, who enters India for a stay of not more than 6 months for legitimate non-immigrant purposes.

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



[Rule 95A - Omitted by NN 14/2022 - CT, retrospectively w.e.f. 01.07.2019]





- (1) ~~Who is eligible for Refund: Retail outlet established in departure area of an international airport, beyond the immigration counters, supplying indigenous goods to an outgoing international tourist who is leaving India shall be eligible to claim refund of tax paid by it on inward supply of such goods.~~
- (2) ~~Application for Refund: Retail outlet claiming refund of the taxes paid on his inward supplies, shall furnish the application for refund claim in FORM GST RFD-10B on a monthly or quarterly basis, as the case may be, through the common portal either directly or through a Facilitation Centre notified by the Commissioner.~~
- (3) ~~Documents to be submitted: The self-certified compiled information of invoices issued for the supply made during the month or the quarter, as the case may be, along with concerned purchase invoice shall be submitted along with the refund application.~~
- (4) ~~Conditions 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.~~
- (5) ~~The provisions of rule 92 shall, mutatis mutandis, apply for the sanction and payment of refund under this rule.~~

~~Explanation. For the purposes of this rule, the expression "outgoing international tourist" shall mean a person not normally resident in India, who enters India for a stay of not more than six months for legitimate non-immigrant purposes."~~

**Note:** The Central Government, on the recommendations of the Council, has exempted whole of the IGST on any 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. [NN 11/2019 - IT (R), w.e.f. 01.07.2019]

## 14.16 Sec. 147 : Deemed Export

The Government may, on the recommendations of the Council, notify certain supplies of goods as deemed exports, where goods supplied do not leave India, and payment for such supplies is received either in Indian rupees or in convertible foreign exchange, if such goods are manufactured in India.

### ANALYTICAL VIEW OF THE TOPIC

Vide NN 48/2017-CT, dated 18.10.2017, the Central Government, on the recommendations of the Council, hereby notifies the supplies of goods listed in column (2) of the Table below as deemed exports, namely :

S. N.	Description of Supply
1.	Supply of goods by a registered person against Advance Authorisation Provided that goods so supplied, when exports have already been made after availing input tax credit on inputs used in manufacture of such exports, shall be used in manufacture and supply of taxable goods (other than nil rated or fully exempted goods) and a certificate to this effect from a chartered accountant is submitted to the jurisdictional commissioner of GST or any other officer authorised by him within 6 months of such supply: Provided further that no such certificate shall be required if input tax credit has not been availed on inputs used in manufacture of export goods.
2.	Supply of capital goods by a registered person against Export Promotion Capital Goods Authorisation.
3.	Supply of goods by a registered person to Export Oriented Unit.

- a. "Refund amount" means the maximum refund that is admissible;
- b. "Net ITC" means ITC availed on **inputs and input services** during the relevant period other than the ITC availed for which refund is claimed under sub-rules (4A) or (4B) or both;
- c. **A (i.e. "Turnover of zero-rated supply of goods")** means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond/LUT or the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier, whichever is less, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both;
- d. **B (i.e. "Turnover of zero-rated supply of services")** means the value of zero-rated supply of services made without payment of tax under bond or LUT, calculated in the following manner, namely:-
- Zero-rated supply of services is the aggregate of the payments received during the relevant period for zero-rated supply of services and zero-rated supply of services where supply has been completed for which payment had been received in advance in any period prior to the relevant period reduced by advances received for zero-rated supply of services for which the supply of services has not been completed during the relevant period.
- e. **C (i.e. "Adjusted Total Turnover"** as per sub-rule (4)) means the sum total of the value of-
- (a) the turnover in a State or a Union territory, as defined under clause (112) of section 2, excluding the turnover of services; and
- (b) the turnover of zero-rated supply of services determined in terms of clause (D) above and non-zero-rated supply of services,
- excluding-
- (i) the value of exempt supplies other than zero-rated supplies; and
- (ii) the turnover of supplies in respect of which refund is claimed under sub-rule (4A) or sub-rule (4B) or both, if any, during the relevant period.
- f. "**Relevant period**" means the period for which the claim has been filed.

*Explanation. - For the purposes of this sub-rule, the value of goods exported out of India shall be taken as lower of the followings -*



- (i) *the Free on Board (FOB) value declared in the Shipping Bill or Bill of Export; or*
- (ii) *the value declared in tax invoice or bill of supply*

*[Explanation inserted by NN 14/2022 - CT, w.e.f. 05.07.2022]*

**NOTE:** Where the application relates to refund of ITC, the electronic credit ledger shall be debited by the applicant by an amount equal to the refund so claimed [Rule 89(3)].

**The manner of calculation of Adjusted Total Turnover under Rule 89(4) of CGST Rules, 2017 [Circular No. 147/03/2021 - GST, dated 12.03.2021]**

The same value of zero-rated/ export supply of goods, as calculated as per amended definition of "Turnover of zero-rated supply of goods", need to be taken into consideration while calculating "turnover in a state or a union territory", and accordingly, in "adjusted total turnover" for the purpose of sub-rule (4) of Rule 89. Thus, the restriction of 150% of the value of like goods domestically supplied, as applied in "turnover of zero-rated supply of goods", would also apply to the value of "Adjusted Total Turnover" in Rule 89(4) of the CGST Rules, 2017.

**Illustration:** Suppose a supplier is manufacturing only one type of goods and is supplying the same goods in both domestic market and overseas. During the relevant period of refund, the details of his inward supply and outward supply details are shown in the table below [Net admissible ITC = Rs. 270]:

Outward Supply	Value per unit (Rs.)	No. of units supplied	Turnover (Rs.)	Turnover as per amended definition (Rs.)
----------------	----------------------	-----------------------	----------------	------------------------------------------

(1) The shipping bill filed by an exporter of goods shall be deemed to be an application for refund of integrated tax paid on the goods exported out of India and such application shall be deemed to have been filed only when:

(a) the person in charge of the conveyance carrying the export goods duly files a departure manifest or an export manifest or an export report covering the number and the date of shipping bills or bills of export;

(b) the applicant has furnished a valid return in Form GSTR-3B: A

*Provided that if there is any mismatch between the data furnished by the exporter of goods in Shipping Bill and those furnished in statement of outward supplies in FORM GSTR-1, such application for refund of IGST paid on the goods exported out of India shall be deemed to have been filed on such date when such mismatch in respect of the said shipping bill is rectified by the exporter; [Proviso inserted by NN. 14/2022 - CT, retrospectively w.e.f. 01.07.2017]*

(c) the applicant has undergone Aadhaar authentication in the manner provided in rule 10B. [clause (c) inserted by NN 35/2021 - CT, w.e.f. 01.01.2022]

(2) The details of the relevant export invoices contained in Form GSTR-1 shall be transmitted electronically by the GST common portal to the system designated by the Customs. And the said system shall electronically transmit to the common portal, a confirmation that the goods covered by the said invoices have been exported out of India.

(3) Upon the receipt of the information regarding the furnishing of a valid return from the common portal, the Customs system shall process the claim of refund in respect of export of goods and an amount equal to the IGST paid in respect of each shipping bill or bill of export shall be electronically credited to the bank account of the applicant.

(4) The claim for refund shall be withheld where,-

a. a request has been received from the jurisdictional Commissioner of GST to withhold the payment of refund; or

b. the proper officer of Customs determines that the goods were exported in violation of the provisions of the Customs Act, 1962; or A

c. *the Commissioner in the Board or an officer authorised by the Board, on the basis of data analysis and risk parameters, is of the opinion that verification of credentials of the exporter, including the availment of ITC by the exporter, is considered essential before grant of refund, in order to safeguard the interest of revenue. [inserted by NN. 14/2022 - CT, retrospectively w.e.f. 01.07.2017]*

A (5A) *Where refund is withheld in accordance with the provisions of clause (a) or clause (c) of sub-rule (4), such claim shall be transmitted to the proper officer of GST electronically through the common portal in a system generated FORM GST RFD-01 and the intimation of such transmission shall also be sent to the exporter electronically through the common portal, and notwithstanding anything to the contrary contained in any other rule, the said system generated form shall be deemed to be the application for refund in such cases and shall be deemed to have been filed on the date of such transmission.*

A (5B) *Where refund is withheld in accordance with the provisions of clause (b) of sub-rule (4) and the proper officer of the Customs passes an order that the goods have been exported in violation of the provisions of the Customs Act, 1962, then, such claim shall be transmitted to the proper officer of Central tax, State tax or Union territory tax, as the case may be, electronically through the common portal in a system generated FORM GST RFD-01 and the intimation of such transmission shall also be sent to the exporter electronically through the common portal, and notwithstanding anything to the contrary contained in any other rule, the said system generated form shall be deemed to be the application for refund in such cases and shall be deemed to have been filed on the date of such transmission.*

A (5C) *The application for refund in FORM GST RFD-01 transmitted electronically through the common portal in terms of sub-rules (5A) and (5B) shall be dealt in accordance with the provisions of Rule 89.*

*[sub-rules (5A), (5B) & (5C) inserted by NN. 14/2022 - CT, retrospectively w.e.f. 01.07.2017]*

(9) The application for refund of IGST paid on the services exported out of India shall be filed in FORM GST RFD-01 and shall be dealt with in accordance with the provisions of rule 89.

**Clarification on certain Refund related issues [Circular No. 166/22/2021 - GST, dated 17.11.2021]**

S.N.	Issue	Clarification
1.	Whether the provisions of section 54(1) of the CGST Act regarding time period, within which an application for refund can be filed, would be applicable in cases of refund of excess balance in electronic cash ledger?	No, the provisions of section 54(1) of the CGST Act regarding time period, within which an application for refund can be filed, would not be applicable in cases of refund of excess balance in electronic cash ledger.
2.	Whether certification/declaration under Rule 89(2)(l) or 89(2)(m) of CGST Rules, 2017 is required to be furnished along with the application for refund of excess balance in electronic cash ledger?	No, furnishing of certification/declaration under Rule 89(2)(l) or 89(2)(m) of the CGST Rules, 2017 for not passing the incidence of tax to any other person is not required in cases of refund of excess balance in electronic cash ledger as unjust enrichment clause is not applicable in such cases.
3.	Whether refund of TDS/TCS deposited in electronic cash ledger under the provisions of section 51/52 of the CGST Act can be refunded as excess balance in cash ledger?	The amount deducted/collected as TDS/TCS by TDS/ TCS deductors under the provisions of section 51 /52 of the CGST Act, as the case may be, and credited to electronic cash ledger of the registered person, is equivalent to cash deposited in electronic cash ledger. It is not mandatory for the registered person to utilise the TDS/TCS amount credited to his electronic cash ledger only for the purpose for discharging tax liability. The registered person is at full liberty to discharge his tax liability in respect of the supplies made by him during a tax period, either through debit in electronic credit ledger or through debit in electronic cash ledger, as per his choice and availability of balance in the said ledgers.  Any amount, which remains unutilized in electronic cash ledger, after discharge of tax dues and other dues payable under CGST Act and rules made thereunder, can be refunded to the registered person as excess balance in electronic cash ledger.
4.	Whether relevant date for the refund of tax paid on supplies regarded as deemed export by recipient is to be determined as per clause (b) of Explanation (2) under section 54 of CGST Act and if so, whether the date of return filed by the supplier or date of return filed by the recipient will be relevant for the purpose of determining relevant date for such refunds?	Clause (b) of Explanation (2) under Section 54 of CGST Act reads as under: “(b) in the case of supply of goods regarded as deemed exports where a refund of tax paid is available in respect of the goods, <u>the date on which the return relating to such deemed exports is furnished</u> ”  On perusal of the above, it is clear that clause (b) of Explanation (2) under section 54 of the CGST Act is applicable for determining relevant date in respect of refund of amount of tax paid on the supply of goods regarded as deemed exports irrespective of the fact whether the refund claim is filed by the supplier or by the recipient.  Further, as the tax on the supply of goods, regarded as deemed export, would be paid by the supplier in his return, therefore, the relevant date for purpose of filing of refund claim for refund of tax paid on such supplies would be the date of filing of return, related to such supplies, by the supplier.

**Clarification in respect of Refund claimed by the recipients of supplies regarded as Deemed Export [Circular No. 172/04/2022 - GST, dated 06.07.2022]**

(A) — P.T.O.

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

**The best preparation for  
tomorrow...**

**is doing your best today**



### Responsibilities of the person so summoned

A person who is issued summon is legally bound to **attend either in person or by an authorized representative** and he is bound to state the truth before the officer who has issued the summon upon any subject which is the subject matter of examination and to produce such documents and other things as may be required.

### Consequences of non-appearance to summons

The proceeding before the official who has issued summons is deemed to be a **judicial proceeding**. If a person does not appear on the date when summoned without any reasonable justification, he can be prosecuted under section 174 of the **Indian Penal Code (IPC)**. If he absconds to avoid service of summons, he can be **prosecuted** under section 172 of the IPC and in case he **does not produce the documents** or electronic records required to be produced, he can be prosecuted under section 175 of the IPC. In case he gives **false evidence**, he can be prosecuted under section 193 of the IPC. In addition, if a person does not appear before a CGST/ SGST officer who has issued the summon, he is liable to a penalty upto Rs. 25,000 under section 122(3)(d) of the Act.

### Guidelines on Issuance of Summons [Instruction No. 03/2022-23 (GST-Investigation), dated 17.08.2022]

CBIC has issued guidelines from time to time to ensure that summons provisions are not misused in the field. Accordingly, CBIC desires that the following guidelines must be followed in matters related to investigation under CGST:

- (i) *Power to issue summons are generally exercised by Superintendents, though higher officers may also issue summons. Summons by Superintendents should be issued after obtaining prior written permission from an officer not below the rank of Deputy/ Assistant Commissioner with the reasons for issuance of summons to be recorded in writing.*
- (ii) *Where for operational reasons it is not possible to obtain such prior written permission, oral/telephonic permission from such officer must be obtained and the same should be reduced to writing and intimated to the officer according such permission at the earliest opportunity.*
- (iii) *In all cases, where summons are issued, the officer issuing summons should record in file about appearance/ non-appearance of the summoned person and place a copy of statement recorded in file.*
- (iv) *Summons should normally indicate the name of the offender(s) against whom the case is being investigated unless revelation of the name of the offender is detrimental to the cause of investigation, so that the recipient of summons has prima-facie understanding as whether he has been summoned as an accused, co accused or as witness.*
- (v) *Issuance of summons may be avoided to call upon statutory documents which are digitally/ online available in the GST portal.*
- (vi) *Senior management officials such as CMD/MD/ CEO/ CFO/ similar officers of any company or a PSU should not generally be issued summons in the first instance. They should be summoned when there are clear indications in the investigation of their involvement in the decision making process which led to loss of revenue.*
- (vii) *Generation and quoting of Document Identification Number (DIN) is mandatory on communication issued by officers to tax payers and other concerned persons for the purpose of investigation. Format of summons has already been prescribed.*
- (viii) *The summoning officer must be present at the time and date for which summons is issued. In case of any exigency, the summoned person must be informed in advance in writing or orally.*
- (ix) *All persons summoned are bound to appear before the officers concerned, the only exception being women who do not by tradition appear in public or privileged persons. The exemption so available to these persons under Section 132 and 133 of CPC, may be kept in consideration while investigating the case.*
- (x) *Issuance of repeated summons without ensuring service of the summons must be avoided. Sometimes it may so happen that summoned person does not join investigations even after being repeatedly summoned. In such cases, after giving reasonable opportunity, generally three summons at reasonable intervals, a complaint should be filed with the jurisdictional magistrate alleging that the accused has committed offence under Sections 172 of Indian Penal Code (absconding to avoid service of summons or other proceedings) and/or 174 of Indian Penal*

**A** Code (non-attendance in obedience to an order from public servant), as inquiry under Section 70 of CGST Act has been deemed to be a "judicial proceedings" within the meaning of Section 193 and Section 228 of the Indian Penal Code. Before filing such complaints, it must be ensured that summons have adequately been served upon the intended person in accordance with Section 169 of the CGST Act. However, this does not bar to issue further summons to the said person under Section 70 of the Act.

### 18.3 Sec. 71 : Access to Business Premises

1. This provision empowers any officer authorised by the officer not below the rank of Joint Commissioner to have access to any place of business of a registered person to inspect books of account, documents, computers, computer programs, computer software and such other things as may be required and which may be available at such place, for the purposes of carrying out any audit, scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.
2. For this purpose, the officer should be authorized by the officer not below the rank of Joint Commissioner.
3. Such an authorized officer shall have access to any place of business of registered person to inspect books of account, documents, computers, computer programs, computer software (whether installed in a computer or otherwise) and such other things as he may require as available at such premises.
4. The object is to carry out any audit, scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.
5. The person in charge of the premises should make available the following :
  - (i) Records maintained by the registered person and declared to proper officer;
  - (ii) Trial balance;
  - (iii) Audited financial statements wherever required;
  - (iv) Cost audit report, if any;
  - (v) Income Tax audit report, if any;
  - (vi) Other relevant records.
6. The documents/records should be made available within 15 working days or such extended period as may be allowed.
7. The documents/records can be called for by the Audit officer or Chartered Accountant or Cost Accountant nominated by the department for audit.

#### **Illustration 1 :**

Explain the situation in which access to business premises is allowed under section 71 of the CGST Act, 2017? Also, list the records which are to be produced during access to business premises? [MTP - May 2018]

#### **Answer:**

During the course of any enquiry under this Act, the duly empowered officer can have access to any business premises, which may be required for the purpose of such enquiry. During such access, the officers can inspect the books of accounts, documents, computers, computer programs, computer software and such other things as may be required.

It is the duty of the persons in charge of such premises to furnish the required documents. Similarly, the persons in charge of business premises are also duty bound to furnish such documents to the audit party deputed by the proper officer or the Chartered Accountant or Cost Accountant, who has been deputed by the Commissioner to carry out special audit. The following records are covered by this provision and are to be produced, if called for.

- (i) the records prepared and maintained by the registered person and declared to the proper officer in the prescribed manner.
- (ii) trial balance or its equivalent.
- (iii) statements of annual financial accounts, duly audited.

- (iii) Further it is also Provided that if either SGST Officer/ UTGST Officer while recovering SGST/UTGST arrears may also recover any amount due from the defaulter the amount due by him under CGST Act as if it is SGST/UTGST and later pass it on to the Central Government.
- (iv) Similar provision also exists in SGST/UTGST Act for recovery of any amount due under SGST Act/UTGST Act to be recovered by CGST officers while recovering arrears of CGST as though the amount due was CGST and later pass it on to the concerned State Government/Union Territory.
- (v) It is also Provided that in case where the SGST officer/UTGST officer also collects CGST in the course of collection of SGST/UTGST or vice-versa, where the amount recovered is not fully covering both the liabilities, the amount collected has to be **apportioned** between Centre and State/Union Territory in the same proportion of the amounts due.
- (vi) **Explanation** – For the purposes of this section, the word **person shall include “distinct persons”** as referred to in sub-section (4) or, as the case may be, sub-section (5) of section 25.

A

**Deposit of Tax during the course of Search, Inspection or Investigation [Instruction No. 01/2022-23 (GST - Investigation), dated 25.05.2022]**

- *During the course of search, inspection or investigation, sometimes the taxpayers opt for deposit of their partial or full GST liability arising out of the issue pointed out by the department during the course of such search, inspection or investigation by furnishing DRC-03. Instances have been noticed where some of the taxpayers after voluntarily depositing GST liability through DRC-03 have alleged use of force and coercion by the officers for making 'recovery' during the course of search or inspection or investigation. Some of the taxpayers have also approached Hon'ble High Courts in this regard.*
- *It is observed that recovery of taxes not paid or short paid, can be made under the provisions of Section 79 of CGST Act, 2017 only after following due legal process of issuance of notice and subsequent confirmation of demand by issuance of adjudication order. No recovery can be made unless the amount becomes payable in pursuance of an order passed by the adjudicating authority or otherwise becomes payable under the provisions of CGST Act and rules made therein.*
- *Therefore, it is clarified that there may not be any circumstance necessitating recovery' of tax dues during the course of search or inspection or investigation proceedings. However, there is also no bar on the taxpayers for voluntarily making the payments on the basis of ascertainment of their liability on non-payment/ short ~~taxes~~ payment of ~~taxes~~ before or at any stage of such proceedings to avoid burden of more interest as well as penalty u/s 73 or 74. ~~taxes~~*

**Illustration 9:**

Briefly discuss the modes of recovery of tax available to the proper officer.

[MTP- CA Final, Nov. 2019]

**Answer:**

As per Sec. 79 of the CGST Act, 2017, the proper officer may recover the dues in following manner:

- Deduction of dues from the amount owned by the tax authorities payable to such person.
- Recovery by way of detaining and selling any goods belonging to such person;
- Recovery from other person, from whom money is due or may become due to such person or who holds or may subsequently hold money for or on account of such person, to pay to the credit of the Central or a State Government;
- Distrain any movable or immovable property belonging to such person, until the amount payable is paid. If the dues not paid within 30 days, the said property is to be sold and with the proceeds of such sale the amount payable and cost of sale shall be recovered.

- (iii) Any offence (other than the above offences) under this Act or under the provisions of any SGST Act/UTGST Act/IGST Act, in respect of supplies of **value > Rs. 1 Crore**, if the person charged with offence had been **allowed to compound earlier** in respect of any of the said offences;
  - (iv) a person who has been accused of committing an offence under this Act which is **also an offence under any other law** for the time being in force;
  - (v) a person who has been **convicted** for an offence under this Act by a court;
  - (vi) a person who has been accused of committing an offence specified in clause (g) or clause (j) or clause (k) of sub-section (1) of section 132; and
  - (vii) any other class of persons or offences as may be prescribed.
3. Compounding shall be allowed only **after making payment of tax, interest and penalty** involved in such offences. Further, any compounding allowed under the provisions of this section shall **not affect the proceedings**, if any, instituted under any **other law**.
  4. The compounding amount for compounding of offences under this section shall be such as may be prescribed, subject to –
    - The **minimum limit** for compounding amount is to be the **higher** of the following amounts:-
      - (i) 50% of tax involved, or
      - (ii) Rs. 10,000.
    - The **upper limit** for compounding amount is to be **higher** of the following amounts: -
      - (i) 150% of tax involved or
      - (ii) Rs. 30,000.
  5. On payment of such compounding amount as may be determined by the Commissioner, no further proceedings shall be initiated under this Act against the accused person in respect of the same offence and any criminal proceedings, if already initiated in respect of the said offence, shall stand abated.

**Clarification on various issues relating to applicability of demand and penalty provisions under the CGST Act, 2017 in respect of transactions involving fake invoices [Circular No. 171/03/2022 - GST, dated 06.07.2022]**

*A number of cases have come to notice where the registered persons are found to be involved in issuing tax invoice, without actual supply of goods or services or both (hereinafter referred to as "fake invoices"), in order to enable the recipients of such invoices to avail and utilize input tax credit fraudulently. This circular is issued for clarification on the issues relating to applicability of demand and penalty provisions under the CGST Act, in respect of such transactions involving fake invoices.*

(A)

S.N.	Issues	Clarification
1.	<p><i>In case where a registered person "A" has issued tax invoice to another registered person "B" without any underlying supply of goods or services or both, whether such transaction will be covered as "supply" under section 7 of CGST Act and whether any demand and recovery can be made from 'A' in respect of the said transaction under the provisions of section 73 or section 74 of CGST Act.</i></p> <p><i>Also, whether any penal action can be taken against registered person 'A' in such cases.</i></p>	<p><i>Since there is only been an issuance of tax invoice by the registered person 'A' to registered person 'B' without the underlying supply of goods or services or both, therefore, such an activity does not satisfy the criteria of "supply", as defined under section 7 of the CGST Act. As there is no supply by 'A' to 'B' in respect of such tax invoice in terms of the provisions of section 7 of CGST Act, no tax liability arises against 'A' for the said transaction, and accordingly, no demand and recovery is required to be made against 'A' under the provisions of section 73 or section 74 of CGST Act in respect of the same. Besides, no penal action under the provisions of section 73 or section 74 is required to be taken against 'A' in respect of the said transaction.</i></p> <p><i>The registered person 'A' shall, however, be liable for penal action under section 122(1)(ii) of the CGST Act for issuing tax invoices</i></p>

		<i>without actual supply of goods or services or both.</i>
2.	<i>A registered person "A" has issued tax invoice to another registered person "B" without any underlying supply of goods or services or both. 'B' avails input tax credit on the basis of the said tax invoice. B further issues invoice along with underlying supply of goods or services or both to his buyers and utilizes ITC availed on the basis of the above mentioned invoices issued by 'A', for payment of his tax liability in respect of his said outward supplies. Whether 'B' will be liable for the demand and recovery of the said ITC, along with penal action, under the provisions of section 73 or section 74 or any other provisions of the CGST Act.</i>	<i>Since the registered person 'B' has availed and utilized fraudulent ITC on the basis of the said tax invoice, without receiving the goods or services or both, in contravention of the provisions of section 16(2)(b) of CGST Act, he shall be liable for the demand and recovery of the said ITC, along with penal action, under the provisions of section 74 of the CGST Act, along with applicable interest under provisions of section 50 of the said Act. Further, as per provisions of section 75(13) of CGST Act, if penal action for fraudulent availment or utilization of ITC is taken against 'B' under section 74 of CGST Act, no penalty for the same act, i.e. for the said fraudulent availment or utilization of ITC, can be imposed on 'B' under any other provisions of CGST Act, including under section 122.</i>
3.	<i>A registered person 'A' has issued tax invoice to another registered person 'B' without any underlying supply of goods or services or both. 'B' avails input tax credit on the basis of the said tax invoice and further passes on the said input tax credit to another registered person 'C' by issuing invoices without underlying supply of goods or services or both. Whether 'B' will be liable for the demand and recovery and penal action, under the provisions of section 73 or section 74 or any other provisions of the CGST Act.</i>	<i>In this case, the ITC availed by 'B' in his electronic credit ledger on the basis of tax invoice issued by 'A', without actual receipt of goods or services or both, has been utilised by 'B' for passing on of ITC by issuing tax invoice to 'C' without any underlying supply of goods or services or both. As there was no supply of goods or services or both by 'B' to 'C' in respect of the said transaction, no tax was required to be paid by 'B' in respect of the same. The input tax credit availed by 'B' in his electronic credit ledger on the basis of tax invoice issued by 'A', without actual receipt of goods or services or both, is ineligible in terms of section 16 (2)(b) of the CGST Act. In this case, there was no supply of goods or services or both by 'B' to 'C' in respect of the said transaction and also no tax was required to be paid in respect of the said transaction. Therefore, in these specific cases, no demand and recovery of either input tax credit wrongly/ fraudulently availed by 'B' in such case or tax liability in respect of the said outward transaction by 'B' to 'C' is required to be made from 'B' under the provisions of section 73 or section 74 of CGST Act.  <i>However, in such cases, 'B' shall be liable for penal action both under section 122(1)(ii) and section 122(1)(vii) of the CGST Act, for issuing invoices without any actual supply of goods and/or services as also for taking/ utilizing input tax credit without actual receipt of goods and/or services.</i></i>

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

**How's the Josh... "High, Sir!"**



The Board may, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the provisions of this Act.

## 24.22 Sec. 166 : Laying of Rules, Regulations And Notifications

Every rule made by the Government, every regulation made by the Board and every notification issued by the Government under this Act, shall be laid, as soon as may be after it is made or issued, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or in the notification, as the case may be, or both Houses agree that the rule or regulation or the notification should not be made, the rule or regulation or notification, as the case may be, shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation or notification, as the case may be.

### ANALYTICAL VIEW OF THE TOPIC

- (a) This Section lays down the general procedure of laying delegated legislations before the Parliament for a prescribed duration.
- (b) The Act permits making of rules by Government, issuance of regulation by Board and issuance of notification by the Government.
- (c) Such rule, regulation and notification, which is a part of delegated legislation is placed before the Parliament.
- (d) It is laid before the Parliament, as soon as may be after it is made or issued, when the Parliament is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions
- (e) Before the expiry of the session or successive sessions both Houses may make suitable modifications and would have effect in such modified form.
- (f) However, any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation or notification, as the case may be.

## 24.23 Sec. 167 : Delegation of Powers

The Commissioner may, by notification, direct that subject to such conditions, if any, as may be specified in the notification, any power exercisable by any authority or officer under this Act may be exercisable also by another authority or officer as may be specified in such notification.

## 24.24 Sec. 168 : Power to Issue Instructions or Directions

- (1) The Board may, if it considers it necessary or expedient so to do for the purpose of uniformity in the implementation of this Act, issue such orders, instructions or directions to the central tax officers as it may deem fit, and thereupon all such officers and all other persons employed in the implementation of this Act shall observe and follow such orders, instructions or directions.
- (2) The Commissioner specified in clause (91) of section 2, sub-section (3) of section 5, clause (b) of sub-section (9) of section 25, sub-sections (3) and (4) of section 35, sub-section (1) of section 37, ~~sub-section (2) of section 38~~, sub-section (6) of section 39, ~~sub-section (1) of section 44~~, sub-section (4) and (5) of section 52, ~~sub-section (5) of section 66~~, sub-section (1) of section 143, except the second proviso thereof, ~~sub-section (1) of section 151~~, clause (1) of sub-section (3) of section 158 and section 167 shall mean a Commissioner or Joint Secretary posted in the Board and such Commissioner or Joint Secretary shall exercise the powers specified in the said sections with the approval of the Board. [Bold & italic words omitted by Finance Act, 2022, w.e.f. 01.10.2022]

### ANALYTICAL VIEW OF THE TOPIC

- This Section empowers the Competent Authority to issue orders, instruction or directions to the lower authorities to bring in uniformity in the implementation of the Act.

- (3) The balance in the electronic cash ledger, after payment of duty, interest, penalty, fee or any other amount payable, may be refunded in such manner as may be prescribed.
- (4) Notwithstanding anything contained in this section, if the Board is satisfied that it is necessary or expedient so to do, it may, by notification, exempt the deposits made by such class of persons or with respect to such categories of goods, as may be specified in the notification, from all or any of the provisions of this section.

**(A) Important Note:** *The CBIC has exempted the deposits pertaining to all classes of persons and all categories of goods, from the provisions of section 51A from 01.06.2022 till 29.11.2022. [NN 47/2022 – Cus (N.T.), dated 31.05.2022]*

**(A) Specified deposits exempted from provisions of Electronic Cash Ledger [NN. 19/2022 Cus (N.T.), w.e.f. 30.11.2022]**

*The CBIC has specified certain deposits which are exempted from provisions of payment through electronic cash ledger:*

- (i) *with respect to goods imported or exported in customs stations where customs automated system is not in place;*
- (ii) *with respect to accompanied baggage;*
- (iii) *other than those used for making payment of,-*
  - (a) *any duty of customs, including cesses and surcharges levied as duties of customs;*
  - (b) *IGST;*
  - (c) *GST Compensation Cess;*
  - (d) *interest, penalty, fees or any other amount payable under the said Act, or the Customs Tariff Act, 1975.*

#### **Section 51B : Electronic Duty Credit Ledger [inserted by Finance Act, 2020, w.e.f. 27.03.2020]**

Duty Credit Ledger is a step in the right direction to streamline the processes of availment of export benefits by removing the physical interface and also usher transparency by avoiding fraudulent claims.

Duty Credit Ledger will enable credit in lieu of duty remission to be given in respect of exports or other such benefit in electronic form for its usage, transfer, etc.

The duty credit available in the electronic duty credit ledger may be used by the person to whom it is issued or the person to whom it is transferred, towards making payment of duties payable under the Customs Act or under the Customs Tariff Act, 1975 in the prescribed manner and time.

- (1) The Central Government may, by notification in the Official Gazette, specify the manner in which it shall issue duty credit, –
  - (a) in lieu of remission of any duty or tax or levy, chargeable on any material used in the manufacture or processing of goods or for carrying out any operation on such goods in India that are exported; or
  - (b) in lieu of such other financial benefit subject to such conditions and restrictions as may be specified therein.
- (2) The duty credit issued under sub-section (1) shall be maintained in the customs automated system in the form of an electronic duty credit ledger of the person who is the recipient of such duty credit, in such manner as may be prescribed.
- (3) The duty credit available in the electronic duty credit ledger may be used by the person to whom it is issued or the person to whom it is transferred, towards making payment of duties payable under this Act or under the Customs Tariff Act, 1975 in such manner and subject to such conditions and restrictions and within such time as may be prescribed.

#### **Section 48 : Disposal of Goods**

- Where importer fails to remove the goods (either for home consumption or for warehouse) within the prescribed time limit of 30 days & no extension has been allowed then custodian may dispose off such goods after giving notice to the importer & as per the direction of the proper officer of customs, by auction.

4. **Sec. 25(7):** The mineral oils (including petroleum and natural gas) extracted or produced in the continental shelf of India or exclusive economic zone of India and imported prior to the 7-2-2002 shall be deemed to be and shall always be deemed to have been exempted from whole of the customs duty leviable on such mineral oils and accordingly, notwithstanding anything contained in any judgement, decree or order of any court, tribunal or other authority, no suit or other proceedings in respect of such mineral oils shall be maintained or continued in any court, tribunal or other authority.

**Sec. 25(8):** Notwithstanding the exemption provided under sub-section (7), no refund of duties of customs paid in respect of the mineral oils specified therein shall be made. **[Analysis :** If any person has already paid customs duty in respect of such mineral oils, then he will not be allowed refund of such duty although customs duty has been exempted. It means the benefit of exemption shall be allowed to those, who have not paid customs duty on such mineral oils.] [Sub-sections (7) and (8) of Sec. 25 of Customs Act, 1962, inserted by FA (No. 2), 2014, w.e.f. 6-8-2014.]

5. The exemption notifications are meant for exempting the goods validly imported into India; they are not meant to exempt the smugglers. So, if any goods are smuggled into India, then such goods cannot be regarded as validly "imported goods" under exemption notification. Hence, exemption from duty on such smuggled goods shall not be available. [CC v. M. Ambalal & Co. (2010) (SC)].

However, it must be noted that the situation would be different if the Customs Tariff Act provides for 'NIL' rate of duty. If that is the case, then, no duty can be charged even on the smuggled goods.

6. **Sec. 25(4A):** Where any conditional exemption is granted, such exemption shall, unless otherwise specified or varied or rescinded, be valid upto 31<sup>st</sup> day of March falling immediately after 2 years from the date of such grant or variation. [Sec. 25(4A) inserted by Finance Act, 2021, w.e.f. 28.03.2021]

### Illustration 1

Smuggled goods were seized from Mr. Das by Customs authorities in Airport on his arrival from Dubai. During adjudication proceedings, he claimed before the adjudicating authority exemption under a Customs Notification applicable for imported goods. Examine whether benefit of exemption notification available for imported goods can be extended to smuggled goods. Answer in two sentences. (2 Marks) (Nov. 2017, Q.6 (d)(i))

### Answer

**No exemption benefit available.** If the smuggled goods and imported goods are treated as the same, there will be no need for two different definitions under the Customs Act, 1962. Since one of the principal functions of the Customs Act is to curb the ills of smuggling in the economy, it will be contrary to the purpose of exemption notifications to give the benefit meant for imported goods to smuggled goods as held in *CCus. (Prev.), Mumbai v. M. Ambalal & Co. 2010 (260) ELT 487 (SC)*.

## 33.2 Customs (Import of Goods at Concessional Rate of Duty or for Specified End Use) Rules, 2022 [NN. 74/2022 - Customs (N.T.), dated 09.09.2022] A

### Rule 2 : Application

*These rules shall apply where -*

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

### Rule 3 : Definition

*In these rules, unless the context otherwise requires, -*

- (b) *"Capital goods" means goods, the value of which is capitalised in the books of account of the importer;*
- (d) *"date of import" means the date of the order made under section 47 of the Act permitting clearance of such goods;*

- (g) “Job work” means any treatment, process or manufacture, consistent with the exemption notification undertaken by a person on goods belonging to the importer except gold, jewellery and articles thereof, and other precious metals or stones; and the term “job worker” shall be construed accordingly;
- (h) “Jurisdictional Custom Officer” means an officer of Customs of a rank equivalent to the rank of Superintendent or an Appraiser exercising jurisdiction over-
- a. the premises where either the goods imported shall be put to use for manufacture or for rendering output services;
  - b. the primary address specified in the Importer Exporter Code issued by Directorate General of Foreign Trade in other cases;
- (k) “output service” means supply of service excluding after-sales service, utilising imported goods;
- (m) “specified end use” means dealing with the goods imported in a manner specified in the notification and includes supply to the intended person and the term “end use recipient” shall be construed accordingly.

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

- (1) The importer shall provide one-time prior information on the common portal, in Form IGCR-1 containing the following particulars, namely: –
- i. the name and address of the importer and his job worker, if any;
  - ii. the goods produced or process undertaken at the manufacturing facility of the importer or his job worker, if any, or both;
  - iii. the nature and description of goods imported used in the manufacture of goods at the premises of the importer or the job worker, if any;
  - iv. particulars of the notification applicable on such import;
  - v. nature of output service rendered utilising the goods imported;
  - vi. particulars of premises intended to be used in case of unit transfer;
  - vii. details of the end use recipient in cases where goods imported are supplied for specified end use; and
  - viii. the intended ports of import.
- (2) On acceptance of the information, an Import of Goods at Concessional Rate of Duty (IGCR) Identification Number (IIN) shall be generated against such information:
- However, such information may be updated on the common portal in case of a change in the details furnished in Form IGCR-1.
- (3) The importer who intends to avail the benefit of a notification shall submit a continuity bond with such surety or security as deemed appropriate by the AC/DC of Customs having jurisdiction over the premises where the goods imported shall be put to use for manufacture of goods or for rendering output service or being put to use for a specified end use, with an undertaking to pay-
- a. in case of a notification that provides a duty exemption, the amount equal to the exemption benefit claimed at the time of import, along with interest @ 15% p.a. for the period from the date of import of the goods till the date of actual payment of the entire amount that he is liable to pay;
  - b. in all cases where the notification is other than one that provides an exemption benefit, the amount equal to the assessable value of the goods being imported.

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

- (1) The importer who intends to avail the benefit of a notification shall be required to mention the IIN and continuity bond number and details while filing the Bill of Entry.
- (2) The AC/DC of Customs at the custom station of importation shall allow the benefit of the notification to the importer.

- (3) Where a Bill of Entry is cleared for home consumption, the bond submitted by the importer gets debited automatically in the customs automated system and the details shall be made available electronically to the jurisdictional Customs Officer.

**Rule 6 : Importer to maintain records**

- (1) The importer shall maintain an account so as to clearly indicate -

- i. quantity and value of goods imported;
- ii. quantity and date of receipt of the goods imported in the relevant premises;
- iii. quantity of such goods consumed including the quantity used domestically for manufacture, quantity exported, if any, to fulfil the intended purpose and quantity of goods sent to an end use recipient;
- iv. quantity of goods sent for job work and the nature of job work carried out;
- v. quantity of goods received after job work;
- vi. quantity of goods re-exported, if any, under rule 10; and
- vii. quantity remaining in stock, according to bills of entry,

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

However, in case of non-receipt or short receipt of goods imported in the relevant premises, the importer shall intimate such non-receipt or short receipt immediately on the common portal in the Form IGCR-2.

- (2) The importer shall submit a monthly statement on the common portal in the Form IGCR- 3 by the 10<sup>th</sup> day of the following month;

However, the importer may submit details of goods consumed in the Form IGCR-3A at any point of time, for immediate re-credit of the bond which shall become a part of the monthly statement of the subsequent month.

**Rule 7 : Procedure for allowing imported goods for job work**

- (1) The importer shall maintain a record of the goods sent for job work during the month and mention the same in the monthly statement referred to in sub-rule (2) of Rule 6.
- (2) The importer shall send the goods to the premises of the job worker under an invoice or wherever applicable, through an e-way bill, as specified in the CGST Act, 2017, mentioning the description and quantity of the goods.
- (3) The maximum period for which the goods can be sent to the job worker shall be 6 months from the date of invoice or e-way bill.
- (4) In case the importer is unable to establish that the goods sent for job work have been used as per the particulars mentioned under rule 4, the jurisdictional Customs Officer shall take necessary action against the importer under rule 11 and 12.
- (5) The job worker shall,-
  - i. maintain an account of receipt of goods, manufacturing process undertaken thereon and the waste generated, if any, during such process;
  - ii. produce the account details before the jurisdictional Customs Officer as and when required by the said officer;
  - iii. after completion of the job work send the processed goods to the importer or to another job worker as directed by the importer for carrying out the remaining processes, if any, under the cover of an invoice or electronic way bill.

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

- (1) The importer shall maintain a record of the goods sent for unit transfer during the month and mention the same in the monthly statement referred to in sub-rule (2) of rule 6.
- (2) The importer shall send the goods under an invoice or wherever applicable, through an e-way bill, as specified in the CGST Act, 2017, mentioning the description and quantity of the goods.
- (3) The importer shall in relation to transfer of goods to another unit,-



- i. maintain an account of receipt of goods, manufacturing process undertaken thereon and the waste generated, if any, during such process;
- ii. produce the account details before the jurisdictional Customs Officer as and when required by the said officer;
- iii. after completion of the said process, send the processed goods back to the premises of the importer from where the goods were received or to a job worker for carrying out the remaining processes, if any, under the cover of an invoice or electronic way bill.

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

- (1) The importer shall maintain a record of the goods supplied to the end use recipient during the month and mention the same in the monthly statement referred to in sub-rule (2) of rule 6.
- (2) The importer shall send the goods under an invoice or wherever applicable, through an e-way bill, as specified in the CGST Act, 2017, mentioning the description and quantity of the goods.
- (3) In case of supply for replenishment or Export against supply, the end use recipient shall,-
  - i. maintain an account of receipt of goods, manufacturing process undertaken thereon and the waste generated, if any, during such process;
  - ii. produce the account details before the jurisdictional Customs Officer as and when required by the said officer;
  - iii. produce the relevant details to the importer for fulfilment of the benefit under the notification;

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

- (1) The importer who has availed the benefit of a notification shall use the goods imported in accordance with the conditions mentioned in the concerned notification within the period and with respect to unutilised or defective goods, so imported, the importer shall have an option to either re-export or clear the same for home consumption, within the said period, namely -
  - (i) within the period specified in the notification;
  - (ii) within 6 months from the date of import, where the time period is not specified in the notification:  
However, the said period of 6 months can be further extended by the jurisdictional Commissioner for a period not exceeding 3 months, if sufficient reason is shown that the causes for not conforming to the time period were beyond the importer's control.
- (2) Any re-export of the unutilised or defective goods referred to in sub rule (1) shall be recorded by the importer in the monthly statement by providing the details of necessary export documents:  
However, the value of such goods for re-export shall not be less than the value of the said goods at the time of import.
- (3) The importer who intends to clear unutilised or defective goods for home consumption shall have an option of voluntary payment of applicable duty along with interest on the common portal and the particulars of such clearance and the duty payment shall be recorded by the importer in the monthly statement.
- (4) The importer shall have an option to clear the capital goods imported, after having been used for the specified purpose, on payment of duty equal to the exemption claimed at the time of importation, along with interest @ 15% p.a. on the depreciated value allowed in straight line method as under –
  - i. for every quarter in the first year @ 4%;
  - ii. for every quarter in the second year @ 3%;
  - iii. for every quarter in the third year @ 3%;
  - iv. for every quarter in the fourth and fifth year @ 2.5%;
  - v. and thereafter for every quarter @ 2%.

Explanation. –

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

- (2) *The depreciation shall be allowed from the date when the capital goods imported have come into use for the purpose as laid down in the notification, upto the date of its clearance.*
- (5) *The importer shall have the option of voluntary payment of the duty along with interest, through the common portal and the particulars of such clearance and the duty payment shall be recorded by the importer in the monthly statement.*

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

- (1) *In the event of any failure on the part of the importer to comply with the conditions mentioned in sub-rule (1) of rule 10 or where the payment referred in sub-rules (3) and (4) of rule 10 is not paid or short paid, the AC/DC of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for specified end use or for rendering output service shall take action by invoking the Bond to initiate the recovery proceedings of an amount as under –*
- in case of a notification that provides a duty exemption, equal to the amount of exemption claimed at the time of importation, along with interest @ 15% p.a. for the period from the date of import of the goods till the date of actual payment of the entire amount of duty that he is liable to pay;*
  - in cases where the notification is other than one that provides an exemption benefit, an amount equal to the assessable value of the goods being imported.*
- (2) *Notwithstanding anything contained in these rules in relation to removal and processing of imported goods for job-work, the importer shall be responsible for ensuring that the said goods are used in accordance with the purposes provided in the notification and in the event of failure to do so, the AC/DC of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for specified end use or for rendering output service shall take action in accordance with these rules.*

#### **Rule 12 : Penalty**

*The importer or a job worker who contravenes any of the provisions of these rules or abets such contravention shall be liable to a penalty to an extent of the amount specified u/s 158(2)(ii) (i.e. Rs. 2,00,000/-).*

**Clarification regarding introduction of new rules – “Customs (Import of Goods at Concessional Rate of Duty or for Specified End Use) Rules, 2022” [Circular No. 18/2022 - Customs, dated 10.09.2022]**

- The new rules are introduced to broaden the scope of coverage of IGCR.*
- Clarifications in respect of major changes implemented through new rules:*

##### **(i) Time period for utilisation of goods:**

*When time period for utilisation is specified in the notifications, the said time period will apply. If not specified, the time period of 6 months will apply.*

*Further, multiple representations have been received in the Board regarding the inability to utilise the goods imported for intended purpose under IGCR within the prescribed time period of 6 months. In order to facilitate trade in such situations, a provision has been introduced wherein the jurisdictional Commissioner can further extend such period of 6 months by another 3 months. However, it is clarified that such extension can be given provided the importer furnishes sufficient reasons for not conforming to the time period so prescribed, which were beyond the importer's control.*

##### **(ii) Specified End Use:**

*IGCRS Rule, 2022 is also expanded to include cases where the intended purpose is for putting the goods imported to specified end use and not necessarily manufacturing or for providing output services. In this regard, it is clarified that:*

- Procedure of intimation, generation of a unique IGCR Identification Number (IIN), import of the goods, submission of bond, maintenance of records, filing of monthly statement or any other procedures remains the same. The Importer shall undertake compliance to the officer having jurisdiction over primary address specified in the Importer Exporter Code (IEC) issued by DGFT.*
- End use may be specified by a notification u/S 25(1) or u/S 11 of the Customs Act, 1962.*
- Where the import is undertaken for a specified end use and no differential duty is involved, the value of the bond shall be equal to the assessable value of the goods.*

- d. In cases where the intended purpose of import is supply of the goods to an end use recipient, the importer shall supply these goods under an invoice or where ever applicable, through an e-way bill, as mentioned in the CGST Act, 2017. The description and quantity of such goods shall be clearly mentioned by the importer.
- e. The importer shall maintain a record of all such goods supplied in a month and provide the details in the monthly statement.
- f. The restrictions on job work are only relating to the case where it is undertaken on the goods belonging to importer and does not apply to the end use recipient who receives the goods on the supply and deals with it as stipulated in the notification.

**(iii) Other Changes:**

*As a trade facilitation measure, a new Form IGCR-3A has been notified for confirmation of consumption for intended purpose at the common portal at any point in time for immediate re-credit of the bond by the jurisdictional AC/DC, without waiting for the filing of monthly statement on the 10<sup>th</sup> of every month. The details filed in form IGCR-3A shall get auto populated in the monthly statement of the subsequent month, which has to be only confirmed by the importer.*

**Clarification regarding submission of surety or security [Circular 48/2017 – Customs, Dated 08.12.2017, as amended by Circular No. 18/2022 – Customs, dated 10.09.2022]**

1. Keeping in view the objective of the Government to further simplify the business procedures and to reduce the burden of transaction cost & compliance cost, CBIC has decided to further ease the norms for taking security/surety along with the Bond.
2. In view of the above, Bank Guarantee/cash security/surety shall be taken as per the following norms for the purpose of extending the benefit under the Customs (Import of Goods at Concessional Rate of Duty or for Specified End Use) Rules 2022:

S.N.	Category of Importer	Quantum of Bank Guarantee/Cash Security and Requirement of Surety
1.	All importer(s) who are either a department of Central Government or a State Government or a Union Territory or a Public Sector Undertaking or an autonomous institute under the said governments	Bank Guarantee/Cash Security-Not required. Further, no surety required. <i>[excluding cases in S.N. 4]</i>
2.	All importers who are Authorized Economic Operators	
3.	<i>All importers who are nominated agencies for the import of gold under the India UAE CEPA</i>	
4.	<i>Designated banks nominated by RBI as well as public sector undertakings importing under NN. 56/2000 - Customs, dated 05.05.2000 or NN. 57/2000 - Customs, dated 08.05.2000</i>	Bank Guarantee/Cash Security-Not required. Further, no surety required. Provided- a. they have not defaulted in following the procedure and conditions specified by DGFT; b. they have not defaulted in payment of duty within the specified period in cases where there was a default in export of jewellery by an exporter to whom the gold/silver/platinum had been supplied; c. they have not been involved in violations involving fraud or collusion or wilful mis- statement or suppression off acts under relevant provisions of the Customs Act, 1962, the Central Excise Act, 1944, the Finance Act, 1994, the Foreign Trade (Development & Regulation) Act, 1992, the Foreign Exchange Management Act, 1999 and the rules made thereunder during the last 3 years.
5.	All importers who are manufacturers or	Importers shall give surety for the amount of duty foregone.

	service providers registered under GST and have been filing prescribed GST returns without fail and whose annual turnover in the preceding year is above Rs. 1 crore	However, where the importer is not able to provide the surety, a Bank Guarantee / Cash Security equivalent to not more than 5% of bond debit value* shall be furnished. [excluding cases in S.N. 4]
6.	Importers not covered under S.N. 1,2,3,4 or 5 above	Bank Guarantee/Cash Security-Not more than 25% of bond debit value*.

\*Bond debit value - Duty foregone in case of concessional rate and assessable value of the goods in other cases.

**Explanation:** Duty foregone would be calculated by reckoning the duty applicable if the importer were not to follow the procedure prescribed in the Customs (Import of Goods at Concessional Rate of Duty or for Specified End Use) Rules 2022.

- The upper limit of Bank Guarantee/ Cash Security to the extent of 5% and 25% respectively has been fixed unless the Deputy Commissioner or the Assistant Commissioner has reasons to demand a higher quantum of Bank guarantee/ cash security, in which case the matter shall be referred to the jurisdictional Commissioner who may order for higher quantum of Bank Guarantee or cash security, subject to limit of 100% of the total duty foregone, after recording the reasons thereof in writing.
- In order to avail above exemption/ relaxation from furnishing Bank Guarantee/Cash security or surety, prosecution should not have been initiated or launched against the importer under, any Act administered by the CBIC or SGST Act or IGST Act or UTGST Act during the previous three financial years.
- Where an importer so requests, the bank guarantee/ cash security may be taken consignment-wise to obviate the financial burden. Further, all bank guarantee(s) should have self-renewal clause.

### **Illustration 2**

An importer imported certain inputs for manufacture of final product. A small portion of the imported inputs were damaged in transit and could not be used in the manufacture of the final product. An exemption notification was in force providing exemption in respect of specified raw materials imported into India for use in manufacture of specified goods, which was applicable to the imports made by the importer in the present case.

Briefly examine whether the importer could claim the benefit of the aforesaid notification in respect of the entire lot of the inputs imported including those that were damaged in transit. [MTP - Nov 2019, Q.3 (c)](5Marks)

### **Answer**

The facts of the case are similar to the case of BPL Display Devices Ltd. v. CCEx., Ghaziabad (2004) 174 ELT 5 (SC) wherein the Supreme Court has held that the benefit of the notifications cannot be denied in respect of goods which are intended for use for manufacture of the final product but cannot be so used due to shortage or leakage.

The Apex Court has held that no material distinction can be drawn between loss on account of leakage and loss on account of damage. The benefit of said exemption cannot be denied as inputs were intended for use in the manufacture of final product but could not be so used due to shortage/leakage/damage. It has been clarified by the Supreme Court that words "for use" have to be construed to mean "intended for use".

Therefore, the importer can claim the benefit of the notification in respect of the entire lot of the inputs imported including those that were damaged in transit.

## **33.3 Doctrine of Unjust Enrichment**

- If the assessee had charged duty to his buyer, refund of excess duty paid to the assessee will amount to excess profit to him. It will not be reasonable to refund the duty to him. This is called unjust enrichment.
- Refund should be paid to customer who has borne the burden of duty. However, it is not practicable to identify individual consumer and pay refund to him. Therefore, refund due is to be transferred to the Consumer Welfare Fund & would be used for the purpose of protection and benefit of the consumers. The refund shall be granted to the assessee or any other person only when he proves that incidence of duty has not been passed to any other person and burden has been borne by him.

- The FT (D&R) Act provides for the development and regulation of foreign trade by facilitating imports into, and augmenting exports from, India and for matters connected therewith or incidental thereto.
- As per the provisions of the Act, the Government :
  - (i) may make provisions for facilitating and controlling foreign trade;
  - (ii) may prohibit, restrict and regulate exports and imports, in all or specified cases as well as subject them to exemptions;
  - (iii) is authorised to formulate and announce an export and import policy and also amend the same from time to time, by notification in the Official Gazette;
  - (iv) is also authorised to appoint a 'Director General of Foreign Trade (DGFT)' for the purpose of the Act, including formulation and implementation of the export-import policy.

### 34.5 Foreign Trade Policy (2015-2020)

- In exercise of the powers conferred by the FT(D&R) Act, the Union Ministry of Commerce and Industry, Government of India announces the integrated **Foreign Trade Policy (FTP)** in every five years with certain underlined objectives. This policy is updated every year in April, in addition to changes that are made throughout the year. A
- The Foreign Trade Policy (FTP), 2015-2020, incorporating provisions relating to export and import of goods and services, shall come into force w.e.f. 01.04.2015 and shall remain in force up to ~~31<sup>st</sup> March, 2020~~ ~~31<sup>st</sup> March, 2021~~ ~~30<sup>th</sup> September, 2021~~ ~~31<sup>st</sup> March, 2022~~ ~~30<sup>th</sup> September, 2022~~ 31<sup>st</sup> March, 2023, unless otherwise specified. [*The existing FTP 2015-2020 which was valid upto 30<sup>th</sup> September, 2022 is further extended upto 31<sup>st</sup> March, 2023. (NN. 37/2015-2020 - GOI, MoCI, DGFT, dated 29.09.2022)*]
- **New FTP (2015-20) Vision:** The new five year Foreign Trade Policy, 2015-20 provides a framework for increasing exports of goods and services as well as generation of employment and increasing value addition in the country, in keeping with the "Make in India" vision of our Honourable Prime Minister. The focus of the government is to support both the manufacturing and services sectors, with a special emphasis on improving the 'ease of doing business'.
- **Amendment to FTP:** Central Government, in exercise of powers conferred by Section 5 of FT (D&R) Act, 1992, as amended from time to time, reserves the right to make any amendment to the FTP, by means of notification, in public interest.
- **Hand Book of Procedures (HBP) and Appendices and Aayat Niryat Forms (AANF):** Director General of Foreign Trade (DGFT) may, by means of a Public Notice, notify Hand Book of Procedures, including Appendices and Aayat Niryat Forms or amendment thereto, if any, laying down the procedure to be followed by an exporter or importer or by any Licensing/Regional Authority or by any other authority for purposes of implementing provisions of FT (D&R) Act, the Rules and the Orders made there under and provisions of FTP.
- **Specific provision to prevail over the general:** Where a specific provision is spelt out in the FTP/Hand Book of Procedures (HBP), the same shall prevail over the general provision.
- **Transitional Arrangements:**
  - (a) Any License/Authorisation/Certificate/Scrup/any instrument bestowing financial or fiscal benefit issued before commencement of FTP 2015-20 (as updated w.e.f. 05.12.2017) shall continue to be valid for the purpose and duration for which such License/Authorisation/Certificate/Scrup/any instrument bestowing financial or fiscal benefit Authorisation was issued, unless otherwise stipulated.
  - (b) In case an export or import that is permitted freely under FTP is subsequently subjected to any restriction or regulation, such export or import will ordinarily be permitted, notwithstanding such restriction or regulation, unless otherwise stipulated. This is subject to the condition that the shipment of export or import is made within the original validity period of an irrevocable commercial letter of credit, established before the date of imposition of such restriction and it shall be restricted to the balance value and quantity available and time period of such irrevocable letter of credit. For operationalising such irrevocable letter of credit, the applicant



- (v) Details as given above will have to be indicated in the relevant Bill of Export, ARE-3, Central Excise certified Invoice/import document/Tax Invoice for export prescribed under the GST rules.

#### **35.2.14 PRE-IMPORT CONDITION IN CERTAIN CASES**

- (i) DGFT may, by Notification, impose pre-import condition for inputs under this Chapter.
- (ii) Import items subject to pre-import condition are listed in Appendix 4-J or will be as indicated in Standard Input Output Norms (SION).
- (iii) Import of drugs from unregistered sources shall have pre-import condition.

#### **35.2.15 DETAILS OF DUTIES EXEMPTED**

Imports under Advance Authorisation are exempted from payment of Basic Customs Duty, Additional Customs Duty, Education Cess, Anti-dumping Duty, Safeguard Duty and Transition Product Specific Safeguard Duty, wherever applicable. However, Import against supplies covered under paragraph 7.02 (c), (d) and (g) of FTP will not be exempted from payment of applicable Anti-dumping Duty, Safeguard Duty and Transition Product Specific Safeguard Duty, if any.

However, imports under Advance Authorisation for physical exports are also exempt from whole of the integrated tax and Compensation Cess leviable under sub-section (7) and sub-section (9) respectively, of section 3 of the Customs Tariff Act, 1975. ~~Imports against Advance Authorisations for physical exports are exempted from Integrated Tax and Compensation Cess upto 31.03.2019 31.03.2020 31.03.2021 31.03.2022 30.06.2022. [Time limit of exemption removed by NN 37/2022 - Customs, dated 30.06.2022].~~ — (A)

#### **35.2.16 ADMISSIBILITY OF DRAWBACK**

Drawback as per rate determined and fixed by Central Excise authority shall be available for duty paid imported or indigenous inputs (not specified in the norms) used in the export product. For this purpose, applicant shall indicate clearly details of duty paid input in the application for Advance Authorisation. As per details mentioned in the application, Regional Authority shall also clearly endorse details of such duty paid inputs in the condition sheet of the Advance Authorisation.

#### **35.2.17 ACTUAL USER CONDITION FOR ADVANCE AUTHORISATION**

- (i) Advance Authorisation and/or material imported under Advance Authorisation shall be subject to 'Actual User' condition. The same shall not be transferable even after completion of export obligation. However, Authorisation holder will have option to dispose of product manufactured out of duty free input once export obligation is completed.
- (ii) In respect of imports made after the discharge of export obligation in full, if facility of input tax credit under relevant Goods and Services Tax law on inputs used for manufacture and supply of goods exported has been availed, then the importer shall, at the time of clearance of the imported materials, furnish a bond to the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, binding himself, to use the imported materials in his factory or in the factory of his supporting manufacturer for the manufacture and supply of taxable goods (other than nil rated or fully exempt supplies) and to submit a certificate from a chartered accountant within six months from the date of clearance of the said materials, that the imported materials have been so used;

However, if the importer pays IGST and the GST compensation cess leviable on the imported materials under sub-section (7) and sub-section (9) respectively of section 3 of the said Customs Tariff Act on the imported materials but for the exemption contained herein, then such imported materials may be cleared without furnishing a bond specified in this condition;

Further, in respect of imports made after the discharge of export obligation in full, and if facility of input tax credit under relevant Goods and Services Tax law has not been availed on inputs used in the manufacture and supply of goods exported and the importer furnishes proof to this effect to the satisfaction of the Deputy Commissioner of Customs, or the Assistant Commissioner of Customs, as the case may be, then the imported materials may be cleared without furnishing a bond as specified above.

## 35.4 Scheme for Remission of Duties and Taxes on Exported Products (RoDTEP)

[NN 75, 76/2021 – Customs (N.T.), dated 23.09.2021, NN 19/2015-2020 – FTP, dated 17.08.2021 and Circular No. 23/2021 – Customs, dated 30.09.2021]

### 35.4.1 Scheme Objective and Operating Principles

- (1) The Scheme's objective is to refund, currently un-refunded:
  - (a) Duties/taxes / levies, at the Central, State and local level, borne on the exported product, including prior stage cumulative indirect taxes on goods and services used in the production of the exported product and
  - (b) Such indirect Duties/taxes/levies in respect of distribution of exported product.
- (2) The rebate under the Scheme shall not be available in respect of duties and taxes already exempted or remitted or credited.

### 35.4.2 Conditions under RoDTEP SCHEME

Duty credit for goods exported under the RoDTEP Scheme shall be subject to the following conditions, namely:-

- (1) that the duty credit is issued -
  - (a) in lieu of remission of any duty or tax or levy, chargeable on any material used in the manufacture or processing of goods or for carrying out any operation on such goods in India that are exported, where such duty or tax or levy is not exempted, remitted or credited under any other Scheme;
  - (b) against export of goods notified in Appendix 4R of the FTP, at the respective rate and cap notified under the said Appendix;
 

however, the value of the said goods for calculation of duty credit to be allowed under the Scheme shall be the declared export FOB value of the said goods or up to 1.5 times the market price of the said goods, whichever is less;
  - (c) against claim of duty credit under the Scheme made by an exporter by providing the appropriate declaration at the item level in the shipping bill or bill of export in the customs automated system presented on or after 01.01.2021;
- (2) that such duty credit shall be used for payment of the duty of customs leviable under the First Schedule to the Customs Tariff Act, 1975 (i.e. only Basic Customs Duty) on goods when imported into India through customs automated system;
- (3) that the export categories or sectors listed in Table-1 annexed hereto shall not be eligible for duty credit under the Scheme;
- (4) that the duty credit allowed under the Scheme against export of goods shall be subject to realization of sale proceeds in respect of such goods in India within the period allowed under FEMA, 1999, failing which such duty credit shall be deemed to be ineligible;
- (5) that the imports and exports are undertaken through the seaports, airports or through the inland container depots or through the land customs stations which allow the bill of entry and shipping bill or bill of export to be presented and processed electronically on the customs automated system;
- (6) that the exporter has the option to generate e-scrips within a period of 1 year from the issuance of duty credit scrips. If this option is not availed by an exporter, then, e-scrips shall be generated automatically by customs automated system and it shall be maintained in the electronic duty credit ledger;
- (7) that the e-scrip shall be valid for a period of ~~1 year~~ <sup>2 years</sup> from the date of its generation and any duty credit in the said e-scrip remaining unutilized at the end of this period shall lapse and the duty credit in the e-scrip that has lapsed shall not be re-generated. *[The validity period of scrips is increased from 1 year to 2 years from the date of their generation, by NN 79/2022 – Customs (N.T.), dated 15.09.2022]*
- (8) that the e-scrip shall be freely transferable; however, the period of validity of the e-scrip shall not change on account of transfer of the e-scrip.

### 35.4.3 Cancellation of duty credit

- (1) Where a person contravenes any of the provisions of the Act or any other law for the time being in force or the rules or regulations made thereunder in relation to exports to which the duty credit relates, or in relation to the e-scrip, the Principal Commissioner of Customs or Commissioner of Customs having jurisdiction over the customs station of registration of the e-scrip may, after enquiry, pass an order to cancel the said duty credit or e-scrip.
- (2) Where the e-scrip is so cancelled, the duty credit amount in the said e-scrip shall be deemed never to have been allowed and the proper officer of Customs shall proceed to recover the duty credit amount used in such e-scrip or transferred from such e-scrip.
- (3) The proper officer of Customs may, without prejudice to any other action that may be taken under this Act or any other law for the time being in force, suspend the operation of the said e-scrip or the electronic duty credit ledger of such exporter or any duty credit transferred from such e-scrip, during pendency of the enquiry under sub-clause (1).

#### **35.4.4 Recovery of amount of duty credit**

- (1) Where an amount of duty credit has, for any reason, been allowed in excess of what the exporter is entitled to, the exporter shall repay the amount so allowed in excess along with interest @ 15% p.a. (u/s 28AA), on that portion of duty credit allowed in excess, which has been used or transferred, and where the exporter fails to repay the amount along with interest, as applicable, it shall be recovered in the manner provided in section 142 of the said Act.
- (2) ~~If the exporter fails to repay the said amount within a period of 15 days along with interest so demanded, then the proper officer of Customs may also proceed for recovery of the said duty credit amount from the transferee in the manner as provided in section 142 of the said Act. [Omitted by NN 75/2022 - Customs (N.T.), dated 14.09.2022]~~

#### **35.4.5 Recovery of amount of duty credit where export proceeds are not realised**

- (1) Where an amount of duty credit has been allowed to an exporter but the sale proceeds (either fully or partially) in respect of such export goods have not been realized by the exporter in India within the period (including extension) allowed by RBI under FEMA, 1999, the exporter shall repay the amount of duty credit (in proportion to the sale proceeds not realized), along with interest @ 15% p.a. (u/s 28AA), within 15 days of expiry of the said period.
- (2) Where the exporter fails to repay the duty credit amount within the said period of 15 days, the said duty credit shall be deemed never to have been allowed and it shall be recovered, along with the said interest, in the manner as provided in section 142 of the said Act.
- (3) ~~The proper officer of Customs may also proceed for recovery of said duty credit amount from the transferee in the manner as provided in section 142 of the said Act. [Omitted by NN 75/2022 - Customs (N.T.), dated 14.09.2022]~~

**Note :** During the pendency of any recovery, no further duty credit, on any subsequent exports, shall be allowed to such exporter till the time such recovery is made and any unutilised duty credit with the exporter or the transferee shall be suspended pending such recovery. [Words "or the transferee" omitted by NN 75/2022 - Customs (N.T.), dated 14.09.2022]

**Effect of Amendment made by NN 75/2022 - Customs (N.T.), dated 14.09.2022:**

*Due to defaults of the Exporter, no action (i.e. recovery or suspension of duty credit scrip) can be taken against the Transferee-holder of the Scrip.*

**Explanation -** For the purposes of this Scheme -

- (a) "Claim" means a claim of duty credit under the Scheme made by an exporter in the shipping bill or bill of export by providing the appropriate declaration at the item level in the said shipping bill or bill of export in the customs automated system;
- (b) "Electronic duty credit ledger" means the ledger in the customs automated system relating to a person who is the recipient of duty credit or to person to whom the duty credit is transferred;
- (c) "Proper officer" means Deputy Commissioner or Assistant Commissioner of Customs.

- (iv) catalysts for initial charge plus one subsequent charge.
- (b) Capital goods imported under EPCG Authorisation for physical exports are also exempt from IGST and GST Compensation cess ~~upto 31.03.2019 31.03.2020 31.03.2021 31.03.2022~~ **30.06.2022**. [Time limit of exemption removed by NN 37/2022 - Customs, dated 30.06.2022] **(A)**
- (c) Import of capital goods for **Project Imports** notified is also permitted under EPCG Scheme.
- (d) Import under EPCG Scheme shall be subject to an **export obligation equivalent to 6 times of duties**, Taxes and cess **saved** on capital goods, **to be fulfilled in 6 years** reckoned from date of issue of Authorisation.
- (e) Authorisation shall be valid for import for **18 months** from the date of issue of Authorisation. Revalidation of EPCG Authorisation shall not be permitted.
- (f) In case IGST and GST Compensation Cess are paid in cash on imports under EPCG, incidence of said IGST and GST Compensation Cess would not be taken for computation of net duty saved, provided Input Tax Credit is not availed.
- ~~(g) Second hand capital goods shall not be permitted to be imported under EPCG Scheme.~~
- ~~(h) Authorisation under EPCG Scheme shall not be issued for import of any Capital Goods (including Captive plants and Power Generator Sets of any kind) for~~
- ~~(i) Export of electrical energy (power)~~
- ~~(ii) Supply of electrical energy (power) under deemed exports~~
- ~~(iii) Use of power (energy) in their own unit, and~~
- ~~(iv) Supply/export of electricity transmission services~~
- [Omitted by updated FTP, w.e.f. 5th December, 2017].
- (i) Import of items which are restricted for import shall be permitted under EPCG Scheme only after approval from Exim Facilitation Committee (EFC) at DGFT Headquarters.
- (j) If the goods proposed to be exported under EPCG authorisation are restricted for export, the EPCG authorisation shall be issued only after approval for issuance of export authorisation from Exim Facilitation Committee at DGFT Headquarters.

### 35.5.3 COVERAGE

- (a) EPCG scheme covers manufacturer exporters with or without supporting manufacturer(s), merchant exporters tied to supporting manufacturer(s) and service providers. Name of supporting manufacturer(s) shall be endorsed on the EPCG authorisation before installation of the capital goods in the factory/premises of the supporting manufacturer (s). In case of any change in supporting manufacturer (s) the RA shall intimate such change to jurisdictional Central Excise Authority of existing as well as changed supporting manufacturer (s) and the Customs at port of registration of Authorisation.
- (b) Export Promotion Capital Goods (EPCG) Scheme also covers a service provider who is designated/certified as a Common Service Provider (CSP) by the DGFT, Department of Commerce or State Industrial Infrastructural Corporation in a Town of Export Excellence subject to provisions of Foreign Trade Policy/Handbook of Procedures with the following conditions :
- (i) Export by users of the common service, to be counted towards fulfilment of EO of the CSP shall contain the EPCG authorisation details of the CSP in the respective Shipping bills and concerned RA must be informed about the details of the Users prior to such export;
- (ii) Such export will not count towards fulfilment of specific export obligations in respect of other EPCG authorisations (of the CSP/User); and

# EOUs, EHTPs, STPs, BTPs And Deemed Exports

## 36.1 Introduction and Objective

- (a) Units undertaking to export their entire production of goods and services (except permissible sales in DTA), may be set up under the Export Oriented Unit (EOU) Scheme, Electronics Hardware Technology Park (EHTP) Scheme, Software Technology Park (STP) Scheme or Bio-Technology Park (BTP) Scheme for manufacture of goods, including repair, re-making, reconditioning, re-engineering, rendering of services, development of software, agriculture including agro-processing, aquaculture, animal husbandry, bio-technology, floriculture, horticulture, pisciculture, viticulture, poultry and sericulture. Trading units are not covered under these schemes.
- (b) Objectives of these schemes are :
- To promote exports,
  - Enhance foreign exchange earnings,
  - Attract investment for export production and
  - Employment generation.

## 36.2 Export and Import of Goods

**Export** : Following exports are permitted:

- (i) all kinds of goods and services except items that are prohibited in ITC(HS),
- (ii) Special Chemicals, Organisms, Materials, Equipment and Technologies (SCOMET) subject to fulfillment of the conditions indicated in ITC (HS).

**Import** : Following imports are permitted:

- (i) Export promotion material upto a maximum value limit of 1.5% of FOB value of previous year's exports.
- (ii) All types of goods, including capital goods, required for its activities, from DTA or bonded warehouses in DTA/ International exhibition held in India, subject to 'Actual User' condition, provided such goods are not prohibited items of import in the ITC (HS) subject following conditions:
  - (a) The imports and/or procurement from bonded warehouse in DTA/International exhibition held in India shall be without payment of basic customs duty. Such imports and/ or procurements shall be made without payment of integrated tax and GST compensation cess ~~upto 01.10.2018 01.04.2020 01.04.2021 01.04.2022 01.07.2022~~ **A** [Time limit of exemption removed by NN 37/2022 - Customs, dated 30.06.2022]].
  - (b) The procurement of goods covered under GST from DTA would be on payment of applicable GST and compensation cess. The refund of GST paid on such supply from DTA to EOU would be available to the supplier subject to such conditions and documentations as specified under GST law.

Goods including capital goods (on a self-certification basis) required for approved activity, free of cost or on loan/ lease from clients, subject to 'Actual User' condition are permitted to be imported.

Certain specified goods from DTA for creating a central facility, with/without payment of duty/ taxes as provided in point 2(a) and 2(b) above.

## 36.3 Second-hand Capital Goods



ALL  
THE

BEST