

CA FINAL SUMMARY BOOK AMENDMENTS

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	before supply or under a contract of supply.
(56)	"India" means the territory of India as referred to in article 1 of the Constitution, its territorial waters, seabed and sub-soil underlying such waters, continental shelf, exclusive economic zone or any other maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, and the air space above its territory and territorial waters.
(59)	"input" means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business.
(60)	"input service" means any service used or intended to be used by a supplier in the course or furtherance of business.
(74)	"mixed supply" means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply. Example: A supply of a package consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drinks and fruit juices when supplied for a single price is a mixed supply. Each of these items can be supplied separately and is not dependent on any other. It shall not be a mixed supply if these items are supplied separately.
(78)	"non-taxable supply" means a supply of goods or services or both which is not leviable to tax under this Act or under the Integrated Goods and Services Tax Act.
(80A) A	"online gaming" means offering of a game on the internet or an electronic network and includes online money gaming; [inserted by CGST (Amendment) Act, 2023, w.e.f. 01.10.2023]
(80B) A	"online money gaming" means online gaming in which players pay or deposit money or money's worth, including virtual digital assets, in the expectation of winning money or money's worth, including virtual digital assets, in any event including game, scheme, competition or any other activity or process, whether or not its outcome or performance is based on skill, chance or both and whether the same is permissible or otherwise under any other law for the time being in force; [inserted by CGST (Amendment) Act, 2023, w.e.f. 01.10.2023]
(84)	"person" includes - <ul style="list-style-type: none"> (a) an individual; (b) a Hindu Undivided Family; (c) a company; (d) a firm; (e) a Limited Liability Partnership; (f) an association of persons or a body of individuals, whether incorporated or not, in India or outside India; (g) any corporation established by or under any Central Act, State Act or Provincial Act or a Government company as defined in clause (45) of section 2 of the Companies Act, 2013; (h) any body corporate incorporated by or under the laws of a country outside India; (i) a co-operative society registered under any law relating to co-operative societies; (j) a local authority; (k) Central Government or a State Government; (l) society as defined under the Societies Registration Act, 1860; (m) trust; and (n) every artificial juridical person, not falling within any of the above.
(85)	"place of business" includes - <ul style="list-style-type: none"> (a) a place from where the business is ordinarily carried on, and includes a warehouse, a godown or any other place where a taxable person stores his goods, supplies or receives goods or services or both; or (b) a place where a taxable person maintains his books of account; or (c) a place where a taxable person is engaged in business through an agent, by whatever name called.

(90)	"principal supply" means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary.
(92)	"quarter" shall mean a period comprising three consecutive calendar months, ending on the last day of March, June, September and December of a calendar year.
(98)	"reverse charge" means the liability to pay tax by the recipient of supply of goods or services or both instead of the supplier of such goods or services or both under sub-section (3) or sub-section (4) of section 9, or under sub-section (3) or subsection (4) of section 5 of the Integrated Goods and Services Tax Act.
(102)	"services" means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged. Explanation.-- For the removal of doubts, it is hereby clarified that the expression "services" includes facilitating or arranging transactions in securities;
(102A)	"specified actionable claim" means the actionable claim involved in or by way of betting, casinos, gambling, horse racing, lottery or online money gaming; [inserted by CGST (Amendment) Act, 2023, w.e.f. 01.10.2023]
(105)	"supplier" in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied: Provided that a person who organises or arranges, directly or indirectly, supply of specified actionable claims, including a person who owns, operates or manages digital or electronic platform for such supply, shall be deemed to be a supplier of such actionable claims, whether such actionable claims are supplied by him or through him and whether consideration in money or money's worth, including virtual digital assets, for supply of such actionable claims is paid or conveyed to him or through him or placed at his disposal in any manner, and all the provisions of this Act shall apply to such supplier of specified actionable claims, as if he is the supplier liable to pay the tax in relation to the supply of such actionable claims; [Proviso inserted by CGST (Amendment) Act, 2023, w.e.f. 01.10.2023]
(106)	"tax period" means the period for which the return is required to be furnished.
(107)	"taxable person" means a person who is registered or liable to be registered under section 22 or section 24.
(108)	"taxable supply" means a supply of goods or services or both which is leviable to tax under this Act.
(112)	"turnover in State" or "turnover in Union territory" means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis) and exempt supplies made within a State or Union territory by a taxable person, exports of goods or services or both and inter-State supplies of goods or services or both made from the State or Union territory by the said taxable person but excludes central tax, State tax, Union territory tax, integrated tax and cess.
(117)	"valid return" means a return furnished u/s 39(1) on which self-assessed tax has been paid in full.
(117A)	"virtual digital asset" shall have the same meaning as assigned to it in clause (47A) of section 2 of the Income-tax Act, 1961; [inserted by CGST (Amendment) Act, 2023, w.e.f. 01.10.2023]
(118)	"voucher" means an instrument where there is an obligation to accept it as consideration or part consideration for a supply of goods or services or both and where the goods or services or both to be supplied or the identities of their potential suppliers are either indicated on the instrument itself or in related documentation, including the terms and conditions of use of such instrument.

"Abhi to IDT Shuru Hui hai..."

	person liable for paying the tax.
Tax payable by the electronic commerce operator [Sec. 9(5)/5(5)]	The Government may notify categories of services the tax on supplies of which shall be paid by electronic commerce operator (ECO) if such services are supplied through it and all the provisions of the act shall apply to such ECO as if ECO is the supplier liable for paying the tax.

Goods Imported in India: Import of goods or services are treated as inter-state supplies. As per proviso to Sec. 5(1) of IGST Act, on the goods imported into India (other than the goods as may be notified by the Government on the recommendations of the Council), the IGST shall be levied and collected as per sec. 3 of Customs Tariff Act, 1975 (as additional duty of Customs) and the value shall also be determined as per the said act. In other words, IGST shall be levied as additional duty of customs in addition to basic customs duty under the Customs Tariff Act, 1975. [As amended by IGST (Amendment) Act, 2023, w.e.f. 01.10.2023]

Analysis: W.e.f. 01.10.2023, the Government has notified the supply of "online money gaming" as the goods on import of which the proviso to sec. 5(1) of the said Act shall not apply, but on which IGST shall be levied and collected u/s 5(1) of the said Act. It means Customs duties shall not be levied on import of "online money gaming", but, IGST will be levied on import of "online money gaming" as per provisions of Sec. 5(1) of the IGST Act, 2017. [As amended by IGST (Amendment) Act, 2023 and NN 03/2023 - II, w.e.f. 01.10.2023]

Taxable event under GST = Supply [Section 7]

Statutory Provisions	
Sec. 7	Meaning and Scope of Supply
Particulars	
(1)	Supply includes -
(a)	all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;
(aa)	the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration. Explanation.--For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another; [Clause (aa) inserted retrospectively by Finance Act, 2021, w.e.f. 01.07.2017, vide Notification No. 39/2021 - Central Tax, dated 21.12.2021]
(b)	importation of services, for a consideration whether or not in the course or furtherance of business and
(c)	the activities specified in Schedule I, made or agreed to be made without a consideration.
(d)	the activities to be treated as supply of goods or supply of services as referred to in schedule II [omitted retrospectively by CGST (Amendment) Act, 2018, w.e.f. 01.07.2017]
(1A)	where certain activities or transactions constitute a supply in accordance with the provisions of sub section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II. [sub-section (1A) inserted retrospectively by CGST (Amendment) Act, 2018, w.e.f. 01.07.2017]
(2)	Notwithstanding anything contained in sub-section (1),
(a)	activities or transactions specified in Schedule III; or

1.	<p>Services by an employee to the employer in the course of or in relation to his employment.</p> <p>Analysis:</p> <p>(i) Any amount paid to a director of a company for attending board of director's meeting, etc., shall be chargeable to GST, because it is not paid in the capacity of an employee. But, if any amount is paid to whole time director in the capacity of employee, then, no GST will be charged on the same.</p> <p>(ii) Further, GST on the services provided by a director to the company or body corporate is chargeable to GST under Reverse Charge Mechanism u/s 9(3) of the CGST Act, 2017 (i.e. company or body corporate will be liable to pay GST to the government directly on the amount paid to director). It means, every company or body corporate paying any amount to director, not in the capacity of employee, shall be compulsorily required to get themselves registered under GST law and consequentially, all the provisions of GST law would be attracted.</p>
2.	<p>Services by any Court or Tribunal established under any law for the time being in force.</p> <p>Explanation : The term "Court" includes District Court, High Court and Supreme Court.</p>
3.	<p>(a) Functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities;</p> <p>(b) Duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or</p> <p>(c) Duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.</p>
4.	Services of funeral, burial, crematorium or mortuary including transportation of the deceased.
5.	Sale of land and, subject to paragraph 5(b) of Schedule II, sale of building.
6.	<p>Actionable claims, other than lottery, betting and gambling specified actionable claims. [As amended by CGST (Amendment) Act, 2023, w.e.f. 01.10.2023]</p> <p>Note: As per Sec. 2(102A), "specified actionable claim" means the actionable claim involved in or by way of betting, casinos, gambling, horse racing, lottery or online money gaming. Further, the applicable rate of GST on specified actionable claims is 28%.</p> <p>Illustration : M/s Rohit ASREC Ltd. procured a portfolio of NPAs (of Rs. 50 crores) from Pankaj Bank Ltd. for a consideration of Rs. 7 crores (under the provisions of SRFAESI Act, 2002). Whether GST is leviable on Rs. 7 crores ?</p> <p>Solution : A transaction of procurement of a portfolio of NPAs is a transaction in actionable claim and is covered under para 6 of Schedule III of the CGST Act, 2017. Therefore, no GST would be charged on this transaction.</p>
7.	Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India. [made effective retrospectively w.e.f. 01.07.2017 by Finance Act, 2023]
8(a).	<p>Supply of warehoused goods to any person before clearance for home consumption.</p> <p>Explanation - For the purposes of paragraph 8, the expression "warehoused goods" shall have the same meaning as assigned to it in the Customs Act, 1962. [made effective retrospectively w.e.f. 01.07.2017 by Finance Act, 2023]</p>
8(b).	Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption. [made effective retrospectively w.e.f. 01.07.2017 by Finance Act, 2023]

Clarification in respect of levy of GST on Director's remuneration [Circular No: 140/10/2020-GST, dated 10.06.2020]

1. Leviability of GST on remuneration paid by companies to the independent directors or those directors who are not the employee of the said company

The primary issue to be decided is whether or not a "Director" is an employee of the company. In respect of independent directors or those directors who are not the employees of the company, the services provided by them

Chapter

3

Time of Supply

Time of supply of goods where tax is payable under forward charge

Time of supply of goods [Section 12(2)]	Time of supply of services [Section 13(2)]
<p>➔ Date of issue of invoice (date of actual issue or last date when it should be issued u/s 31); or Date of receipt of payment (to the extent payment is received), whichever is earlier.</p> <p>No GST on advances received for supply of goods: The registered person who did not opt for the composition levy u/s 10 of the CGST Act, has been notified as the class of persons who shall pay GST on the outward supply of goods on the date of issue of invoice or last date when it should be issued u/s 31, irrespective of the actual receipt of payment in respect of such supply.</p> <p>However, this benefit is not available to the registered persons making supply of "specified actionable claims" as defined u/s 2(102A). It means, in respect of supply of "specified actionable claims", time of supply shall be earlier of Date of issue of invoice (date of actual issue or last date when it should be issued u/s 31) or Date of receipt of payment (to the extent payment is received), whichever is earlier. In nut shell, GST will be required to be paid on advances received in respect of supply of "specified actionable claims". [Inserted by NN 50/2023 - CT, w.e.f. 01.10.2023]</p>	<p>(a) Invoice issued within the time period prescribed under section 31</p> <p>Earliest of the following:</p> <ul style="list-style-type: none"> • Date of issue of invoice by the supplier • Date of receipt of payment (entering the payment in books of account or crediting of payment in bank account, whichever is earlier) <p>If Advance payment received is upto Rs. 1,000, the supplier can choose to take date of invoice issued with respect to such excess amount as the time of supply of services of such excess value.</p> <p>(b) Invoice not issued within the time period prescribed under section 31</p> <p>Earliest of the following:</p> <ul style="list-style-type: none"> • Date of provision of service • Date of receipt of payment (entering the payment in books of account or crediting of payment in bank account, whichever is earlier) <p>if Advance payment received is upto Rs. 1,000, the supplier can choose to take date of invoice issued with respect to such excess amount as the time of supply of services of such excess value.</p> <p>(c) When the above events are unascertainable</p> <ul style="list-style-type: none"> • Date on which the recipient shows the receipt of services in his books of account

Time limit for issue of invoices [Sec. 31]

Supply of goods	Supply of services
<p>Before or at the time of,-</p> <p>(a) removal of goods for supply to the recipient, where the supply involves movement of goods, or</p> <p>(b) delivery of goods or making available thereof to the recipient, in any other case</p> <p>➔ In case of continuous supply of goods, the invoice should be issued before or at the time of issuance of periodical statement or receipt</p>	<ul style="list-style-type: none"> • Before or after the provision of service but within 30 days [45 days in case of insurance companies/banking and financial institutions including NBFCs] from the date of supply of services • In case of cessation of supply of services before completion of supply, the invoice (to the extent of supply made before such cessation) should be issued at the time when the supply ceases. • In case of continuous supply of services, the invoice should

Rule 27 : Value Of Supply Of Goods Or Services Where The Consideration Is Not Wholly In Money

Value shall be either of the following in the given order:

- ➔ open market value
- ➔ total of consideration in money + money value of the consideration not in money,
- ➔ value of supplies of like kind and quality
- ➔ consideration in money + money value of non monetary consideration computed as per rule 30 or 31 in that order.

Rule 28 : Value Of Supply Of Goods Or Services Or Both Between Distinct Or Related Persons, Other Than Through An Agent

(1) Value shall be either of the following in the given order:

- ➔ open market value
- ➔ value of supplies of like kind and quality
- ➔ value as per rule 30 or 31 in that order

Option to supplier to value goods sold as such by recipient ⇒ Value = 90% of price charged by recipient to its unrelated customer

If Recipient is eligible for ITC ⇒ invoice value = open market value (taxable value)

- (2) Notwithstanding anything contained in sub-rule (1), the value of supply of services by a supplier to a recipient who is a related person, by way of providing corporate guarantee to any banking company or financial institution on behalf of the said recipient, shall be deemed to be 1% of the amount of such guarantee offered, or the actual consideration, whichever is higher. [Sub-rule (2) inserted by NN. 52/2023 - CT, w.e.f. 26.10.2023]

Rule 29: Value Of Supply Of Goods Made Or Received Through An Agent

Value shall be either of the following in the given order:

- ➔ open market value or 90% of price charged by recipient to his unrelated customer for supplies of like kind and quality
- ➔ value as per rule 30 or 31 in that order.

Rule 30 : Value Of Supply Of Goods Or Services Or Both Based On Cost

- ➔ Where the value of a supply of goods or services or both is not determinable by any of the preceding rules of this Chapter, the value shall be 110% of the cost of production or manufacture or the cost of acquisition of such goods or the cost of provision of such services.

Rule 31 : Residual Method

- ➔ Where the value of supply of goods or services or both cannot be determined under rules 27 to 30, the value shall be determined using reasonable means consistent with the principles and general provisions of section 15 & valuation rules. For services, rule 31 can be adopted ignoring rule 30.

Rule 31A : Value Of Supply In Case Of Lottery, Betting, Gambling And Horse Racing

- ➔ The value of supply of **Lottery** shall be deemed to be 100/128 of the face value of ticket or of the price as notified

in the Official Gazette by the organising State, whichever is higher.

- **Actionable claim in form of chance to win in Betting, Gambling or horse racing in a race club** - 100% of the face value of the bet or the amount paid into the totalisator.

Rule 31B : Value Of Supply In Case Of Online Gaming Including Online Money Gaming [inserted by NN 51/2023 – CT, w.e.f. 01.10.2023]

- Notwithstanding anything contained in this chapter, the value of supply of online gaming, including supply of actionable claims involved in online money gaming, shall be the total amount paid or payable to or deposited with the supplier by way of money or money's worth, including virtual digital assets (like Cryptocurrencies, etc.), by or on behalf of the player.
- However, any amount returned or refunded by the supplier to the player for any reasons whatsoever, including player not using the amount paid or deposited with the supplier for participating in any event, shall not be deductible from the value of supply of online money gaming.

Rule 31C : Value Of Supply Of Actionable Claims In Case Of Casino [inserted by NN 51/2023 – CT, w.e.f. 01.10.2023]

- Notwithstanding anything contained in this chapter, the value of supply of actionable claims in casino shall be the total amount paid or payable by or on behalf of the player for –
 - purchase of the tokens, chips, coins or tickets, by whatever name called, for use in casino; or
 - participating in any event, including game, scheme, competition or any other activity or process, in the casino, in cases where the token, chips, coins or tickets, by whatever name called, are not required.
- However, any amount returned or refunded by the casino to the player on return of token, coins, chips, or tickets, as the case may be, or otherwise, shall not be deductible from the value of the supply of actionable claims in casino.
- **Explanation.** - For the purpose of rule 31B and rule 31C, any amount received by the player by winning any event, including game, scheme, competition or any other activity or process, which is used for playing by the said player in a further event without withdrawing, shall not be considered as the amount paid to or deposited with the supplier by or on behalf of the said player.

Rule 32: Determination Of Value In Respect Of Certain Supplies

Rule 32(2): The Value of supply of services in relation to the purchase or sale of foreign currency, including money changing

Option 1

- Value = [Buying/selling rate – RBI reference rate at that time] x total units of currency.
- If no RBI reference rate is available, value = 1% of gross amount of currency exchanged in INR.
- If the currencies exchanged are not in INR, Value = lesser of the 2 amounts that would have been received by converting both currencies into INR at RBI reference rate

Option 2

Currency Exchanged	Value
Upto Rs. 1,00,000	1% of gross amount of currency exchanged subject to minimum Rs. 250
From Rs. 1,00,001 to Rs. 10,00,000	Rs. 1,000 + 0.5% of gross amount of currency exchanged in INR exceeding Rs. 1 lakh
From Rs. 10,00,001	Rs. 5,500 + 0.1% of gross amount of currency exchanged in INR exceeding Rs. 10 lakh subject to maximum of Rs. 60,000 for each transaction

Rule 37A : Reversal of input tax credit in the case of non-payment of tax by the supplier and re-availment thereof [Inserted by NN 26/2022 - CT, w.e.f. 26.12.2022] :

- ✓ 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 FORM 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 the supplier does not pay the Tax to the government by filing return in FORM GSTR-3B for the tax period corresponding to the said statement of outward supplies, till the 30th day of September following the end of financial year in which the ITC in respect of such invoice or debit note has been availed, then, the recipient shall be required to reverse the ITC while furnishing a return in FORM GSTR-3B on or before the 30th day of November following the end of such financial year.
- ✓ However, where the said amount of ITC is not reversed by the recipient in a return in FORM GSTR-3B on or before the 30th day of November following the end of the financial year, then, such amount shall be payable by the said person along with interest thereon under section 50 (if ITC is utilized).
- ✓ Further, the recipient can re-avail the aforesaid ITC (without any time limit specified u/s 16(4)), if the said supplier subsequently furnishes the return in FORM GSTR-3B for the said tax period.

(d). **Filing of Return [Section 16(2)(d)] :** The registered person taking the ITC must have filed his return u/s 39.

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.

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 recipient, 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, **whether wholly or partly**, along with the tax within 180 days from the date of issue of invoice, then, such ITC availed by the recipient in respect of such supply, **proportionate to the amount not paid to the supplier**, would be **paid or reversed by him** along with applicable interest while furnishing the return in Form GSTR-3B for the tax period in which the said 180 days expired.

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 reversed or paid to the Government after adding it to the output tax liability.

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.

If depreciation claimed on GST component of capital goods, then, ITC not allowed [Section 16(3)]

like activity will not be eligible for ITC (except for plant & machinery).

- ➔ But, if any person has used any of the goods for construction, installation, etc. of any plant & machinery for his business, then, he shall be eligible for ITC of GST paid on goods used in construction, installation, etc. of such plant & machinery.
- ➔ The expression "construction" includes re-construction, renovation, additions or alteration or repairs, to the extent of capitalization, to the said immovable property. It means, if any input or input services are used for repairing, etc. of immovable property, which is revenue expenditure in nature (i.e. not capitalized in the books of accounts), then, ITC of GST paid on such inputs and input services shall be available to the registered person.

Examples:

- A company buys cement, tiles etc. and avails the services of an architect for construction of its office building. ITC on such goods and services is blocked.
 - MN & Constructions procures cement, paint, iron rods and services of architects and interior designers for construction of a commercial complex for one of its clients. ITC on such goods and services is allowed to MN & Co.
 - A company buys cement, tiles etc. and avails the services of an architect for renovation of its office building. The company has booked such expenditure in its profit and loss account. ITC on such goods and services is allowed.
 - ITC on goods and/or services used by an automobile company for construction of a foundation on which a machinery (to be used in the production process) is to be mounted permanently, is allowed.
- (e) **Inward supplies on which tax has been paid under the composition scheme**
- (f) **Inward supplies received by a non-resident taxable person except goods imported by him**
- (fa) Goods or services or both received by a taxable person, which are used or intended to be used for activities relating to his obligations under corporate social responsibility referred to in section 135 of the Companies Act, 2013 [inserted by Finance Act, 2023, w.e.f. 01.10.2023]
- (g) **Goods and / or services used for personal consumption**
- (h) **Goods that are lost, stolen, destroyed, written off or disposed of by way of gift or free samples**
- (i) **Tax paid under sections 74, 129 and 130:** These sections prescribe the provisions relating to tax paid as a result of evasion of taxes, or upon detention of goods or conveyances in transit, or towards redemption of confiscated goods/ conveyances.

Whether moulds and dies owned by Original Equipment Manufacturers (OEM) that are sent free of cost (FOC) to a component manufacturer is leviable to tax and whether OEMs are required to reverse input tax credit in this case? [Circular No. 47/21/2018 - GST, dated 08.06.2018]

Moulds and dies owned by the original equipment manufacturer (OEM) which are provided to a component manufacturer (the two not being related persons or distinct persons) on FOC basis does not constitute a supply as there is no consideration involved. Further, since the moulds and dies are provided on FOC basis by the OEM to the component manufacturer in the course or furtherance of his business, there is no requirement for reversal of input tax credit availed on such moulds and dies by the OEM.

It is further clarified that while calculating the value of the supply made by the component manufacturer, the value of moulds and dies provided by the OEM to the component manufacturer on FOC basis shall not be added to the value of such supply because the cost of moulds/dies was not to be incurred by the component manufacturer and thus, does not merit inclusion in the value of supply in terms of section 15(2)(b) of the CGST Act, 2017.

However, if the contract between OEM and component manufacturer was for supply of components made by using the moulds/dies belonging to the component manufacturer, but the same have been supplied by the OEM to the component manufacturer on FOC basis, the amortised cost of such moulds/dies shall be added to the value of the components. In such cases, the OEM will be required to reverse the credit availed on such moulds/ dies, as the same will not be considered to be provided by OEM to the component manufacturer in the course or furtherance of the former's business.

Total input tax involved on inputs & input services in a tax period	T
Less : Input tax on inputs & input services that are intended to be used exclusively for non-business purposes	(T ₁)
Less : Input tax on inputs & input services that are intended to be used exclusively for exempt supplies	(T ₂)
Less : Input tax on inputs & input services which are ineligible for credit [blocked credits u/s 17(5)]	(T ₃)
ITC credited to Electronic Credit Ledger	C ₁
Less : ITC on inputs & input services that are intended to be used exclusively for taxable supplies including zero rated supplies	(T ₄)
Common ITC available for apportionment	C₂

- T₁, T₂, T₃ and T₄ will be determined and declared by the registered person at the invoice level.
- Where ITC on inputs and input services used partly for non-business purposes and exempt supplies can be segregated at invoice level, the same will be added to T₁ and T₂ respectively and the balance credit will be added in T₄ [i.e. in such a case, no proportionate apportionment is required].
- The proportionate credit attributable to taxable supplies in C₂ will be allowed as ITC.

Step 2 : Compute credit attributable to exempt supplies (ineligible credit) by apportionment of common credit

- **Apportion C₂ into credit attributable to exempt supplies D₁ as under:**

$$D_1 = (E/F) \times C_2$$

Where, E = Aggregate value of exempt supplies during the tax period

F = Total turnover in the State during the tax period

Common Points for rule 42 & rule 43 :

- (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 purposes of rule 42 & 43, 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 except, -**

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- (i) the value of activities or transactions specified in paragraph 5 of the said schedule (i.e sale of land, & sale of building when entire consideration is received after issuance of completion certificate by the competent authority or its first occupation, whichever is earlier); and
- (ii) the value of such activities or transactions as may be prescribed in respect of clause (a) of paragraph 8 of the said schedule. (i.e. Supply of warehoused goods to any person before clearance for home consumption). [Further, for this purpose, the Value of Exempt supply shall be the value of supply of goods from Duty Free Shops at arrival terminal in international airports to the incoming passengers. (Explanation inserted by NN 38/2023 - CT, w.e.f. 01.10.2023)]

[As amended by Finance Act, 2023, w.e.f. 01.10.2023]

Analysis: It means, in respect of activities & transactions which are covered under Schedule III of the CGST Act, ITC shall not be reversible, although such activities & transactions are not leviable to GST. But, transactions of "sale of land & building" and "Supply of warehoused goods to any person before clearance for home consumption" which are not chargeable to GST, will be treated as exempt supply and accordingly ITC will not be available for these particular transactions of Schedule III.

- (iii) Aggregate value of exempt supplies and total turnover excludes the central excise duty, State excise duty, VAT and CST.
- (iv) The aggregate value of exempt supplies shall exclude:
- (a) interest or discount earned on deposits, loans or advances, except in case of a banking company or a financial institution including a non-banking financial company; and
- A (b) ~~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; [Omitted by NN 38/2023 - CT, w.e.f. 04.08.2023]~~
- (c) the value of supply of Duty Credit Scrips [e.g. - RoDTEP, RoSCTL, MEIS, SEIS Duty Credit Scrips].

■ **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 in 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 September in the following financial year and interest @ 18% p.a. should be paid on such differential amount from 1st 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 credit in the return of the month not later than September in the next financial year.

2. Methodology of apportionment of credit of capital goods and reversal of ineligible credit [Rule 43]

Applicability of Rule 43 for all cases other than Construction services covered by para 5(b) of Schedule II of the Act:

Step 1 : Determine common credit T_c on capital goods as under:

- (i) Identify input tax on capital goods used/intended to be used exclusively for non-business purposes or making exempt supplies. Such amount will not be credited to Electronic Credit Ledger [ECrL].

Who are not eligible to opt for Composition Scheme

1. Persons, not eligible to opt for composition scheme [Section 10(2)]:

- (a) A person who is engaged in supply of service except restaurant & outdoor catering service. However, if an eligible person (i.e. supplier of goods or restaurant & outdoor catering service supplier) who has opted for composition scheme may supply services (other than restaurant & outdoor catering service), of value not exceeding Rs. 5,00,000/- or 10% of turnover in a State or Union territory in the preceding financial year, whichever is higher.

Further, while computing value of services supplied during current financial year, interest or discount earned on loans, advances or deposits will not be taken into account. [CGST (Removal of difficulties) Order No. 01/2019 - CT, w.e.f. 01.02.2019]

Further, for the purposes of computing limit of "10% of turnover in a State or Union territory in the preceding financial year", the interest or discount earned on loans, advances or deposits shall not be taken into account for determining the value of turnover in a State or Union territory.

Example:

Vivek is engaged in supply of goods. His aggregate turnover in preceding FY is Rs. 84 lakhs (including Rs. 4 lakhs interest or discount earned on loans, advances or deposits). Since, his aggregate turnover in the preceding FY does not exceed Rs. 1.5 crore, he is eligible for composition scheme in current FY. Further, in current FY, he can supply services [other than restaurant & outdoor catering services] upto a value of not exceeding:

- (a) 10% of Rs. 80 lakhs, i.e. Rs. 8 lakhs

or

- (b) Rs. 5 lakhs,

whichever is higher. Thus, he can supply services upto a value of Rs. 8 lakhs in current FY. If the value of services supplied exceeds Rs. 8 lakhs, he becomes ineligible for the composition scheme and has to opt out of the composition scheme. However, interest or discount earned during current financial year on loans, advances or deposits shall not be taken into account while computing limit of Rs. 8 lakhs in current financial year.

- (b) Supplier of goods or services which are not leviable under the CGST Act/SGST Act/UTGST Act.
 (c) Supplier of inter-State outward supplies of goods or services.
 (d) Person supplying ~~goods or~~ services through an electronic commerce operator, who is required to collect tax at source under section 52. [Words "goods or" omitted by Finance Act, 2023, w.e.f. 01.10.2023]
 (e) **Manufacturer** of following notified goods :

(i)	Ice cream and other edible ice, whether or not containing cocoa
(ii)	Pan masala
(iii)	Aerated Water, containing added sugar or other sweetening matter or flavoured [Eg. Pepsi, Coca-cola, etc.]
(iv)	All goods, i.e. Tobacco and manufactured tobacco substitutes
(v)	Fly ash bricks; fly ash aggregates; Fly ash blocks
(vi)	Bricks of fossil meals or similar siliceous earths
(vii)	Building bricks
(viii)	Earthen or roofing tiles

- Further, he is required to file an **intimation for withdrawal** from the scheme in prescribed form **within 7 days** of the occurrence of such event.
- Such person shall be allowed to **avail the input tax credit** in respect of the **stock** of inputs on capital goods held by him on the date of withdrawal and furnish a statement, **within 30 days** of withdrawal of the option, containing the details of such stock held in prescribed form on the common portal.

Composition Scheme for Supplier of Services [Sec. 10(2A) read with NN 02/2019 - CT (R)]

- Option to pay concessional tax by supplier of services & goods
- An option for small service providers with aggregate turnover upto Rs. 50 lakh in preceding FY who are not eligible for composition scheme u/s 10(1)
- Concessional tax will be payable on first supplies of goods and /or services upto an aggregate turnover of Rs. 50 lakh made on/after 1st April in any FY, subject to specified conditions.

Explanation - For the purposes of computing aggregate turnover of a person for determining his eligibility to pay tax under this section, the expression "aggregate turnover" shall include the value of supplies made by such person from the 1st day of April of a financial year up to the date when he becomes liable for registration under this Act, but shall not include the amount of interest or discount earned on loans, advances or deposits extended.

- Concessional tax will be payable @ 6% (CGST @ 3% + SGST/UTGST @ 3%) of value of all outward supplies (including exempt supplies) of goods or services or both irrespective of actual rate of tax.

Explanation - For the purposes of determining the tax payable by a person under this section, the expression "turnover in State or turnover in Union territory" shall not include the value of following supplies, namely:—

- (i) supplies from the first day of April of a financial year up to the date when such person becomes liable for registration under this Act; and
- (ii) amount of interest or discount earned on loans, advances or deposits extended.

Conditions for the Scheme:

1. Supplies are made by a registered person, -
 - (i) whose aggregate turnover in the preceding financial year was Rs. 50 lakhs or below;
 - (ii) who is not eligible to pay tax under sub-section (1) of section 10 of the said Act;
 - (iii) who is not engaged in making any supply which is not leviable to tax under the said Act;
 - (iv) who is not engaged in making any inter-State outward supplies of goods or services;
 - (v) who is neither a casual taxable person nor a non-resident taxable person;
 - (vi) who is not engaged in making any supply of ~~goods or~~ services through an electronic commerce operator who is required to collect tax at source u/s 52; and [Words "goods or" omitted by Finance Act, 2023, w.e.f. 01.10.2023]
 - (vii) who is not engaged in **manufacture** of the following goods: A

(i)	Ice cream and other edible ice, whether or not containing cocoa
(ii)	Pan masala
(iii)	Aerated Water, containing added sugar or other sweetening matter or flavoured [Eg. Pepsi, Coca-cola, etc.]
(iv)	All goods, i.e. Tobacco and manufactured tobacco substitutes
(v)	Fly ash bricks; fly ash aggregates; Fly ash blocks
(vi)	Bricks of fossil meals or similar siliceous earths

Sl.	Notified Category of goods and services u/s 9(4)
1	*If value of inputs and input services purchased from registered supplier is less than 80%, promoter has to pay GST on reverse charge basis, under section 9(4) of the CGST Act, at the applicable rate of GST on all such inward supplies (to the extent it is short of 80% of the inward supplies from registered supplier)
2	Cement purchased from an unregistered person
3	Capital goods purchased from an unregistered person

Section 9(3) of the CGST Act, 2017

The Government may, on the recommendations of the council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

List of services taxable under reverse charge, i.e. the services where tax is payable by the recipient:

S. N.	Category of Supply of Service	Supplier of Service	Recipient of Service
1.	Supply of services by a Goods Transport Agency (GTA) 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 GST; 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 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 GST; 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 registered under GST located in the taxable territory.
	<p>However, RCM on GTA service shall not apply</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) where, - (a) 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 (b) 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/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 from the Financial Year ____ under forward charge and have not reverted to reverse charge mechanism." [as amended by NN 08/2023 -</p>		

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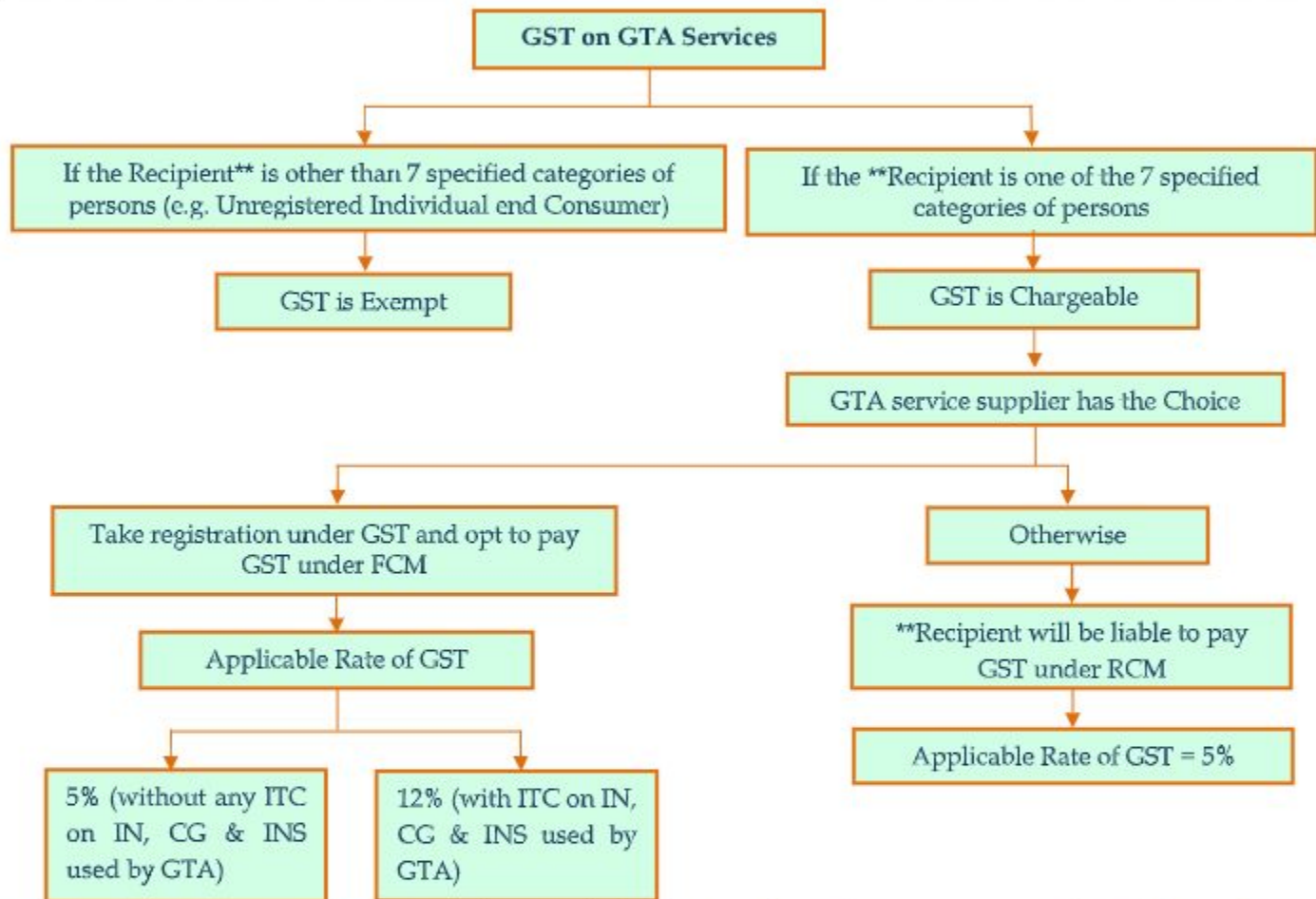
Declaration → Not in ICAI

<p>(A)</p>	<p>CT (R), w.e.f. 27.07.2023]</p> <p>(c) Further, the option exercised by GTA to itself pay GST on the services supplied by it during a Financial Year shall be deemed to have been exercised for the next and future financial years unless the GTA files a declaration to revert under reverse charge mechanism on or after the 1st January of the preceding Financial Year but not later than 31st March of the preceding Financial Year. [Proviso inserted by NN 06/2023 - CT (R), w.e.f. 27.07.2023]</p> <p>(d) Further, a GTA who commences new business or crosses threshold for registration during any Financial Year, may exercise the option to itself pay GST on the services supplied by it during that Financial Year by making a declaration before the expiry of 45 days from the date of applying for GST registration or 1 month from the date of obtaining registration, whichever is later. [Proviso inserted by NN 05/2023 - CT (R), w.e.f. 09.05.2023]</p> <p>[also refer analysis given at the end of this table]</p>	<p style="text-align: right; color: red;">ICAI → X</p>	
2.	<p>Services provided by an individual advocate including a senior advocate or firm of advocates by way of legal services, directly or indirectly.</p> <p>Explanation: "legal service" means any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any court, tribunal or authority."</p>	An individual advocate including a senior advocate or firm of advocates.	Any business entity located in the taxable territory.
3.	Services supplied by an arbitral tribunal to a business entity.	An arbitral tribunal.	Any business entity located in the taxable territory.
4.	Services provided by way of sponsorship to any body corporate or partnership firm.	Any person	Any body corporate or partnership firm located in the taxable territory.
5.	<p>Services supplied by the Central Government, State Government, Union territory or local authority to a business entity excluding, -</p> <p>(1) renting of immovable property, and</p> <p>(2) Services specified below -</p> <p>(i) services by the Department of Posts and the Ministry of Railways (Indian Railways); [As amended by NN. 14/2023 - CT (R), w.e.f. 20.10.2023]</p> <p>(ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;</p> <p>(iii) transport of goods or passengers.</p> <p>[Provisions of RCM, in so far as they apply to the CG and SG, shall also apply to the Parliament, State Legislatures, Courts and Tribunals (Words 'Courts and Tribunals' inserted by NN 02/2023 - CT (R), w.e.f. 01.03.2023)]</p>	Central Government, State Government or Union territory or local authority;	Any business entity located in the taxable territory.
5A.	<p>Services supplied by the Central Government excluding the Ministry of Railways (Indian Railways), State Government, Union territory or local authority by way of renting of immovable property to a person registered under GST. [As</p>	Central Government, State Government, Union Territory or	Any person registered under GST

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 (i.e. renting of motor vehicle), 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 (i.e. transport of passengers), and the body corporate shall not be liable to pay GST on the same under RCM.

Summary of GTA



**Recipient of GTA service is the person who pays/is liable to pay freight for transportation of goods by road in goods carriage, located in the taxable territory.

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 RCM purposes under CGST Act (as given above) have also been notified for RCM under IGST Act. Further, following 2 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 supplied by any person who is located in a non taxable territory 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.
2	Services supplied by a person located	A person located in	Importer of goods, as defined in section 2(26)

A	in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India.	non-taxable territory	of the Customs Act, 1962, located in the taxable territory. [Omitted by NN 13/2023 - IT(R), w.e.f. 01.10.2023]
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Sec. 9(5) of CGST Act : Tax Payable by the Electronic Commerce Operator (ECO) on Notified Services [Sec. 5(5) of IGST Act]

The Government may, on the recommendations of the Council, by notification, specify categories of services the tax on intra-State supplies of which shall be paid by the electronic commerce operator as if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services.

Provided that where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax:

Provided further that where an electronic commerce operator does not have a physical presence in the taxable territory and also he does not have a representative in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.

ANALYTICAL VIEW OF THE TOPIC

■ The Government may notify specific categories of services the tax on supplies of which shall be paid by the electronic commerce operator (ECO) if such services are supplied through it.

■ Following categories of services supplied through ECO are notified for the purpose of Sec. 9(5)/5(5) :-

- (i) services by way of transportation of passengers by a radio-taxi, motorcab, maxicab, motor cycle, ~~omnibus~~ or any other motor vehicle except omnibus (e.g. OLA, Uber, Rapido, etc.) [as amended by NN 16/2023-CT(R), w.e.f. 20.10.2023];
- (ia) services by way of transportation of passengers by an omnibus except where the person supplying such service through electronic commerce operator is a company or [inserted by NN 16/2023 - CT(R), w.e.f. 20.10.2023];

Analysis of Amendment for Bus Operators:

The representation was filed by the bus operator's association that most of the bus operators supplying service through ECO owned one or two buses and were not in a position to take GST registration and meet GST compliances.

Therefore, w.e.f. 01.01.2022, the liability to pay GST on bus transportation services supplied through ECOs has been placed on the ECO under section 9(5) of the CGST Act, 2017. But, at the same time, due to this provision, the larger organized entities were unable to avail Input Tax Credit (ITC) on inward goods and services, because they were not liable to pay GST on the aforesaid services.

Therefore, in order to strike a balance between the requirement for simplifying business operations for small operators and the necessity for larger organized entities to avail ITC on inward goods and services, the government specifically excluded "Company" omnibus operators from the scope of section 9(5) of the CGST Act, 2017. [Further, "Company" means Company as defined u/s 2(20) of the Companies Act, 2013.]

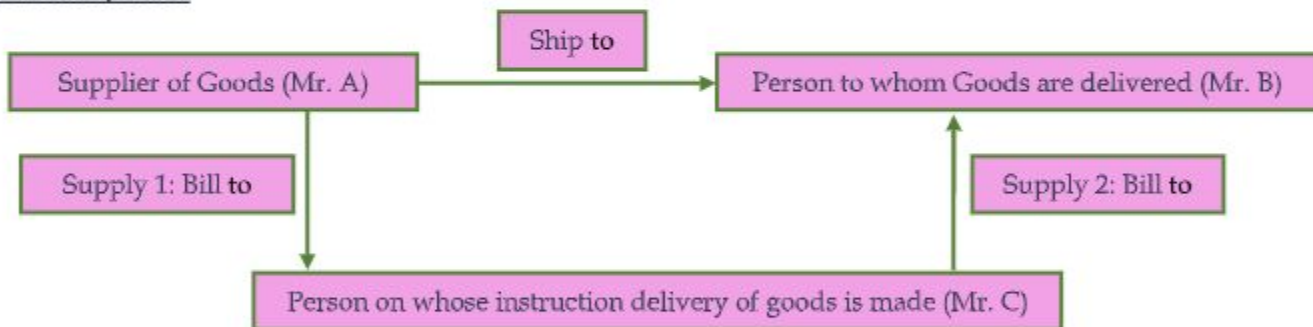
- (ii) services by way of providing accommodation in hotels, inns, guest houses, clubs, Campsites or other commercial places meant for residential or lodging purposes, except where the person supplying such service through electronic commerce operator is liable for registration u/s 22(1) of the CGST Act. (e.g. Tripadvisor, goibibo, etc.)
- (iii) services by way of house-keeping, such as plumbing, carpentering, etc., except where the person supplying such services through electronic commerce operator is liable for registration u/s 22(1) of the CGST Act. (e.g. urbanclap.com, zimmer.com, etc.)
- (iv) Supply of restaurant service other than the service supplied by restaurant, eating joints etc. located at specified premises. (e.g. Swiggy, Zomato, etc.) [Specified premises means premises providing hotel accommodation service having declared tariff of any unit of accommodation above Rs. 7,500/- per unit per day or equivalent.]

PLACE OF SUPPLY OF GOODS

SECTION 10 OF IGST ACT, 2017

Section	Nature of Supply	Place of Supply
10(1)(a)	Supply involves movement of goods	Location of goods at the time at which movement terminates for delivery to recipient.
10(1)(b)	Goods delivered to a third person on direction of the Buyer [Bill to Ship to Model]	Principal place of business of Buyer
10(1)(c)	Supply does not involves movement of goods	Location of goods at the time of delivery to the recipient
10(1)(ca) A	Supply made to unregistered person [Clause (ca) inserted by IGST (Amendment) Act, 2023, w.e.f. 01.10.2023]	Location of recipient recorded in the invoice (even if name of the State of recipient is recorded); and location of the supplier where the address of the recipient is not recorded in the invoice
10(1)(d)	Where goods are assembled or installed at site	Place of installation or assembly
10(1)(e)	Goods supplied on board a conveyance like a vessel, aircraft, train or motor vehicle	Place where such goods are taken on-board the conveyance
10(2)	Where the place of supply of goods cannot be determined in terms of the above provisions	To be determined in the prescribed manner

Illustration : Section 10(1)(b) - Supply involves movement of goods, and delivered to a person on the instruction of a third person



Supply 1: Supply from the supplier of goods (Mr. A) to the person to whom the goods are delivered (Mr. B) on the instruction of a third person (Mr. C) – *Place of supply shall be the principal place of business of the person on whose instruction goods are delivered (Mr. C) to the receiver of goods (Mr. B)* as per Sec. 10(1)(b).

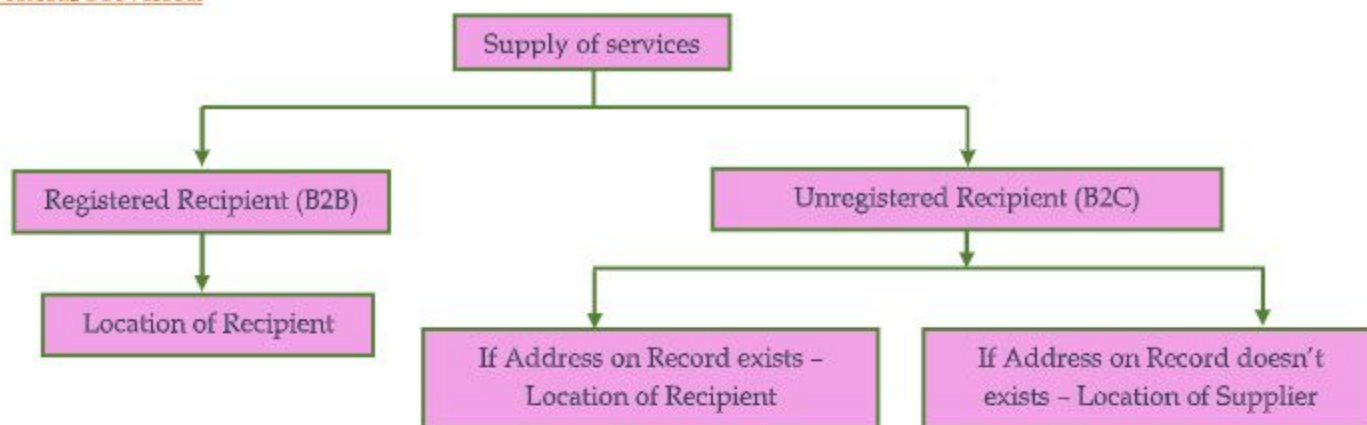
Supply 2: Deemed supply of goods by the person on whose instruction (Mr. C) the goods were delivered by the original supplier (Mr. A) to the receiver of goods (Mr. B) – *Place of supply shall be the location of goods at the time when the movement of goods terminates for delivery to recipient (Mr. B)* as per Sec. 10(1)(a).

SECTION 11 : PLACE OF SUPPLY OF GOODS IN CASE OF EXPORT OR IMPORT

Section 11 of IGST Act, 2017: The place of supply of goods, –

- imported into India shall be the location of the importer;
- exported from India shall be the location outside India.

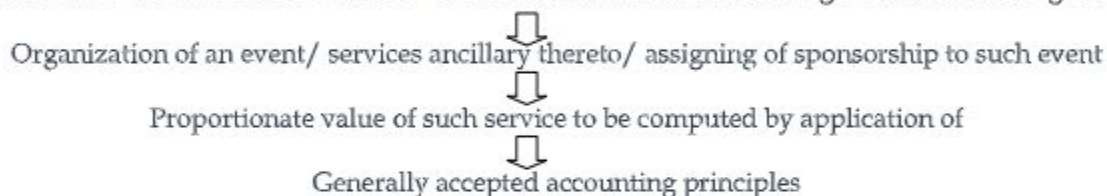
**Place of supply of services where location of supplier AND recipient is in India
[Section 12]**

General Provision**Specific Provisions**

Sec.12	Nature of Service	Place of Supply
(3)	Immovable property related-services including accommodation in hotel/boat/vessel & ancillary services	Location at which the immovable property or boat or vessel is located or intended to be located If located outside India: Location of the recipient
	If the immovable property or boat or vessel is located in more than one State	Each such State in proportion to the value of services provided in each State - Refer Rule 4 - Given below
(4)	Restaurant and catering services, personal grooming, fitness, beauty treatment and health service	Location where the services are actually performed
(5)	Training and performance appraisal	B2B: Location of such registered person B2C: Location where the services are actually performed
(6)	Admission to an event or amusement park and ancillary services	Place where the event is actually held or where the park or the other place is located
(7)	Organisation of an event including ancillary services and assigning of sponsorship to such events	<ul style="list-style-type: none"> ■ B2B: Location of such registered person ■ B2C: Location where the event is actually held <ul style="list-style-type: none"> ■ If the event is held outside India: Location of the recipient
	If the event is held in more than one State	Each such State in proportion to the value of services provided in each State - Refer Rule 5 - Given below
(8)	Transportation of goods, including mails or courier	B2B: Location of such registered person B2C: Location at which such goods are handed over for their transportation
		If the goods are transported outside India: Location of the destination of goods [proviso omitted by Finance Act, 2023, w.e.f. 01.10.2023]
(9)	Passenger transportation	B2B: Location of such registered person B2C: Place where the passenger embarks on the conveyance for a continuous journey <ul style="list-style-type: none"> ■ Return Journey - treated as separate journey ■ Where the right to passage is given for future use and the point of embarkation is not known at the time of issue

	States/ Union territories or both)	
(b)	<p>➔ All other services provided in relation to immovable property including services by way of accommodation in any immovable property for organising any marriage or reception etc. and in cases of supply of accommodation by a hotel, inn, guest house, club or campsite, by whatever name called where such property is a single property located in 2 or more contiguous States or/and Union Territories</p> <p>➔ Services ancillary to services mentioned above.</p>	Area of the immovable property lying in each State/Union Territories
(c)	Services by way of lodging accommodation by a house boat or vessel and its ancillary services.	Time spent by the boat or vessel in each such State/Union Territories, to be determined on the basis of declaration made by the service provider.

Manner of determining proportionate value of service relating to organization of event, attributable to different States/Union territories - where the event is held - in the absence of a contract or agreement in this regard [Rule 5]



Manner of determining proportionate value of service in the absence of a contract or agreement (Rule 6 of IGST Rules, 2017)

In the absence of a contract or agreement between the supplier and recipient of services, the value of services supplied in different States/Union territories (where the leased circuit is installed) is determined in proportion to the **number of points lying** in each such State/ Union territory.

The number of points in a circuit is determined in the following manner -

- (i) In the case of a circuit between two points or places, the starting point or place of the circuit and the end point or place of the circuit will invariably constitute two points.
- (ii) Any intermediate point or place in the circuit will also constitute a point provided that the benefit of the leased circuit is also available at that intermediate point.

Clarification on the entitlement of ITC where the Place of Supply is determined in terms of the proviso to section 12(8) of the IGST Act [Circular No. 184/16/2022-GST, dated 27.12.2022]

Now, this circular is not relevant due to amendment made in Sec. 12(8) of the IGST Act, 2017.

(A)

	NBFC to account holders	services
	Intermediary services	
	Services consisting of hiring of means of transport, including yachts but excluding aircrafts and vessels, up to a period of one month	
(9)	Transportation of goods, other than by way of mail or courier [Omitted by Finance Act, 2023, w.e.f. 01.10.2023]	Place of destination of such goods
(10)	Passenger transportation	Place where the passenger embarks on the conveyance for a continuous journey
(11)	Services provided on-board a conveyance	First scheduled point of departure of that conveyance for the journey
(12)	Online information and database access or retrieval services	Location of recipient of service
(13)	<p>In order to prevent double taxation or non-taxation of the supply of a service, or for the uniform application of rules, the Government shall have the power to notify any description of services or circumstances in which the place of supply shall be the place of effective use and enjoyment of a service.</p> <p>Using this power, the government has notified the place of supply of following services:</p>	
	(i) Supply of research and development services related to pharmaceutical sector by a person located in taxable territory to a person located in the non-taxable territory.	<p>The place of supply of services shall be the location of the recipient of services subject to fulfilment of the following conditions:</p> <p>a. Supply of services from the taxable territory are provided as per a contract between the service provider located in taxable territory and service recipient located in non-taxable territory.</p> <p>b. Such supply of services fulfills all other conditions in the definition of export of services, except condition provided at Section 2(6)(iii) of IGST Act, 2017 [i.e. the place of supply of service is outside India].</p>
	(ii) Supply of maintenance, repairs or overhaul service in respect of aircrafts , aircraft engines and other aircraft components or parts supplied to a person for use in the course or furtherance of business.	The Place of supply of services shall be the location of the recipient of service . [NN 02/2020 - I.T., w.e.f. 01.04.2020]
	(iii) Supply of maintenance, repairs or overhaul service in respect of ships and other vessels , their engines and other components or parts supplied to a person for use in the course or furtherance of business.	The Place of supply of services shall be the location of the recipient of service . [NN 03/2021 - I.T., w.e.f. 02.06.2021]

Manner of determining proportionate value of service supplied in different State/Union territories (where such services are supplied) in the absence of a contract or agreement in this regard [Rule 7 of IGST Rules, 2017]

Sl.	Cases	Manner of computing the proportionate value of service
1.	Services relating to goods & individual	
	(a) Services supplied on the same goods	Equally dividing the value of service in each of the States/ Union territory where the service is performed
	(b) Services supplied on different goods	Considering the ratio of the invoice value of goods in each States/ Union territory, on which service is performed, as the ratio of the value of the service performed in each State/Union territory
	(c) Services supplied to individuals	Applying generally accepted accounting principles.
2.	Services directly relating to immovable property	In the same manner as is applicable for determining the proportionate value of services provided in relation to an immovable property under section 12(3) i.e. Rule 4
3.	Services relating to admission to/organization of event	In the same manner as is applicable for determining the proportionate value of services provided in relation to organization of an event under section 12(7) i.e. Rule 5

Clarification on supply of satellite launch services by ANTRIX Corporation Ltd. [Circular No. 2/1/2017 IGST dated 27.09.2017]

Place of supply of satellite launch services supplied by ANTRIX Corporation Limited to international customers would be outside India in terms of section 13(9) of IGST Act, 2017 and such supply which meets the requirements of section 2(6) of IGST Act, thus constitutes export of service and shall be zero rated in accordance with section 16 of the IGST Act. Where satellite launch service is provided by ANTRIX Corporation Limited to a person located in India, the place of supply of satellite launch service would be governed by section 12(8) of the IGST Act and would be taxable under CGST Act, UTGST Act or IGST Act, as the case may be.

Clarification on Satellite launch services provided by NSIL to international customers – Whether Export of Service or not [Circular No. 164/20/2021 – GST, dated 06.10.2021]

As the satellite launch services supplied by M/s New Space India Limited (NSIL), a wholly-owned Government of India Company under the administrative control of Department of Space (DoS), are similar to those supplied by ANTRIX Corporation Ltd, the said circular No. 2/1/2017-IGST, dated 27.09.2017, is applicable to them also.

Important Note: “Satellite launch services” is exempted from GST [Entry No. 19C in NN 12/2017 CT (R)]. A

Clarification on Export of Services under GST [Circular No. 78/52/2018-GST, dated 31.12.2018]

Issue:

In case an exporter of services outsources a portion of the services contract to another person located outside India, what would be the tax treatment of the said portion of the contract at the hands of the exporter? There may be instances where the full consideration for the outsourced services is not received by the exporter in India.

Clarification:

1. Even if the full consideration for the services as per the contract value is not received in convertible foreign exchange in India due to the fact that the recipient of services located outside India has directly paid to the supplier of services located outside India (for the outsourced part of the services), that portion of the consideration shall also be treated as receipt of consideration for export of services in terms of section 2(6)(iv) of the IGST Act. Therefore, total value of services as agreed to in the contract between the exporter of services located in India and the recipient of services located outside India will be considered as export of services.
2. Further, the supplier of services located in India would be liable to pay IGST on reverse charge basis on the import of services on that portion of services which has been provided by the supplier located outside India to the recipient of

- (A) nature of which renders their supply ~~essentially automated and involving minimal human intervention and impossible to ensure in the absence of information technology~~ and includes electronic services such as, -
- (i) advertising on the internet;
 - (ii) providing cloud services;
 - (iii) provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;
 - (iv) providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;
 - (v) online supplies of digital content (movies, television shows, music and the like);
 - (vi) digital data storage; and
 - (vii) ~~online gaming~~ online gaming, excluding the online money gaming as defined in section 2(80B) of the CGST Act, 2017 [As amended by IGST (Amendment) Act, 2023, w.e.f. 01.10.2023];
2. **Who is a Non-Taxable Online Recipient?** : “Non-taxable online recipient” means any unregistered person receiving online information and database access or retrieval services located in taxable territory.
- (A) **Explanation** : For the purposes of this clause, the expression “unregistered person” includes a person registered solely in terms of clause (vi) of section 24 of the CGST Act, 2017 (i.e. persons registered only for the purpose of deducting TDS u/s 51 of the CGST Act, 2017); [as amended by Finance Act, 2023, w.e.f. 01.10.2023]

Section 14A : Special Provision for Specified Actionable Claims Supplied By A Person Located Outside Taxable Territory

(A) [Sec. 14A inserted by IGST (Amendment) Act, 2023, w.e.f. 01.10.2023]

- (1) A supplier of online money gaming as defined in section 2(80B) of the CGST Act, 2017, not located in the taxable territory, shall in respect of the supply of online money gaming by him to a person in the taxable territory, be liable to pay IGST on such supply.
- (2) For the purposes of complying with provisions of sub-section (1), the supplier of online money gaming shall obtain a single registration under the Simplified Registration Scheme referred to in section 14(2) of this Act.
However, any person located in the taxable territory representing such supplier for any purpose in the taxable territory shall get registered and pay the IGST on behalf of the supplier.
Further, if such supplier does not have a physical presence or does not have a representative for any purpose in the taxable territory, he shall appoint a person in the taxable territory for the purpose of paying IGST and such person shall be liable for payment of such tax.
- (3) In case of failure to comply with provisions of sub-section (1) or sub-section (2) by the supplier of the online money gaming or a person appointed by such supplier or both, notwithstanding anything contained in section 69A of the Information Technology Act, 2000, any information generated, transmitted, received or hosted in any computer resource used for supply of online money gaming by such supplier shall be liable to be blocked for access by the public in such manner as specified in the said Act.

Section 15 : Refund of Integrated Tax to International Tourist

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.

Explanation - For the purposes of this section, the term “tourist” means a person not normally resident in India, who enters India for a stay of not more than six months for legitimate non-immigrant purposes.

Section 16 : Zero Rated Supply

- (1) “Zero rated supply” means any of the following supplies of goods or services or both, namely :

- (a) export of goods or services or both; or ^(A)
- (b) supply of goods or services or both for authorized operations to a Special Economic Zone developer or a Special Economic Zone unit. [As amended by Finance Act, 2021, w.e.f. 01.10.2023]
- (2) Subject to the provisions of sub-section (5) of section 17 of the Central Goods and Services Tax Act, credit of input tax may be availed for making zero-rated supplies, **notwithstanding that such supply may be an exempt supply.**
- (3) ^(A) A registered person making zero rated supply shall be eligible to claim refund of unutilised input tax credit on supply of goods or services or both, without payment of integrated tax, under bond or Letter of Undertaking, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made there under, subject to such conditions, safeguards and procedure as may be prescribed.
- However, the registered person making zero rated supply of goods shall, in case of non-realisation of sale proceeds, be liable to deposit the refund so received under this sub-section along with the applicable interest under section 50 of the Central Goods and Services Tax Act within thirty days after the expiry of the time limit prescribed under the Foreign Exchange Management Act, 1999 for receipt of foreign exchange remittances, in such manner as may be prescribed.
- (4) The Government may, on the recommendation of the Council, and subject to such conditions, safeguards and procedures, by notification, specify -
- ^(A) (i) a class of persons who may make zero rated supply on payment of integrated tax and claim refund of the tax so paid;
- (ii) a class of goods or services which may be exported on payment of integrated tax and the supplier of such goods or services may claim the refund of tax so paid.

Note: As per NN 01/2023 – IT, as amended by NN 05/2023 – IT, w.e.f. 01.10.2023, the Government has notified

- (i) all goods or services (except some specified goods like Tobacco based goods, pan-masala, etc.) as the class of goods or services which may be exported on payment of integrated tax and on which the supplier of such goods or services may claim the refund of tax so paid; and
- (ii) all suppliers to a Developer or a unit in Special Economic Zone undertaking authorised operations as the class of persons who may make supply of goods or services (except some specified goods like Tobacco based goods, pan-masala, etc.) to such Developer or a unit in Special Economic Zone for authorised operations on payment of integrated tax and on which the said suppliers may claim the refund of tax so paid.

[Sub-sections (3) & (4) substituted by Finance Act, 2021, w.e.f. 01.10.2023]

Section 17A : Transfer Of Certain Amounts

Where any amount has been transferred from the electronic cash ledger under this Act 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.

Section 19 : Tax Wrongfully Collected And Paid To Central Government Or State Government

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

"Bachcha Kabil Bano, Kabil...
Kamyabi Toh Jhak Maarke Peechhe Bhagegi"

	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). Therefore, 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 is taxable under GST.
5.	Services by way of transportation of goods by an aircraft from a place outside India upto the customs station of clearance in India.
6.	Services by way of transportation of goods by an aircraft from customs station of clearance in India to a place outside India . Nothing contained in this entry shall apply after the 30.09.2018 30.09.2019 30.09.2020 30.09.2021 30.09.2022. <u>Analysis</u> : W.e.f. 01.10.2022, this service is made taxable , because, this exemption is not extended beyond 30.09.2022.
7.	Services by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India . Nothing contained in this entry shall apply after the 30.09.2018 30.09.2019 30.09.2020 30.09.2021 30.09.2022. <u>Analysis</u> : W.e.f. 01.10.2022, this service is made taxable , because, this exemption is not extended beyond 30.09.2022.
8.	Satellite launch services supplied by Indian Space Research Organisation (ISRO), Antrix Corporation Limited or New Space India Limited. [Entry No. 19C of NN 12/2017 CT (R), as amended by NN 07/2023 CT (R), w.e.f. 27.07.2023] <u>Analysis of Amendment</u> : W.e.f. 27.07.2023, the exemption to Satellite launch services has been extended to all the organisations including private organisations to encourage start-ups.
9.	Services by way of transportation by rail or a vessel from one place in India to another of the following goods- (a) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap; (b) defence or military equipments; (c) newspaper or magazines registered with the Registrar of Newspapers; (d) railway equipments or materials ; [Omitted by NN 04/2022 CT (R), w.e.f. 18.07.2022] (e) agricultural produce; (f) milk, salt and food grain including flours, pulses and rice; and (g) organic manure.
10.	Services provided by a goods transport agency , by way of transport in a goods carriage of - (a) agricultural produce; (b) goods, where consideration charged for the transportation of goods on a consignment transported in a single carriage does not exceed Rs. 1,500 ; [Omitted by NN 04/2022 CT (R), w.e.f. 18.07.2022] (c) goods, where consideration charged for transportation of all such goods for a single consignee does not exceed Rs. 750 ; [Omitted by NN 04/2022 CT (R), w.e.f. 18.07.2022] (d) milk, salt and food grain including flour, pulses and rice; (e) organic manure; (f) newspaper or magazines registered with the Registrar of Newspapers; (g) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap; or (h) defence or military equipments.
11.	Services provided by a Goods Transport Agency (GTA) , to an unregistered person, including an unregistered casual taxable person , other than the following recipients, namely :

	<ul style="list-style-type: none"> [Circular No. 177/09/2022 - GST, dated 03.08.2022] 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.
5.	Renting or leasing of agro machinery or vacant land with or without a structure incidental to its use for the purpose 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 or agricultural produce.
6.	Services provided by the Central Government, State Government, Union territory or local authority by way of assignment of right to use natural resources to an individual farmer 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.
7.	Services by way of loading, unloading, packing, storage or warehousing of agricultural produce.
8.	Services by way of loading, unloading, packing, storage or warehousing of rice. Analysis: Commission agent of rice is taxable.
9.	Services by way of warehousing of minor forest produce. Examples of minor forest produce: Trees and leaves, flowers and fruits, and all other parts or produce of trees, etc. brought from the forest.
10.	Services by way of storage or warehousing of cereals, pulses, fruits, nuts and vegetables, spices, copra, sugarcane, jaggery, raw vegetable fibres such as cotton, flax, jute etc., indigo, unmanufactured tobacco, betel leaves, tendu leaves, coffee and tea. [omitted words, omitted by NN 04/2022 - CT(R), w.e.f. 18.07.2022]

Government Related Services

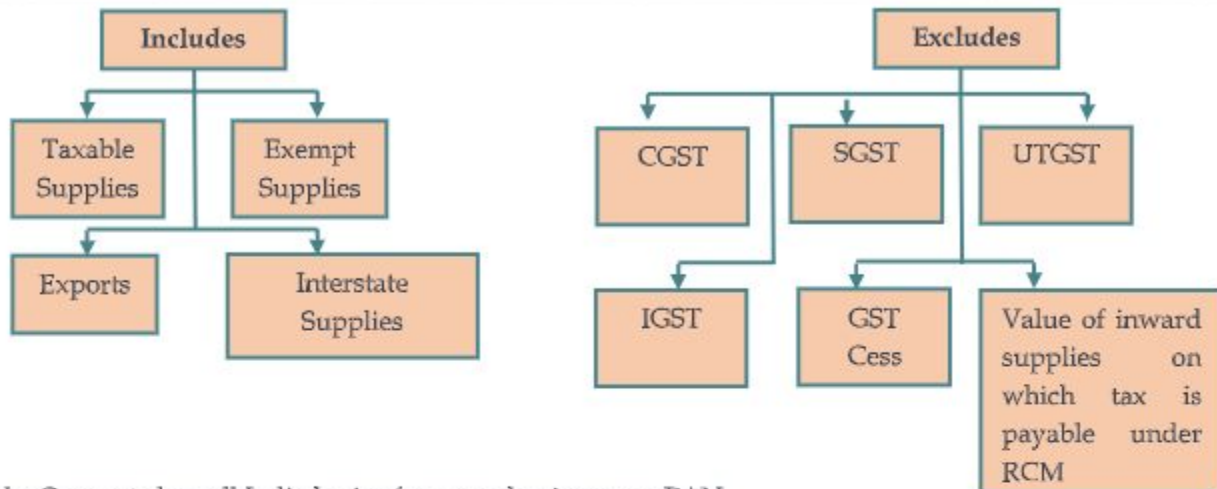
1.	<p>Services by Government : Services by the Central Government, State Government, Union territory or local authority excluding the following services -</p> <p style="text-align: right;">(A)</p> <p>(a) services by the Department of Posts and the Ministry of Railways (Indian Railways) by way of speed 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] [As amended by NN. 13/2023 - CT (R), w.e.f. 20.10.2023]</p> <p>(b) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;</p> <p>(c) transport of goods or passengers; or</p> <p>(d) any service, other than services covered under entries (a) to (c) above, provided to business entities.</p>
1A.	<p>Services by the Department of Posts by way of post card, inland letter, book post and ordinary post (envelopes weighing less than 10 grams). [inserted by NN 04/2022 - CT (R), w.e.f. 18.07.2022]</p> <p>Analysis:</p> <p>(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.</p> <p>(2) Accordingly, following are the examples of the services provided by the Department of Posts which are taxable under GST:</p> <ul style="list-style-type: none"> 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.); Ordinary post (other than envelopes weighing less than 10 grams);

	<p>Note: As per clause (zzf) under this notification, 'Specified organisation' shall mean, -</p> <ul style="list-style-type: none"> ■ Kumaon Mandal Vikas Nigam Limited, a Government of Uttarakhand Undertaking; or ■ 'Committee' or 'State Committee' as defined in section 2 of the Haj Committee Act, 2002.
32.	<p>Pure services provided to Government:</p> <ul style="list-style-type: none"> ■ Pure services (excluding works contract service or other composite supplies involving supply of any goods) ■ provided to the Central Government, State Government or Union territory or local authority or a Governmental authority or a Government Entity [omitted words, omitted by NN 16/2021 - CT(R), w.e.f. 01.01.2022] ■ by way of any activity: <ul style="list-style-type: none"> ■ 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
33.	<p>Composite supply provided to Government:</p> <ul style="list-style-type: none"> ■ 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 or a Governmental authority or a Government Entity [omitted words, omitted by NN 16/2021 - CT(R), w.e.f. 01.01.2022] ■ by way of any activity: <ul style="list-style-type: none"> ■ 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>Note:</p> <ul style="list-style-type: none"> • [Circular No. 51/25/2018 GST, dated 31.07.2018] Service provided by private service providers to the State Governments by way of transportation of patients on behalf of the State Governments against consideration in the form of fee or otherwise charged from the State Government, would be exempt. • [Circular No. 153/09/2021 - GST, dated 17.06.2021] 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 (adding vitamins & minerals to increase nutritional value) 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. • [Circular No. 177/09/2022 - GST, dated 03.08.2022] The functions entrusted to Municipalities and Panchayats under articles 243W & 243G of the Indian Constitution also include the activities of Sanitation and conservancy services. 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. • [Circular No. 206/18/2023 - GST, dated 31.10.2023] Public parks in government residential colonies, government offices and other public areas are developed and maintained by Central Public Works Department (CPWD). Maintenance of community assets, urban forestry, protection of the environment and promotion of ecological aspects are functions entrusted to Panchayats and Municipalities under Article 243G and 243W of the constitution. ICAI → X <p>Accordingly, it is clarified that supply of pure services and composite supplies by way of horticulture / horticulture works (where the value of goods constitutes not more than 25% of the total value of supply) made to CPWD are eligible for exemption from GST under Sr. No. 3 and 3A of NN 12/2017 - CT (R).</p>
33A	<p>Services provided to a Governmental Authority by way of - (a) Water supply; (b) Public health; (c) Sanitation</p>

	<p>conservancy; (d) Solid waste management; and (e) Slum improvement and upgradation. [Entry No. 3B of NN. 12/2017 CT (R), inserted by NN. 13/2023 - CT (R), w.e.f. 20.10.2023]</p> <p>[Circular No. 206/18/2023 - GST, dated 31.10.2023] District Mineral Foundations Trusts (DMFTs) set up by the State Governments work for the interest and benefit of persons and areas affected by mining related operations by regulating receipt and expenditure from the respective Mineral Development Funds created in the concerned district. They provide services related to drinking water supply, environment protection, health care facilities, education, welfare of women and children, supply of medical equipment, etc.</p> <p>These activities are similar to activities that are enlisted in 11th Schedule and 12th Schedule of the Constitution. The ultimate users of the various schemes under DMF are individuals, families, women and children, farmers/producer groups, Self Help Groups of the mining affected areas etc. The services/supplies out of DMF fund are provided free of charge and no consideration is realized from the beneficiaries by DMF against such services.</p> <p style="text-align: center;">ICAI → X</p> <p>Accordingly, it is clarified that DMFT set up by the State Governments are Governmental Authorities and thus eligible for the same exemptions from GST as available to any other Governmental Authority.</p>
34.	Services of leasing of assets (rolling stock assets including wagons, coaches, locos) by the Indian Railways Finance Corporation to Indian Railways . [Omitted by NN 07/2021 - CT (R), w.e.f. 01.10.2021]
35.	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. [omitted by NN 04/2022 CT (R), w.e.f. 18.07.2022]
36.	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.
37.	Services provided to the Central Government, State Government, Union territory administration under any training programme for which 75% or more of the total expenditure is borne by the Central Government, State Government, Union territory administration.
38.	Services provided to the Central Government, by way of transport of passengers with or without accompanied belongings, by air, embarking from or terminating at a Regional Connectivity Scheme airport , against consideration in the form of viability gap funding . However, the said exemption shall not apply on or after the expiry of a period of 3 years from the date of commencement of operations of the regional connectivity scheme airport as notified by the Ministry of Civil Aviation.
39.	Service provided by Fair Price Shops to Central Government, State Government or Union Territory by way of sale of food grains, kerosene, sugar, edible oil, etc. under Public Distribution System (PDS) against consideration in the form of commission or margin .
40.	Taxable services, provided or to be provided, by a Technology Business Incubator (TBI) or a Science and Technology Entrepreneurship Park (STEP) recognised by the National Science and Technology Entrepreneurship Development Board of the Department of Science and Technology, Government of India or bio-incubators recognised by the Biotechnology Industry Research Assistance Council, under the Department of Biotechnology, Government of India.
41.	Services provided by an incubatee up to a total turnover of Rs. 50 lakh in a financial year subject to the following conditions, namely : (a) the total turnover had not exceeded Rs. 50 lakh during the preceding financial year; and (b) a period of 3 years has not elapsed from the date of entering into an agreement as an incubatee.
42.	Services by way of giving on hire - (a) to a state transport undertaking , a motor vehicle meant to carry more than 12 passengers ; or (aa) to a local authority , an Electrically operated vehicle meant to carry more than 12 passengers ; or (b) to a goods transport agency , a means of transportation of goods; or

	<p>2. Is the RWA entitled to take ITC of GST paid on input and services used by it for making supplies to its members and use such ITC for discharge of GST liability on such supplies where the amount charged for such supplies is more than Rs. 7,500/- per month per member?</p>	<p>RWAs are entitled to take ITC of GST paid by them on capital goods (generators, water pumps, lawn furniture etc.), inputs (taps, pipes, other sanitary/hardware fittings etc.) and input services such as repair and maintenance services.</p>
	<p>3. Where a person owns 2 or more flats in the housing society, the exemption ceiling of Rs. 7,500/- to be available shall be applied per residential apartment or per person?</p>	<p>The ceiling of Rs. 7,500/- per month per member shall be applied separately for each residential apartment owned by him.</p>
	<p>4. How should the RWA calculate GST payable where the maintenance charges exceed Rs. 7,500/- per month per member?</p>	<p>In case the charges exceed Rs. 7,500/- per month per member, the entire amount is taxable. For example, if the maintenance charges are Rs. 9,000/- per month per member, GST @18% shall be payable on the entire amount of Rs. 9,000/- and not on [Rs. 9,000 - Rs. 7,500] = Rs. 1,500/- .</p>
<p>7.</p>	<p>Services provided by an unincorporated body or a non-profit entity registered under any law for the time being in force, engaged in-</p> <p>(i) activities relating to the welfare of industrial or agricultural labour or farmers; or</p> <p>(ii) promotion of trade, commerce, industry, agriculture, art, science, literature, culture, sports, education, social welfare, charitable activities and protection of environment, to its own members against consideration in the form of membership fee upto an amount of one thousand rupees (Rs. 1,000/-) per member per year.</p> <p>Issue: Applicability of GST on supply of electricity by the real estate companies, malls, airport operators, etc., to their lessees or occupants.</p> <p>Clarification [Circular No. 206/18/2023 - GST, dated 31.10.2023]: It is clarified that whenever electricity is being supplied bundled with renting of immovable property and/or maintenance of premises, it forms a part of composite supply and shall be taxed accordingly. The principal supply is renting of immovable property and/or maintenance of premise and the supply of electricity is an ancillary supply. Even if electricity is billed separately, the supplies will constitute a composite supply and therefore, the rate of the principal supply i.e., GST rate on renting of immovable property and/or maintenance of premise would be applicable.</p> <p>However, where the electricity is supplied by the Real Estate Owners, Resident Welfare Associations (RWAs), Real Estate Developers etc., as a pure agent, it will not form part of value of their supply. Further, where they charge for electricity on actual basis that is, they charge the same amount for electricity from their lessees or occupants as charged by the State Electricity Boards or DISCOMs from them, they will be deemed to be acting as pure agent for this supply.</p> <p style="text-align: center;">ICAI → X</p>	
<p>8.</p>	<p>Services received from a provider of service located in a non-taxable territory by -</p> <p>(a) the Central Government, State Government, Union territory, a local authority, a governmental authority or an individual in relation to any purpose other than commerce, industry or any other business or profession;</p> <p>(b) an entity registered under section 12AA of the Income-tax Act, 1961 for the purposes of providing charitable activities; or</p> <p>(c) a person located in a non-taxable territory.</p> <p>However, the exemption shall not apply to -</p> <p>(i) online information and database access or retrieval (OIDAR) services received by persons specified in entry (a) or entry (b); or</p> <p>(ii) services by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India received by persons specified in the entry. [as amended by NN 12/2023 - IT (R), w.e.f. 01.10.2023]</p> <p style="text-align: center;">(A)</p>	

Aggregate Turnover



- To be Computed on all India basis of persons having same PAN

Compulsory Registration in Certain Cases

Sec. 24	Compulsory registration in certain cases
Notwithstanding anything contained in sub-section (1) of section 22, the following categories of persons shall be required to be registered under this Act, -	
(i)	persons making any inter-State taxable supply (also refer Note 1);
(ii)	casual taxable persons making taxable supply;
(iii)	persons who are required to pay tax under reverse charge;
(iv)	person who are required to pay tax under sub-section (5) of section 9;
(v)	non-resident taxable persons making taxable supply;
(vi)	persons who are required to deduct tax under section 51, whether or not separately registered under this Act;
(vii)	persons who make taxable supply of goods or services or both on behalf of other taxable persons whether as an agent or otherwise;
(viii)	Input Service Distributor, whether or not separately registered under this Act;
(ix)	persons who supply goods or services or both, other than supplies specified under sub-section (5) of section 9, through such electronic commerce operator who is required to collect tax at source under section 52;
(x)	every electronic commerce operator who is required to collect tax at source under section 52;
(xi)	every person supplying online information and data base access or retrieval services from a place outside India to a person in India, other than a registered person;
(xia)	every person supplying online money gaming from a place outside India to a person in India; and [inserted by CGST (Amendment) Act, 2023, w.e.f. 01.10.2023]; and
(xii)	such other person or class of persons as may be notified by the Government on the recommendations of the Council.

Notes:

- (1) Government has exempted the persons making inter-state supplies of taxable services and having an aggregate turnover, to be computed on all India basis, not exceeding Rs. 20/Rs. 10 lakhs in a financial year, from obtaining registration under GST Act.

- (2) Government has exempted Job-workers making inter-state supplies of services to a registered person and having an aggregate turnover, to be computed on all India basis, not exceeding Rs. 20/Rs. 10 lakhs in a financial year (and not supplying services in relation to Jewellery, goldsmiths' and silversmiths' wares and other articles of Chapter 71), from obtaining registration under GST Act.
- (3) Government has exempted Casual Taxable Persons & other persons making inter-state supplies of [notified handicraft goods, and other notified products when made by craftsmen predominantly by hand even though some machinery may also be used in the process] and having an aggregate turnover, to be computed on all India basis, not exceeding Rs. 20/Rs. 10 lakhs in a financial year, from obtaining registration under GST Act. But, these persons should have obtained a PAN and have generated an e-way bill.
- (4) In case a person who is already registered under GST is required to deduct tax under Section 51, he is required to take separate registration for the purpose of deducting tax u/s 51.
- (5) An Input Service Distributor (ISD) is required to obtain a separate registration even though it may be separately registered.
- (6) As per section 2(107) of the CGST Act, taxable person means a person who is registered or liable to be registered under section 22 or section 24. From the definition of 'taxable person', it may be inferred that even an unregistered person who is liable to be registered is a taxable person. Similarly, a person not liable to be registered, but has taken voluntary registration and got himself registered is also a taxable person.

Persons not liable for Registration [Section 23]

- (i) Person engaged exclusively in supplying goods/services/both **not liable to tax**
- (ii) Person engaged exclusively in supplying goods/services/both **wholly exempt from tax**
- (iii) **Agriculturist** to the extent of supply of produce out of cultivation of land
- (iv) Persons making **only reverse charge supplies**
- (v) Supplier of services supplying **services through an E-Commerce operator**, if such service provider is having aggregate turnover **upto Rs. 20 Lakhs** in a financial year
- (va) **Supplier of goods supplying goods through an E-Commerce operator**, if such supplier is having aggregate turnover **upto Rs. 20 Lakhs** in the preceding & current financial year, subject to the following conditions, namely :-
 - (a) Such persons shall not make any inter-State supply of goods;
 - (b) Such persons shall not make supply of goods through ECO in more than one State or Union territory;
 - (c) Such persons shall be required to have a PAN issued under the Income Tax Act, 1961;
 - (d) Such persons shall, before making any supply of goods through ECO, declare on the common portal their PAN, address of their place of business and the State or Union territory in which such persons seek to make such supply, which shall be subjected to validation on the common portal;
 - (e) Such persons have been granted an enrolment number on the common portal on successful validation of the PAN declared as per clause (iv);
 - (f) Such persons shall not be granted more than one enrolment number in a State or Union territory;
 - (g) No supply of goods shall be made by such persons through ECO unless such persons have been granted an enrolment number on the common portal; and
 - (h) Where such persons are subsequently granted registration u/s 25 of the said Act, the enrolment number shall cease to be valid from the effective date of registration. [NN 34/2023 - CT, w.e.f. 01.10.2023]
- (vi) 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, -
 - (1) persons required to take compulsory registration u/s 24 of the said Act;
 - (2) persons engaged in making supplies of Ice cream and other edible ice, whether or not containing cocoa; Pan masala; Tobacco & manufactured tobacco substitutes; Fly ash bricks; fly ash aggregates; Fly ash blocks; Bricks of fossil meals or similar siliceous earths; Building bricks; or Earthen or roofing tiles.
 - (3) persons engaged in making intra-State supplies in the States of Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Puducherry, Sikkim, Telangana, Tripura, Uttarakhand; and
 - (4) persons exercising option u/s 25(3) (i.e. Voluntary Registration), or such registered persons who intend to continue with their registration under the said Act.

- There may be a case where two units of a tax payer are located in same State – one in **SEZ** and another **outside SEZ**. **Separate registrations** have to be obtained for each of the two units.

Procedure For Registration

Every Person liable to get registered and person seeking voluntary registration shall, before applying for registration, declare his Permanent Account Number (PAN), **mobile number, e-mail address**, State/UT in **Part A of FORM GST REG-01** on GST Common Portal (www.gst.gov.in). [Omitted words, omitted by NN 26/2022 – CT, w.e.f. 26.12.2022]

The Permanent Account Number shall be validated online by the common portal from the CBDT database **and shall also be verified through separate one-time passwords sent to the mobile number and e-mail address linked to the PAN.**

Temporary Reference Number (TRN) is generated and communicated to the applicant on the validated mobile number and e-mail address.

Using TRN, applicant shall electronically submit application in **Part B** of application form, along with specified documents at the Common Portal.

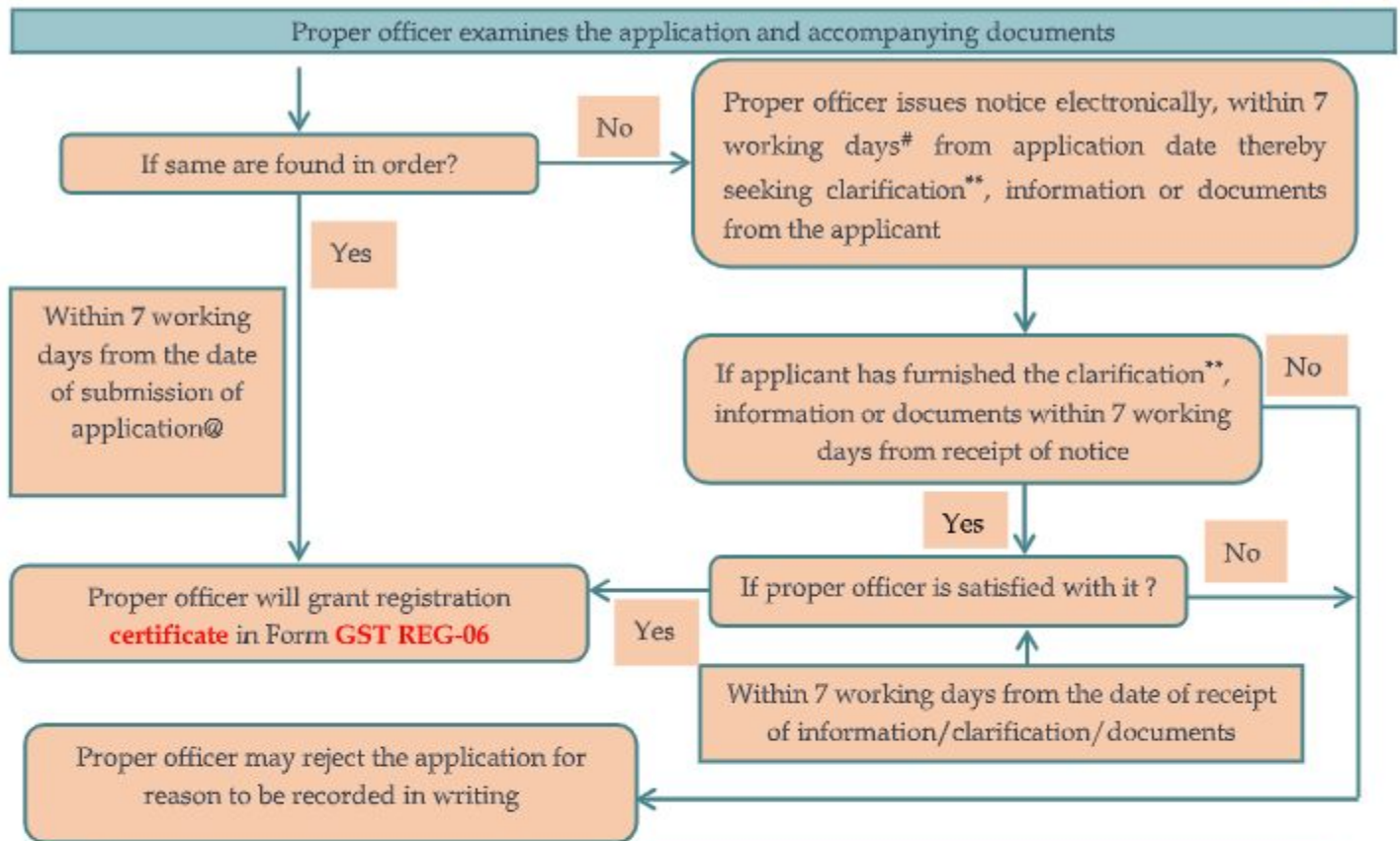
Rule 8(4A): Where an applicant, other than a person notified u/s 25(6D), opts for authentication of Aadhaar number, he shall, while submitting the application, undergo authentication of Aadhaar number and the date of submission of the application in such cases shall be the date of authentication of the Aadhaar number, or 15 days from the submission of the application in Part B of FORM GST REG-01, whichever is earlier. (A)

Further, w.e.f. 26.12.2022, if the applicant is applying for GST registration in the State of **Gujarat or Puducherry**, then, the following additional procedure needs to be followed by the applicant:

Every registration application made by a person, other than a person notified u/s 25(6D), who has opted for authentication of Aadhaar number and is identified on the common portal, based on data analysis and risk parameters, shall be followed by biometric-based Aadhaar authentication and taking photograph of the applicant where the applicant is an individual or of such individuals in relation to the applicant as notified u/s 25(6C) where the applicant is not an individual, along with the verification of the original copy of the documents uploaded with the application in FORM GST REG-01 at one of the Facilitation Centres notified by the Commissioner for the purpose of this sub-rule and the application shall be deemed to be complete only after completion of the process laid down under this proviso. [Proviso inserted by NN 04/2023 – CT, w.e.f. 26.12.2022] [The applicability of this additional procedure is also extended to the state of Puducherry vide NN 31/2023 – CT, w.e.f. 31.07.2023]

On receipt of such application, an acknowledgement in the prescribed form shall be issued to the applicant electronically. A Casual Taxable Person (CTP) applying for registration get a TRN for making an advance deposit of tax in his electronic cash ledger and an acknowledgement is issued only after said deposit.

Application shall be forwarded to the proper officer.



@ However, where -

- a person, other than a person notified u/s 25(6D), fails to undergo authentication of Aadhaar number as specified in rule 8(4A) or does not opt for authentication of Aadhaar number; or
- (aa) a person, who has undergone authentication of Aadhaar number as specified in rule 8(4A), is identified on the common portal, based on data analysis and risk parameters, for carrying out physical verification of places of business; or [inserted by NN 26/2022 - CT, w.e.f. 26.12.2022]*
- the proper officer, with the approval of an officer authorised by the Commissioner not below the rank of Assistant Commissioner, deems it fit to carry out physical verification of places of business, the registration shall be granted within 30 days of submission of application, after physical verification of the place of business in the presence of the said person, in the manner provided u/r 25 and verification of such documents as the proper officer may deem fit. [Proviso to Rule 9(1)] *[Omitted words, omitted by NN 38/2023 - CT, w.e.f. 04.08.2023]*

#However, where-

- a person, other than a person notified u/s 25(6D), fails to undergo authentication of Aadhaar number as specified in rule 8(4A) or does not opt for authentication of Aadhaar number; or
- (aa) a person, who has undergone authentication of Aadhaar number as specified in rule 8(4A), is identified on the common portal, based on data analysis and risk parameters, for carrying out physical verification of places of business; or [inserted by NN 26/2022 - CT, w.e.f. 26.12.2022]*
- the proper officer, with the approval of an officer authorised by the Commissioner not below the rank of Assistant Commissioner, deems it fit to carry out physical verification of places of business, the notice may be issued not later than 30 days from the date of submission of the application. [Proviso to Rule 9(2)]

2. a Department or establishment of the Central Government or State Government; or
3. a local authority; or
4. a statutory body; or
5. a Public Sector undertaking; or
6. a person applying for Unique Identity Number (i.e. any specialised agency of the UNO, etc.).

Aadhaar Authentication for Registered Person [Rule 10B]:

The registered person, other than a person notified u/s 25(6D), who has been issued a certificate of registration under rule 10 shall, undergo authentication of the Aadhaar number of the proprietor, in the case of proprietorship firm, or of any partner, in the case of a partnership firm, or of the karta, in the case of a Hindu undivided family, or of the Managing Director or any whole time Director, in the case of a company, or of any of the Members of the Managing Committee of an Association of persons or body of individuals or a Society, or of the Trustee in the Board of Trustees, in the case of a Trust and of the authorized signatory, in order to be eligible for the following purposes:

1. For filing of application for revocation of cancellation of registration in FORM GST REG 21 under Rule 23
2. For filing of refund application in FORM RFD-01 under rule 89
3. For refund under rule 96 of the integrated tax paid on goods exported out of India

However, if Aadhaar number has not been assigned to the person required to undergo authentication of the Aadhaar number, such person shall furnish the following identification documents, namely: -

- (a) her/his Aadhaar Enrolment ID slip; and
- (b) (i) Bank passbook with photograph; or
(ii) Voter identity card issued by the Election Commission of India; or
(iii) Passport; or
(iv) Driving license issued by the Licensing Authority under the Motor Vehicles Act, 1988:

Further, such person shall undergo the authentication of Aadhaar number within a period of 30 days of the allotment of the Aadhaar number.

Physical verification of business premises in certain cases [Rule 25] [As substituted by NN. 38/2023 - CT, w.e.f. 04.08.2023]:

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- (1) Where the proper officer is satisfied that the physical verification of the place of business of a person is required after the grant of registration, he may get such verification of the place of business done and the verification report along with the other documents, including photographs, shall be uploaded on the common portal within a period of 15 working days following the date of such verification.
- (2) Where the physical verification of the place of business of a person is required before the grant of registration in the circumstances specified in the proviso to sub-rule (1) of rule 9, the proper officer shall get such verification of the place of business done and the verification report along with the other documents, including photographs, shall be uploaded on the common portal at least 5 working days prior to the completion of the time period specified in the said proviso.

How Aadhaar Authentication is done?

Once registration application is submitted, GST system sends "link" to the concerned persons at their GST registered mobile numbers and email ids mentioned in the GST application, for the Aadhaar Authentication.

On clicking the verification link, a window for Aadhaar Authentication will open where they have to enter Aadhaar Number and the OTP received by them on the mobile number linked with Aadhaar.

Taxpayers need to complete Aadhaar Authentication of all Promoters/ Partners/ Authorized Signatories/ Karta, etc. as mentioned in the application to avail this option.

On successful authentication, demographic data of the persons is fetched from Aadhaar to GST System.

15 Digit GSTIN Format

State Code	PAN										Entity Code	Check sum character	

Effective date of registration [Rule 10]:

Where an applicant submits application for registration	Effective date of registration is
within 30 days from the date he becomes liable to registration	the date on which he becomes liable to registration
after 30 days from the date he becomes liable to registration	date of grant of registration

Furnishing of Bank Account Details [Rule 10A] - After a certificate of registration in FORM GST REG-06 has been made available on the common portal and a GSTIN has been assigned, the registered person shall furnish information with respect to details of bank account on the common portal

- within 30 days from the date of grant of registration, or
- before furnishing the details of outward supplies in FORM GSTR-1 or using invoice furnishing facility, whichever is earlier. [As amended by NN. 38/2023 - CT, w.e.f. 04.08.2023]

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However, this rule (i.e. this relaxation) does not apply to the following persons:

- (i) Persons who have been granted registration under rule 12 (TDS/TCS);
- (ii) Persons who have been granted registration under rule 16 (Compulsory / Suo-Motu Registration by Proper officer).

Special provisions for grant of registration in case of Non-Resident Taxable Person (NRTP) and Casual Taxable Person (CTP) [Sections 25 & 27 read with rules 13 & 15]:

- Both CTP and NRTP have to compulsorily get registered under GST irrespective of the threshold limit, at least 5 days prior to commencement of business.
- Application will be submitted by NRTP in a different prescribed form whereas CTP will submit the application for registration in the normal form for application for registration i.e. Form GST REG 01 and his registration of CTP will be a PAN based registration.
- **Period of validity of registration certificate granted to CTP/NRTP** : Registration Certificate granted to CTP/ NRTP will be valid for **earlier** of:
 - (a) Period specified in the registration application, or
 - (b) 90 days from the effective date of registration [can be extended further by a period not exceeding 90 days by making an application before the end of the validity of registration granted to him**]
- **Advance deposit of tax** : At the time of submitting the registration application, CTP/NRTP are required to make an **advance deposit of tax** in an amount equivalent to the estimated tax liability of such person for the period for which the registration is sought.

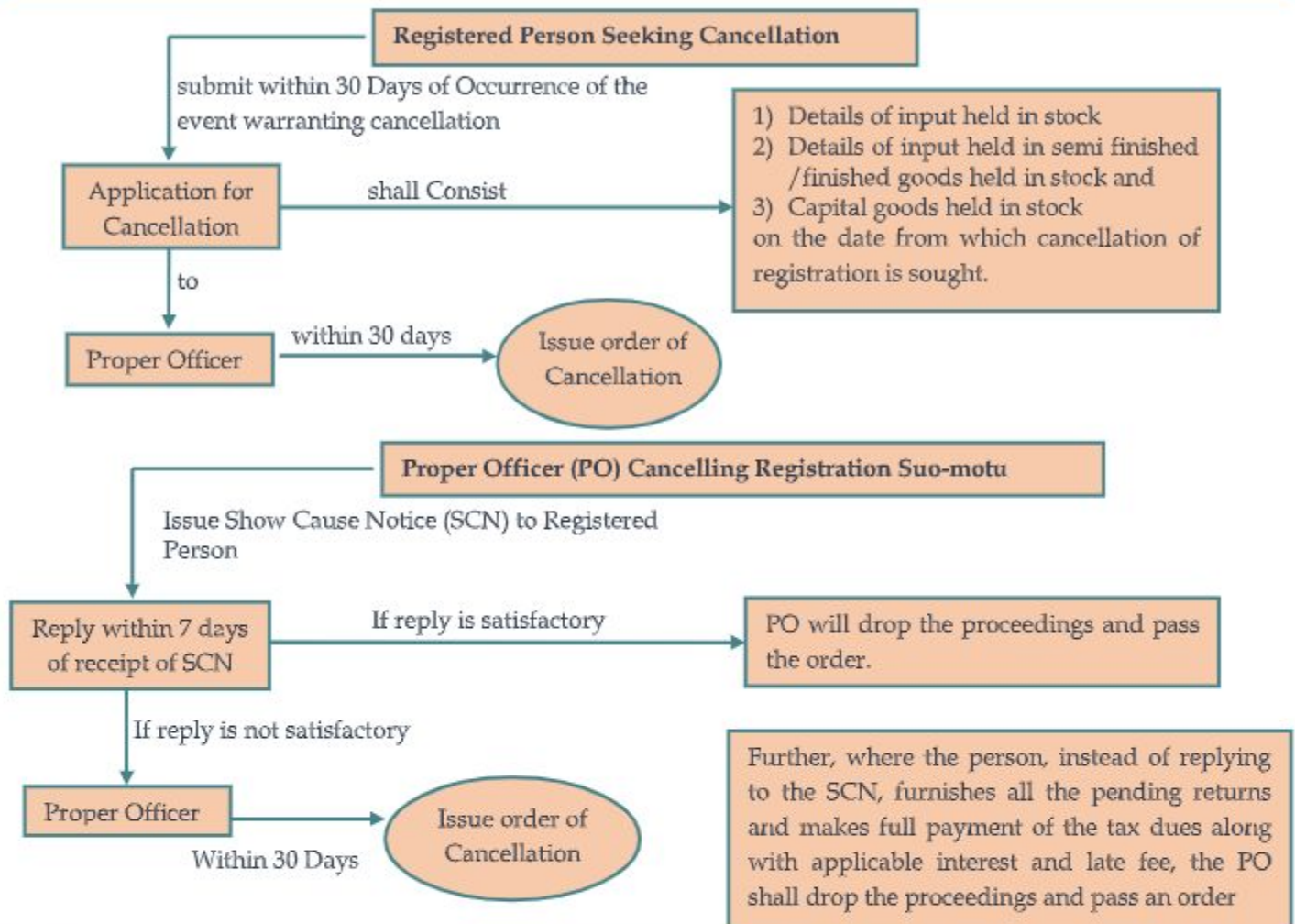
Where extension of time is sought, such registered taxable person will deposit an additional amount of tax equivalent to the estimated tax liability of such person for the period for which the extension is sought.

Clarifications of issues under GST related to casual taxable person (CTP) [Circular No. 71/45/2018-GST, dated 26.10.2018]

1. The amount of advance tax which a casual taxable person is required to deposit while obtaining registration should be calculated **after considering the due eligible ITC** which might be available to such taxable person and is required to deposit only "**estimated net tax liability**" and not the gross tax liability.
2. Further, in case of long running exhibitions (for a period **more than 180 days**), the taxable person cannot be treated as a CTP and thus such person would be required to obtain registration as a **normal taxable person**. While

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.

Procedure for Cancellation of Registration



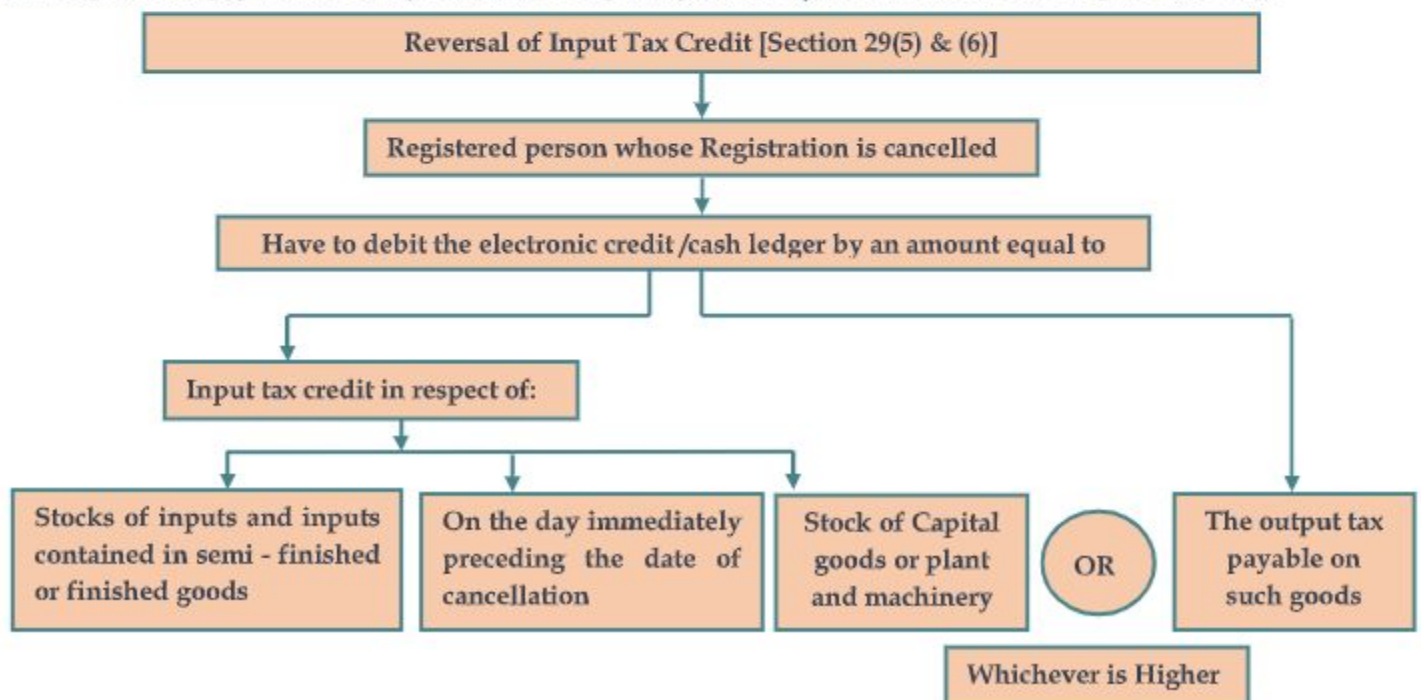
Rule 21A. Suspension of registration [inserted by NN 03/2019 – CT, w.e.f. 01.02.2019]:

- (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) a comparison of the returns (i.e. GSTR – 3B) furnished by a registered person under section 39 with
 - (i) the details of outward supplies furnished in FORM GSTR-1; or
 - (ii) 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, or

- (b) there is a contravention of the provisions of rule 10A by the registered 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, anomalies or non-compliances and asking him to **explain**, within a period of **30 days**, as to why his registration shall not be cancelled. [As amended by NN. 38/2023 – CT, w.e.f. 04.08.2023]
- (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.
- 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.
- (A) Further, where the registration has been suspended under sub-rule (2A) for contravention of provisions of rule 10A 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 compliance with the provisions of rule 10A. [proviso inserted by NN 38/2023 – CT, w.e.f. 04.08.2023]
- (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 u/s 29(5).



Revocation of cancellation of registration [Section 30 read with rule 23]:

- **Application:** Where the registration of a person is cancelled suo-motu by the proper officer, such registered person may, subject to the provisions of rule 10B, apply for revocation of the cancellation of registration to such proper officer, **within 90 days** from the date of service of the order of cancellation of registration, at the GST Common Portal in the prescribed manner. [30 days substituted by 90 days vide NN 38/2023 - CT, w.e.f. 01.10.2023]
- Ⓐ However, such period may, on sufficient cause being shown, and for reasons to be recorded in writing, be extended by the Commissioner or an officer authorised by him in this behalf, not below the rank of Additional Commissioner or Joint Commissioner, as the case may be, for a further period not exceeding 180 days (i.e. 90 + 180 days). [as amended by Finance Act, 2023 read with NN 38/2023 - CT, w.e.f. 01.10.2023]
- **Returns/Tax Payment:** However, in case registration was cancelled for failure of registered person to furnish returns, **before applying for revocation** the person has to **rectify the defaults** (by filing all pending returns, making payment of all dues in terms of such returns alongwith interest, penalty, late fee, etc.) for which the registration was cancelled by the officer.
- Proper officer as per prescribed manner, either revoke cancellation of the registration or reject the application.
- Application cannot be rejected without giving an opportunity of being heard.
- Revocation of cancellation under CGST will be a deemed revocation under SGST and vice-a-versa.

Clarification in respect of transfer of input tax credit in case of death of sole proprietor [Circular No. 96/15/2019-GST, dated 28.03.2019]

1. **Registration liability of the transferee / successor:** As per section 22(3) of the CGST Act, the transferee or the successor shall be liable to be registered with effect from the date of such transfer or succession.
2. **Cancellation of registration on account of death of the proprietor:** Section 29(1)(a) of the CGST Act, allows the legal heirs in case of death of sole proprietor of a business, to file application for cancellation of registration.
3. **Transfer of Input Tax Credit:** In case of death of sole proprietor, if the business is continued by any person being transferee or successor of business, it shall be construed as transfer of business. Section 18(3) of the CGST Act, allows the registered person to transfer the unutilized input tax credit lying in his electronic credit ledger to the transferee by filing of FORM GST ITC-02. Upon acceptance by the transferee / successor, the un-utilized input tax credit specified in FORM GST ITC-02 shall be credited to his electronic credit ledger.
4. **Transfer of liability:** As per section 85(1) of the CGST Act, the transferor and the transferee / successor shall jointly and severally be liable to pay any tax, interest or any penalty due from the transferor in cases of transfer of business. Furthermore, section 93(1) of the CGST Act provides that where a person, liable to pay tax, interest or penalty under the CGST Act, dies, then the person who continues business after his death, shall be liable to pay tax, interest or penalty due from such person under this Act. It is therefore clarified that the transferee / successor shall be liable to pay any tax, interest or any penalty due from the transferor in cases of transfer of business due to death of sole proprietor.

Tax Deduction at Source (TDS) [Sec. 51 of CGST Act]

Under the GST regime, section 51 of the CGST Act, 2017 empower the Central Government to make it mandatory for the following persons (the deductor) to deduct tax at source from payments made to the suppliers of taxable goods and/or services:

- (a) Central/State Government department or establishment
- (b) Local Authority
- (c) Governmental Agencies
- (d) Notified Persons/category of persons

Using this power, the Central Government has appointed 01.10.2018, as the date on which the provisions of section 51 of the said Act shall come into force with respect to persons specified under clauses (a), (b) and (c) of sub-section (1) of section 51 of the said Act and the persons specified below under clause (d) of sub-section (1) of section 51 of the said Act, namely:-

- c) Receipt of services which are exempted from GST.
- d) Receipt of goods which are exempted from GST.
- e) Goods on which GST is not leviable. [For example - petrol, diesel, petroleum crude, natural gas, aviation turbine fuel (ATF) and alcohol for human consumption]
- f) Where the location of the supplier and place of supply is in a State/UT which is different from the State/UT where the deductor is registered.
- g) All activities or transactions specified in Schedule III of the CGST Act, 2017, irrespective of the value.
- h) Where the tax is to be paid on reverse charge by the recipient i.e. the deductor.
- i) Where the payment is made to an unregistered supplier.
- j) Where the payment relates to "Cess" component.

Collection of Tax at Source [Sec. 52 of CGST Act]

TCS refers to the tax which is collected by the electronic commerce operator (ECO) when a supplier supplies some goods or services through its portal and the payment for that supply is firstly collected by the ECO and then, it is paid by the ECO to the supplier.

But, the provisions of TCS will not apply, if the payment in respect of supply of goods or services through ECO is directly received in the account of the supplier (i.e. not through ECO).

Who is liable to collect TCS?

Every electronic commerce operator (ECO), not being an agent, has been mandated to collect tax at source (TCS) from the net value of the taxable supplies made through it by the other suppliers, whenever the ECO collects the consideration on the behalf of the supplier.

Rate of TCS - 0.5% (CGST/SGST) or 1% (IGST) of net value of the taxable supplies.

Example: Suppose a certain product is sold at Rs. 1,120 [including GST @ 12%] through an Operator by a supplier. The operator would collect tax @ 1% of the net value of Rs. 1,000 i.e. Rs. 10 in case of inter - State supplies.

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
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The value of a supply shall include any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than GST, if charged separately by the supplier.

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.

Filing of Monthly & Annual Statement by ECO

- An electronic statement [Form GSTR - 8] 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.
- Additionally, the ECO is also mandated to file an Annual Statement [Form GSTR - 9B] on or before 31st day of December following the end of financial year.
- Further, the ECO shall not be allowed to furnish GSTR - 8 after the expiry of a period of 3 years from the due date of furnishing the said statement, except where the Government allows. [Sec. 52(15) inserted by Finance Act, 2023, w.e.f. 01.10.2023]

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. 30th day of November following the end of the financial year
- Or
2. The actual date of furnishing of relevant annual statement,

Whichever is earlier.

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 through 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.
- The operator is required to furnish such details within 15 working days.
- 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).

Other Key Points Relating to Registration under GST:

- 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. The threshold limit of Rs. 20 lakhs (Rs. 10 lakhs for special category states) is not applicable to them.
- Further, section 24(ix) of the CGST Act, 2017 makes it mandatory for every person who supplies goods or services through such operator to get registered under GST.
- However, service suppliers supplying services through such ECOs have been exempted from registration until their turnover crosses threshold limit for registration.
- Similarly, suppliers supplying goods through such ECOs have also been exempted from registration until their turnover crosses threshold limit for registration in the preceding and current financial year, subject to fulfillment of certain specified conditions.

(A) Special procedure to be followed by ECO in respect of supply of goods made through it by the persons exempted from obtaining registration (hereinafter referred to as the said person) [NN. 37/2023 - CT, w.e.f. 01.10.2023]

- (i) the ECO shall allow the supply of goods through it by the said person only if enrolment number has been allotted on the common portal to the said person;
- (ii) the ECO shall not allow any inter-State supply of goods through it by the said person;
- (iii) the ECO shall not collect TCS u/s 52(1) in respect of supply of goods made through it by the said person; and
- (iv) the ECO shall furnish the details of supplies of goods made through it by the said person in the statement in FORM GSTR-8 electronically on the common portal.

Further, where multiple ECOs are involved in a single supply of goods through ECO platform, "the ECO" shall mean the ECO who finally releases the payment to the said person for the said supply made by the said person through him.

(A) Special procedure to be followed by ECO in respect of supply of goods made through it by the persons opted for Composition Scheme (hereinafter referred to as the said person) [NN. 36/2023 - CT, w.e.f. 01.10.2023]

- (i) the ECO shall not allow any inter-State supply of goods through it by the said person;
- (ii) the ECO shall collect TCS u/s 52(1) in respect of supply of goods made through it by the said person and pay to the Government as per provisions of 52(3); and
- (iii) the ECO shall furnish the details of supplies of goods made through it by the said person in the statement in FORM GSTR-8 electronically on the common portal.

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, 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 is hereby clarified, that TCS at the notified rate, in terms of section 52 of the CGST Act, shall be collected by Tea Board respectively from the -
 - (i) sellers (i.e. tea producers) on the net value of supply of goods i.e. tea; and
 - (ii) auctioneers on the net value of supply of services (i.e. brokerage).

Frequently Asked Questions on TCS under GST as clarified by Law Committee of GST Council

Sl.	Question	Answer
1.	Is it mandatory for every e-commerce operator to obtain registration?	No. As per section 24(x) of the CGST Act, 2017, every electronic commerce operator who is required to collect TCS u/s 52 (not every electronic commerce operator) has to obtain compulsory registration irrespective of the value of supply made by him.
2.	Whether a supplier of goods or services supplying through e-commerce operator would be entitled to threshold exemption? (A)	As per Section 24(ix) of the CGST Act, 2017, every person supplying goods or services through an ECO who is required to collect TCS u/s 52 shall be mandatorily required to register irrespective of the value of supply made by him. However, service suppliers supplying services through such ECOs have been exempted from registration until their turnover crosses threshold limit for registration. Similarly, suppliers supplying goods through such ECOs have also been exempted from registration until their turnover crosses threshold limit for registration in the preceding and current financial year,

		subject to fulfillment of certain specified conditions.
3.	Whether TCS is required to be collected by ECOs on supply of goods or services by unregistered suppliers through their portal?	No. In respect of supplies made by the suppliers who are not liable for registration, ECOs are not required to collect TCS on supplies being made by such suppliers through their portal.
4.	Whether e-Commerce operator is required to obtain registration in every State/UT in which suppliers listed on their e-commerce platform are located to undertake the necessary compliance as mandated under the law?	As per the extant law, registration for TCS would be required in each State/UT as the obligation for collecting TCS would be there for every intra-State or inter-State supply. In order to facilitate the obtaining of registration in each State/UT, the e-commerce operator may declare the Head Office as its place of business for obtaining registration in that State/UT where it does not have physical presence. It may be noted that each State/UT has indicated one administrative jurisdiction where all e-commerce operators having business (but not having physical presence) in that State/UT shall register. The proper officer for the purpose of registration of ECOs has also been notified by each State/UT.
5.	Foreign e-commerce operator do not have place of business in India since they operate from outside. But their supplier and customers are located in India. So, in this scenario will the TCS provision be applicable to such e-commerce operator and if yes, how will foreign e-commerce operator obtain registration?	Where registered supplier is supplying goods or services through a foreign e-commerce operator to a customer in India, such foreign e-commerce operator would be liable to collect TCS on such supply and would be required to obtain registration in each State/UT. It may be noted that each State/UT has indicated one administrative jurisdiction where all e-commerce operators having business (but not having physical presence) in that State/UT shall register. The proper officer for the purpose of registration of ECOs has also been notified by each State/UT. If the foreign e-commerce operator does not have physical presence in a particular State/UT, he may appoint an agent on his behalf.
6.	Is it necessary for e-Commerce operators who are already registered under GST and have GSTIN, to have separate registration for TCS as well?	E-Commerce operator has to obtain separate registration for TCS irrespective of the fact whether e-Commerce operator is already registered under GST as a supplier or otherwise and has GSTIN.
7.	At what time should the e-commerce operator collect TCS?	TCS is to be collected once supply has been made through the e-commerce operator and where the business model is that the consideration is to be collected by the e-commerce operator irrespective of the actual collection of the consideration. For example, if the supply has taken place through the e-commerce operator on 30 th October, 2020 but the consideration for the same has been collected in the month of November, 2020, then TCS for such supply has to be collected and reported in the statement for the month of October, 2020.
8.	Whether TCS to be collected on exempt supplies?	No, TCS is not required to be collected on exempt supplies.
9.	Whether TCS to be collected on supplies on which the recipient is required to pay tax on reverse charge basis?	No, TCS is not required to be collected on supplies on which the recipient is required to pay tax on reverse charge basis.

10.	Whether TCS is to be collected in respect of supplies made by the composition taxpayer?	Yes. TCS is required to be collected on supplies of goods made by a composition taxpayer supplying goods through ECO. Further, as per section 10(2)(d) of the CGST Act, 2017, a composition taxpayer cannot supply services through ECO liable to collect TCS.
11.	Whether TCS is to be collected on import of goods or services or both?	TCS is not liable to be collected on any supplies on which the recipient is required to pay tax on reverse charge basis. As far as import of goods is concerned since same would fall within the domain of Customs Act, 1962, it would be outside the purview of TCS. Thus, TCS is not liable to be collected on import of goods or services.
12.	Whether payment of TCS through Input Tax Credit available with ECO for depositing TCS as per Section 52(3) of the CGST Act, 2017 is allowed?	No, payment of TCS is not allowed through Input Tax Credit of e-Commerce operator.
13.	It is very common that customers of e-commerce companies return goods. How these sales returns are going to be adjusted?	An e-commerce company is required to collect tax only on the net value of taxable supplies made through it. In other words, value of the supplies which are returned (supply return) may be adjusted from the aggregate value of taxable supplies made by each supplier (i.e. on GSTIN basis). In other words, if two suppliers "A" and "B" are making supplies through an e-commerce operator, the "net value of taxable supplies" would be calculated separately in respect of "A" and "B". If the value of returned supplies is more than supplies made on behalf of any of such supplier during any tax period, the same would be ignored in his case.
14.	Under Section 52, e-commerce operator collects TCS on the net of returns. Sometimes sales return is more than sales and hence can negative amount be reported?	Negative amount cannot be declared. There will be no impact in next tax period also. In other words, if returns are more than the supplies made during any tax period, the same would be ignored in current as well as future tax period(s).

Clarification regarding GST on Services Supplied by Restaurants through E-Commerce Operators [Circular No. 167/23/2021 - GST, dated 17.12.2021]

Sl.	Issue	Clarification
1.	Would ECOs have to still collect TCS in compliance with section 52 of the CGST Act, 2017?	As 'restaurant service' has been notified under section 9(5) of the CGST Act, 2017, the ECO shall be liable to pay GST on restaurant services provided w.e.f. 01.01.2022, through ECO. Accordingly, the ECOs will no longer be required to collect TCS and file GSTR 8 in respect of restaurant services on which it pays tax in terms of section 9(5). On other goods or services supplied through ECO, which are not notified u/s 9(5), ECOs will continue to pay TCS in terms of section 52 of CGST Act, 2017 in the same manner at present.
2.	Would ECOs have to mandatorily take a separate registration w.r.t supply of restaurant service [notified under 9(5)] through them even though they are registered to pay GST	As ECOs are already registered in accordance with rule 8 (in Form GST-REG 01) of the CGST Rules, 2017 (as a supplier of their own goods or services), there would be no mandatory requirement of taking separate registration by ECOs for payment of tax on restaurant service

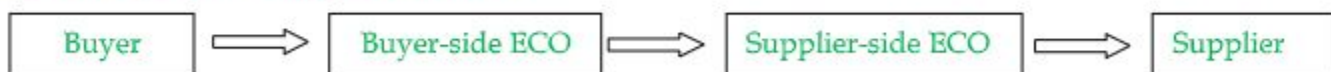
	on services on their own account?	under section 9(5) of the CGST Act, 2017.
3.	What would be the aggregate turnover of person supplying 'restaurant service' through ECOs?	It is clarified that the aggregate turnover of person supplying restaurant service through ECOs shall be computed as defined in section 2(6) of the CGST Act, 2017 and shall include the aggregate value of supplies made by the restaurant through ECOs. Accordingly, for threshold consideration or any other purpose in the Act, the person providing restaurant service through ECO shall account such services in his aggregate turnover.
4.	Would supply of goods or services other than 'restaurant service' through ECOs be taxed at 5% without ITC?	ECO is required to pay GST on services Notified under section 9(5), besides the services/other supplies made on his own account. On any supply that is not notified under section 9(5), that is supplied by a person through ECO, the liability to pay GST continues on such supplier and ECO shall continue to pay TCS on such supplies. Thus, present dispensation continues for ECO, on supplies other than restaurant services. On such supplies (other than restaurant services made through ECO) GST will continue to be billed, collected and deposited in the same manner as is being done at present. ECO will deposit TCS on such supplies.

Clarification on TCS liability in case of multiple E-commerce Operators in one transaction, in the context of Open Network for Digital Commerce (ONDC) [Circular No. 194/06/2023 - GST, dated 17.07.2023] A

- In the current platform-centric model of e-commerce, the buyer interface and seller interface are operated by the same ECO. This ECO collects the consideration from the buyer, deducts the TCS u/s 52 of the CGST Act, credits the deducted TCS amount to the GST cash ledger of the seller and passes on the balance of the consideration to the seller after deducting their service charges.
- In the case of the ONDC Network or similar other arrangements, there can be multiple ECOs in a single transaction - one providing an interface to the buyer and the other providing an interface to the seller. In this setup, buyer-side ECO could collect consideration, deduct their commission and pass on the consideration to the seller-side ECO.

Issue: Which ECO should ~~deduct~~ ^{collect} TCS and make other compliances under section 52 of CGST Act in such situations, as in such models having multiple ECOs in a single transaction, both the Buyer-side ECO and the Seller-side ECO qualify as ECOs as per Section 2(45) of the CGST Act.

Case 1: In a situation where multiple ECOs are involved in a single transaction of supply of goods or services or both through ECO platform and where the supplier-side ECO himself is not the supplier in the said supply, who is liable for compliances u/s 52 including collection of TCS?



Clarification: In such a situation where multiple ECOs are involved in a single transaction of supply of goods or services or both through ECO platform and where the supplier-side ECO himself is not the supplier of the said goods or services, the compliances u/s 52 of CGST Act, including collection of TCS, is to be done by the supplier-side ECO who finally releases the payment to the supplier for a particular supply made by the said supplier through him.

e.g.: Buyer-side ECO collects payment from the buyer, deducts its fees/commissions and remits the balance to Seller-side ECO. Here, the Seller-side ECO will release the payment to the supplier after deduction of his fees/commissions

and therefore will also be required to collect TCS, pay the same to the Government and also make other compliances u/s 52 of CGST Act.

In this case, the Buyer-side ECO will neither be required to collect TCS nor will be required to make other compliances in accordance with section 52 of CGST Act with respect to this particular supply.

Case 2: In a situation where multiple ECOs are involved in a single transaction of supply of goods or services or both through ECO platform and the Supplier-side ECO is himself the supplier of the said supply, who is liable for compliances u/s 52 including collection of TCS?



Clarification: In such a situation, TCS is to be collected by the Buyer-side ECO while making payment to the supplier for the particular supply being made through it.

e.g. Buyer-side ECO collects payment from the buyer, deducts its fees and remits the balance to the supplier (who is itself an ECO as per the definition in Sec 2(45) of the CGST Act). In this scenario, the Buyer-side ECO will also be required to collect TCS, pay the same to the Government and also make other compliances u/s 52 of CGST Act.

Interest on Delayed Payment of Tax [Sec. 50]

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)]
- 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. 01.07.2017]

Rate of Interest

- 18% in case of belated payment of tax i.e. on failure to pay tax (or part of tax) to the Government's account
- 18% on utilisation of wrongly availed input tax credit [24% p.a. substituted by 18% p.a. retrospectively w.e.f. 01.07.2017 by Finance Act, 2022].

Computation of Period for Calculation of Interest

In case of belated payment of tax [Rule 88B(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 88B(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,

- 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
- 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 88B(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):

- If return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period.
- 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 88B(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.

Note: The payment of interest in case of belated payment of tax should be made voluntarily i.e. even without a demand.

Clarification on charging of interest in cases of wrong availment of IGST credit and reversal thereof [Circular No. 192/04/2023 - GST, dated 17.07.2023] 

Issue: Clarification regarding charging of interest u/s 50(3) of the CGST Act in the cases where IGST credit has been wrongly availed by a registered person. Clarification is being sought as to whether such wrongly availed IGST credit would be considered to have been utilized for the purpose of charging of interest u/s 50(3) of CGST Act, read with rule

88B of CGST Rules, in cases where though the available balance of IGST credit in the electronic credit ledger of the said registered person falls below the amount of such wrongly availed IGST credit, the total balance of input tax credit in the electronic credit ledger of the registered person under the heads of IGST, CGST and SGST taken together remains more than such wrongly availed IGST credit, at all times, till the time of reversal of the said wrongly availed IGST credit.

Case 1: In the cases of wrong availment of IGST credit by a registered person and reversal thereof, for the calculation of interest under rule 88B of CGST Rules, whether the balance of input tax credit available in electronic credit ledger under the head of IGST only needs to be considered or total input tax credit available in electronic credit ledger, under the heads of IGST, CGST and SGST taken together, has to be considered.

Clarification: Since, the amount of input tax credit available in electronic credit ledger, under any of the heads of IGST, CGST or SGST, can be utilized for payment of liability of IGST, it is the total input tax credit available in electronic credit ledger, under the heads of IGST, CGST and SGST taken together, that has to be considered for calculation of interest u/r 88B of CGST Rules and for determining as to whether the balance in the electronic credit ledger has fallen below the amount of wrongly availed input tax credit of IGST, and to what extent the balance in electronic credit ledger has fallen below the said amount of wrongly availed credit.

Thus, in the cases where IGST credit has been wrongly availed and subsequently reversed on a certain date, there will not be any interest liability u/s 50(3) of CGST Act if, during the time period starting from such availment and up to such reversal, the balance of input tax credit (ITC) in the electronic credit ledger, under the heads of IGST, CGST and SGST taken together, has never fallen below the amount of such wrongly availed ITC, even if available balance of IGST credit in electronic credit ledger individually falls below the amount of such wrongly availed IGST credit. However, when the balance of ITC, under the heads of IGST, CGST and SGST of electronic credit ledger taken together, falls below such wrongly availed amount of IGST credit, then it will amount to the utilization of such wrongly availed IGST credit and the extent of utilization will be the extent to which the total balance in electronic credit ledger under heads of IGST, CGST and SGST taken together falls below such amount of wrongly availed IGST credit, and will attract interest.

Case 2: Whether the credit of compensation cess available in electronic credit ledger shall be taken into account while considering the balance of electronic credit ledger for the purpose of calculation of interest u/r 88B(3) of CGST Rules in respect of wrongly availed and utilized IGST, CGST or SGST credit.

Clarification: As per proviso to section 11 of GST (Compensation to States) Act, 2017, input tax credit in respect of compensation cess on supply of goods and services leviable under section 8 of the said Act can be utilised only towards payment of compensation cess leviable on supply of goods and services. Thus, credit of compensation cess cannot be utilized for payment of any tax under CGST or SGST or IGST heads and/ or reversals of credit under the said heads.

Accordingly, credit of compensation cess available in electronic credit ledger cannot be taken into account while considering the balance of electronic credit ledger for the purpose of calculation of interest u/r 88B(3) of CGST Rules in respect of wrongly availed and utilized IGST, CGST or SGST credit.

How's the josh...???

"High, Sir!"

14	Rate of tax	✓	✗	✗	✗	✓	✓	✓
15	Amount of tax	✓	✗	✗	✗	✓	✓	✓
16	Place of supply, in case of inter-state supply	✓	✗	✗		✓	✗	✓
17	Address of delivery	✓	✗	✗	✗	-	-	-
18	Whether the tax is payable on reverse charge basis; and	✓	✓	✗	✗	✓	✓	✗
19	Signature or digital signature of the supplier or his authorized representative	✓	✓	✓	✓	✓	✓	✓
20	Nature of Document	✗	✗	✗	✓	-	-	-
21	Sr. No. & Date of Tax Invoice/Bill of Supply/Receipt Voucher	✗	✗	✗	✓	✗	✓	✗
22	QR Code (in case of e-invoice)	✓	✓	✓	✓	✗	✗	✗

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Further, in cases involving supply of online money gaming or in cases where any taxable service is supplied by or through an ECO or by a supplier of OIDAR services to a recipient who is un-registered, irrespective of the value of such supply, a tax invoice issued by the registered person shall contain the name and address of the recipient along with its PIN code and the name of the State of the recipient and the same shall be deemed to be the address on record of the recipient. [Proviso inserted by NN 26/2022 - CT, w.e.f. 26.12.2022 and amended by NN. 38/2023 - CT, w.e.f. 04.08.2023 & NN. 51/2023 - CT, w.e.f. 01.10.2023]

Number of HSN digits required on tax invoice:

As per NN. 12/2017 - CT, as amended by NN. 78/2020 - CT, dated 15.10.2020, the requirement to mention the HSN Code for goods or services w.e.f. 01.04.2021 is as under:

S. No.	Aggregate Turnover (AT) in the preceding F.Y.	Number of Digits of HSN Code
1.	Upto Rs. 5 crores	4
2.	More than Rs. 5 crores	6

Further, it is provided that a registered person whose aggregate turnover in the preceding financial year is **upto Rs. 5 crores**, may **not mention** the number of digits of **HSN** Codes as specified in the table above, in a tax invoice issued by him in respect of supplies made to **unregistered persons**. Above provisions are also applicable to Bill of Supply.

Invoice-cum-bill of supply (Rule 46A): Where a registered person is supplying taxable as well as exempted goods or services or both to an unregistered person, a single "invoice-cum-bill of supply" may be issued for all such supplies.

Further, the said single "invoice-cum-bill of supply" shall contain the particulars as specified under Rule 46 (i.e. for Tax invoice) or Rule 54 (i.e. for Tax invoice in special cases), as the case may be, and Rule 49 (i.e. for Bill of Supply). [Proviso inserted by NN 26/2022 - CT, w.e.f. 26.12.2022]

Where at the time of receipt of advance		
(i)	rate of tax is not determinable	tax shall be paid at the rate of 18%
(ii)	nature of supply is not determinable	same shall be treated as inter-State supply

Supplier permitted to issue any document other than tax invoice [Section 31(2) and proviso to section 31(1) read with rules 54 and 55]:

2. 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. 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.

E-invoice through Govt. notified website [Rule 48(4)]



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 Rs. 20 crores~~ **Rs. 10 crores Rs. 5 crores**, 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 to Rs. 10 crores w.e.f. 01.10.2022 by NN 17/2022 - CT, which is further reduced to Rs. 5 crores w.e.f. 01.08.2023 by NN 10/2023 - 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:

"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."

Clarification on applicability of e-invoicing w.r.t an entity [Circular no. 186/18/2022 - GST, dated 27.12.2022]

Issue: Whether the exemption from mandatory generation of e-invoices is available for the entity as whole, or whether the same is available only in respect of certain Supplies made by the said entity?

Clarification: Certain entities/sectors have been exempted from mandatory generation of e-invoices as per rule 48(4). It is hereby clarified that the said exemption from generation of e-invoices is for the entity as a whole and is not restricted by the nature of supply being made by the said entity.

Illustration: A Banking Company providing banking services, may also be involved in making supply of some goods, including bullion. The said banking company is exempted from mandatory issuance of e-invoice for all supplies of goods and services and thus, will not be required to issue e-invoice with respect to any supply made by it.

Clarification on applicability of e-invoice w.r.t supplies made to TDS deductors [Circular no. 198/10/2023 - GST, dated 17.07.2023]

Issue: Whether e-invoicing is applicable for supplies made by a registered person, whose turnover exceeds the prescribed threshold for generation of e-invoicing, to Government Departments or establishments / Government agencies / local authorities / PSUs which are registered solely for the purpose of deduction of TDS as per provisions of sec. 51 of the CGST Act?

Clarification: Government Departments or establishments / Government agencies / local authorities / PSUs, etc. registered solely for the purpose of deduction of TDS under GST, are to be treated as registered persons under the GST law as per provisions of sec. 2(94) of CGST Act. Accordingly, the registered person, whose turnover exceeds the prescribed threshold for generation of e-invoicing, is required to issue e-invoices for the supplies made to such Government Departments or establishments/Government agencies/ local authorities/ PSUs, etc u/r 48(4) of CGST Rules.

Tax invoice to have Dynamic 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.

Using this power, vide NN 14/2020 - CT, dated 21.03.2020, 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:

- (i) Insurer, Banking Company, financial institution including a NBFC;
- (ii) Goods Transport Agency;
- (iii) Passenger Transport Service Supplier;
- (iv) Supplier of services by way of admission or exhibition of cinematograph films in multiplex screens;
- (v) Supplier of OIDAR services located in non-taxable territory.

However, where such registered person makes a Dynamic Quick Response (QR) code available to the recipient through a digital display, such B2C invoice issued by such registered person containing cross-reference of the payment using a Dynamic Quick Response (QR) code, shall be deemed to be having Quick Response (QR) code.

Clarification in respect of applicability of Dynamic Quick Response (QR) Code on B2C invoices and compliance of NN 14/2020 - CT, dated 21.03.2020 [Circular no. 146/02/2021-GST, dated 23.02.2021]

S.N.	Issues	Clarification
1.	To which invoice is NN 14/2020 - CT, dated 21.03.2020 applicable? Would this requirement be applicable on invoices issued for supplies made for Exports?	This notification is applicable to a tax invoice issued to an unregistered person by a registered person (B2C invoice) whose annual aggregate turnover exceeds 500 Cr rupees in any of the financial years from 2017-18 onwards. However, the said notification is not applicable to an invoice issued by certain specified persons. As regards the supplies made for exports, though such supplies are made by a registered person to an unregistered person, however, as e-invoices are required to be issued in respect of supplies for exports, in terms of NN. 13/2020-CT, dated 21.03.2020 treating them as Business to Business (B2B) supplies, NN. 14/2020- CT, dated 21.03.2020 will not be applicable to them.

		(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	18 th of the month next to relevant Quarter
			GSTR - 4 (Return)	Annually	30 th 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	13 th of the next month or 7 th day after the last day of the validity of registration, whichever is earlier.
5.	Rule 64 	Supplier of OIDAR services or online money gaming services located outside India [as amended by NN 51/2023 - CT, w.e.f. 01.10.2023]	GSTR-5A	Monthly	20 th of the next month
6.	Sec. 39(4) read with rule 65	Input Service Distributor (ISD)	GSTR-6	Monthly	13 th of the next month
7.	Sec. 39(3) read with rule 66	Registered person deducting tax at source [TDS]	GSTR-7	Monthly	10 th of the next month
8.	Sec. 52(4) read with rule 67	E-Commerce operator (not being an agent) [TCS]	GSTR-8	Monthly	10 th of the next month
9.	Section 44 read with Rule 80	Registered person other than an ISD, tax deductor/tax collector, casual taxable person, a non-resident taxpayer, OIDAR service supplier located in non-taxable territory and some Govt. Deptt.	GSTR-9	Annual return	31 st December of the next financial year
10.	Section 52(5) read with Rule 80(2)	E-commerce operator required to collect tax at source	GSTR-9B	Annual statement	31 st December of the next financial year
11.	Section 44 read with Rule 80	Registered person whose aggregate turnover during a financial year exceeds Rs. 5 crore	GSTR-9C	Self Certified Reconciliation Statement	To be submitted along with the annual return [GSTR-9]
12.	Section 45 read with Rule 81	Taxable person whose registration has been surrendered or cancelled	GSTR-10	Final return	Within 3 months of the date of cancellation or date of order of cancellation,

					whichever is later.
13.	Section 55 read with Rule 82	Persons who have been issued a Unique Identity Number (UIN)	GSTR-11	Details of inward Supplies	-

■ **Time limit for Rectification:** The maximum time limit within which rectifications/amendments are permissible in GSTR-1 is earlier of the following dates:

- 30th November following the end of the financial year to which such details pertain or
- Date of filing of the relevant annual return

■ GSTR 1 needs to be filed even if there is no business activity (Nil Return) in the tax period.

■ 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.

■ Further, the registered person shall not be allowed to furnish GSTR - 1 for a tax period after the expiry of a period of 3 years from the due date of furnishing the said statement, except where the Government allows. [Sec. 37(5) inserted by Finance Act, 2023, w.e.f. 01.10.2023]

■ **Bar on filing of GSTR-1 or using IFF [Rule 59(6) of the CGST Rules, 2017]:** Notwithstanding anything contained in this rule, -

(i) a registered person shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in FORM GSTR-1, if he has not furnished the return in FORM GSTR-3B for the preceding month;

(ii) a registered person, required to furnish quarterly return, shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in FORM GSTR-1 or using the invoice furnishing facility, if he has not furnished the return in FORM GSTR-3B for preceding tax period;

(iii) a registered person, to whom an intimation has been issued on the common portal under the provisions of sub-rule (1) of rule 88C in respect of a tax period, shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in FORM GSTR-1 or using the invoice furnishing facility for a subsequent tax period, unless he has either deposited the amount specified in the said intimation or has furnished a reply explaining the reasons for any amount remaining unpaid, as required under the provisions of sub-rule (2) of rule 88C. [clause (d) inserted by NN 26/2022 - CT, w.e.f. 26.12.2022]

(iv) a registered person, to whom an intimation has been issued on the common portal under the provisions of sub-rule (1) of rule 88D in respect of a tax period or periods, shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in FORM GSTR-1 or using the invoice furnishing facility for a subsequent tax period, unless he has either paid the amount equal to the excess input tax credit as specified in the said intimation or has furnished a reply explaining the reasons in respect of the amount of excess input tax credit that still remains to be paid, as required under the provisions of sub-rule (2) of rule 88D; [Inserted by NN. 38/2023 - CT, w.e.f. 04.08.2023]

(v) a registered person shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in FORM GSTR-1 or using the invoice furnishing facility, if he has not furnished the details of the bank account as per the provisions of rule 10A. [Inserted by NN. 38/2023 - CT, w.e.f. 04.08.2023]

■ **Rule 88C - Manner of dealing with difference in liability reported in statement of outward supplies and that reported in return:**

(1) Where the tax payable by a registered person, in accordance with the statement of outward supplies furnished by him in FORM GSTR-1 or using the IFF in respect of a tax period, exceeds the amount of tax payable by such person in accordance with the return for that period furnished by him in FORM GSTR-3B, by such amount and such percentage, as may be recommended by the Council, the said registered person shall be intimated of such difference in Part A of FORM GST DRC-01B, electronically on the common portal, and a copy of such intimation shall also be sent to his e-mail address, highlighting the said difference and directing him to -

- a) pay the differential tax liability, along with interest u/s 50, through FORM GST DRC-03; or
 - b) explain the aforesaid difference in tax payable on the common portal, within a period of 7 days.
- (2) The registered person referred to in sub-rule (1) shall, upon receipt of the intimation referred to in that sub-rule, either,-
- a) pay the amount of the differential tax liability, as specified in Part A of FORM GST DRC- 01B, fully or partially, along with interest under section 50, through FORM GST DRC-03 and furnish the details thereof in Part B of FORM GST DRC-01B electronically on the common portal; or
 - b) furnish a reply electronically on the common portal, incorporating reasons in respect of that part of the differential tax liability that has remained unpaid, if any, in Part B of FORM GST DRC-01B, within a period of 7 days.
- (3) Where any amount specified in the intimation referred to in sub-rule (1) remains unpaid within the period specified in that sub-rule and where no explanation or reason is furnished by the registered person in default or where the explanation or reason furnished by such person is not found to be acceptable by the proper officer, the said amount shall be recoverable in accordance with the provisions of section 79.

■ **Rule 88D – Manner of dealing with difference in input tax credit available in auto-generated statement containing the details of input tax credit and that availed in return [Inserted by NN. 38/2023 – CT, w.e.f. 04.08.2023]**

- (A)
- (1) Where the amount of input tax credit availed by a registered person in the return for a tax period or periods furnished by him in FORM GSTR-3B exceeds the input tax credit available to such person in accordance with the auto-generated statement containing the details of input tax credit in FORM GSTR-2B in respect of the said tax period or periods, by such amount and such percentage, as may be recommended by the Council, the said registered person shall be intimated of such difference, electronically, highlighting the said difference and directing him to, either,
 - (a) pay an amount equal to the excess ITC availed in the said FORM GSTR-3B, along with interest, or
 - (b) explain the reasons for the aforesaid difference in ITC, within a period of 7 days.
 - (2) Such registered person shall, either,
 - (a) pay an amount equal to the excess ITC, fully or partially, along with interest and furnish the details thereof, or
 - (b) furnish a reply, electronically, incorporating reasons in respect of the amount of excess ITC that has still remained unpaid, if any, within a period of 7 days.
 - (3) Where any amount remains unpaid within the period of 7 days and where no explanation or reason is furnished by the registered person in default or where the explanation or reason furnished by such person is not found to be acceptable by the proper officer, the said amount shall be liable to be demanded in accordance with the provisions of section 73 or section 74.

■ **Due date for payment of tax [Section 39(7)]:** Due dates for payment of tax in respect of the persons required to file monthly GSTR-3B and GSTR-5 are linked with the due dates for filing of such returns i.e., the last dates (due dates) of filing such returns are also the due dates for payment of tax in respect of persons required to file such returns.

However, the 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 shall also be required to pay GST on monthly basis [Explained in detail in subsequent para]

Further, the composition taxpayers are required to make payment of tax on quarterly basis on or before 18th of the month next to the relevant quarter although they are required to submit the return on annual basis.

- (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, other than a supplier who has opted for QRMP Scheme, in FORM GSTR-1 or using the IFF, as the case may be,-
- for the 1st 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 1st month of the quarter;
 - for the 2nd 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 2nd month of the quarter;
 - for the 3rd 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,-

- for the 1st and 2nd 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;
 - in the 3rd 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.
- **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 1st of the subsequent month for which the return is being filed for.
 - **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.

■ **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, 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).
- **Sec. 39(10):** 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.

- **Sec. 39(11):** A registered person shall not be allowed to furnish a return for a tax period after the expiry of a period of 3 years from the due date of furnishing the said return, except where the Government allows. [Sec. 39(11) inserted by Finance Act, 2023, w.e.f. 01.10.2023]

First Return [Section 40]

Every registered person who has made outward supplies in the period between the date on which he became liable to registration till the date on which registration has been granted shall declare the same in the first return furnished by him after grant of registration.

Annual Return [Section 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.

2. Due date of furnishing Annual Return = 31st December of the next Financial Year

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

Normal Suppliers: Annual Return is to be filed electronically in Form GSTR-9 through the common portal.

ECO required to collect TCS u/s 52: Annual Statement is to be filed electronically in Form GSTR-9B through the common portal.

4. Who is required to furnish a Reconciliation Statement...?

Every registered person who is required to furnish annual return and whose aggregate turnover during a financial year exceeds Rs. 5 Crores, shall also furnish a self-certified reconciliation statement in Form GSTR-9C along with the annual return on or before 31st December of the next financial year electronically through the common portal.

Further, Section 35(5) has been omitted w.e.f. 01.08.2021 which was as follows:

~~Sec. 35(5): Every registered person whose aggregate turnover exceeds Rs. 5 crores shall get his accounts audited by a Chartered Accountant or a Cost Accountant and shall submit a copy of the audited annual accounts and the reconciliation statement along with annual return.~~

Analysis of Amendment: By making these amendments, instead of GST Audit and submission of reconciliation statement in Form GSTR-9C by a Chartered Accountant or a Cost Accountant, now, every registered person who is required to furnish annual return and whose aggregate turnover during a financial year exceeds Rs. 5 Crores, shall be required to furnish a self-certified reconciliation statement in Form GSTR-9C.\

5. Further, the registered person shall not be allowed to furnish an annual return for a financial year after the expiry of a period of 3 years from the due date of furnishing the said annual return, except where the Government allows. [Sec. 44(2) inserted by Finance Act, 2023, w.e.f. 01.10.2023]

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Final Return [Sec. 45]

1. Who are required to furnish Final Return? [Section 45 read with rule 81]

Every registered person who is required to furnish return u/s 39(1) and whose registration has been surrendered or cancelled shall file a Final Return electronically in Form GSTR-10 through the common portal.

1. Amount refundable in cash shall be refunded after making adjustment of any outstanding demand under the Act or under any existing law.
2. In respect of amount refundable in electronic credit ledger, the proper officer shall issue order re-crediting the said amount as Input Tax Credit in the electronic credit ledger.
3. This sub-rule is not applicable in following 2 cases:
 - (i) refund of tax paid on zero-rated supplies or
 - (ii) refund of tax paid on deemed export.

Grant of provisional refund [Section 54(6) read with rule 91]

- The PO may, in the case of any claim for refund on account of zero-rated supply of goods or services or both made by registered persons,
- refund on a provisional basis, 90% of the total amount so claimed, ~~excluding the amount of ITC provisionally accepted.~~ ^A [as amended by Finance Act, 2023, w.e.f. 01.10.2023]

Principal of Unjust Enrichment [Section 54(8) & (9)]

- Theory of unjust enrichment postulates that only the person who has NOT passed the incidence of tax will be eligible to claim the refund.
- Cases where refundable amount shall be paid to the applicant [Exceptions to Doctrine of Unjust Enrichment]: Section 54(8) stipulates that the refundable amount shall, instead of being credited to the Consumer Welfare Fund, be paid to the applicant, if such amount is relatable to –
 - (a) Refund of tax paid on **export** of goods or services or both or on inputs or input services used in making such exports;
 - (b) refund of **unutilized ITC** in case of zero rated supplies or accumulated ITC on account of inverted duty structure;
 - (c) refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued, or where a **refund voucher** has been issued;
 - (d) refund of tax in pursuance of **section 77**, i.e. tax paid tax on a transaction treated to be an intra-State supply, but which is subsequently held to be an inter-State supply or vice-versa.;
 - (e) the tax and interest, if any, or any other amount paid by the applicant, if he had **not passed on the incidence** of such tax and interest to any other person; or
 - (f) the tax or interest borne by such other class of **applicants** as the Government may, on the recommendations of the Council, by **notification**, specify.

No Refund of Advance tax by casual or NR persons [Section 54(13)]

The amount of advance tax deposited by a casual taxable person or a non-resident taxable person u/s 27(2), shall not be refunded unless such person has, in respect of the entire period for which the certificate of registration granted to him had remained in force, furnished all the return required u/s 39.

Refund of any amount, after adjusting the tax payable by the applicant out of the advance tax deposited by him u/s 27 at the time of registration, shall be claimed **only after the last return required to be furnished by him has been so furnished in the last return required to be furnished by him.** [Rule 89(1), 3rd proviso] [As amended by NN. 38/2023 - CT, w.e.f. 04.08.2023]

Withholding of Refund Claim [Section 54(10), (11) & (12)]

- (a) Amount of refund determined by an order passed under section 54(5),
 - (b) any income from investment of the amount credited to the Fund; and
 - (c) such other monies received by it,
- in such manner as may be prescribed.

- All sums credited to the Consumer Welfare Fund shall be utilised by the Government for the welfare of the consumers in such manner as may be prescribed [Section 58(1) of the CGST Act].
- **Maintenance of Books of Accounts**
The Government or the authority specified by it shall maintain proper and separate account and other relevant records in relation to the Fund and prepare an annual statement of accounts in such form as may be prescribed in consultation with the CAG (Comptroller and Auditor- General of India).

Interest On Delayed Refunds [Section 56 of CGST Act]

- 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.
 - Interest is payable for the period of delay beyond 60 days from the date of receipt of such application till the date of refund of such tax, to be computed in such manner and subject to such conditions and restrictions as may be prescribed [as amended by Finance Act, 2023, w.e.f. 01.10.2023].
- 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.
 - 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].
- C. **Rule 94(2) [Inserted by NN. 38/2023 - CT, w.e.f. 01.10.2023]: Further, the following periods shall not be included in the period of delay, namely:-**
- (a) any period of time beyond 15 days of receipt of notice (i.e. notice for rejecting the amount of refund claimed) that the applicant takes to furnish a reply or submit additional documents or reply; and
 - (b) any period of time taken either by the applicant for furnishing the correct details of the bank account to which the refund is to be credited or for validating the details of the bank account so furnished, where the amount of refund sanctioned could not be credited to the bank account furnished by the applicant.
- 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.

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.

Refund of taxes to the retail outlets [Rule 95A]

where,-

- a. **“Refund amount”** means the maximum refund that is admissible;
- b. **“Net ITC”** means ITC availed on **inputs and input services (not Capital Goods)** during the relevant period;
- 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 [as amended by NN 16/2020 - CT, w.e.f. 23.03.2020];
- 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. [This definition as substituted by NN 39/2018 - CT, w.e.f. 04.09.2018]
- 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

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Note: “The value of goods exported out of India” to be included while calculating “adjusted total turnover” will be same as being determined as per the aforesaid Explanation inserted in the said sub-rule. [Circular No. 197/09/2023 - GST, dated 17.07.2023]

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.

Determination of refundable amount in case of refund of unutilised ITC on account of (i) exports without payment of tax, (ii) supplies made to SEZ Unit/ SEZ Developer without payment of tax or (iii) accumulation due to inverted tax structure, clarified [Master Circular on Refunds - Circular No. 125/44/2019 GST dated 18.11.2019]

The common portal calculates the refundable amount as the least of the following amounts:

- 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.
- (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.
- (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.
- (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.
- (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.
- (10) The refund under this rule is not allowed to the persons who have claimed the following benefits:
- (i) Receipt of supplies under "deemed export" benefits (except receipt of capital goods under EPCG Scheme)
 - (ii) Receipt of supplies under benefit of NN 40/2017 - CT (R) or NN 41/2017 - IT (R) [i.e. inward supplies at concessional rate of 0.1% (IGST or CGST+SGST)]
 - (iii) Import of goods without payment of IGST & GST Compensation Cess, if imported by EOU or under Advance Authorisation or EPCG Scheme (except receipt of capital goods under EPCG Scheme).

Explanation: However, this restriction shall not apply where the registered person has paid IGST and GST Compensation Cess on inputs and has availed exemption of only Basic Customs Duty (BCD).

Export of goods or services under bond or Letter of Undertaking (LUT) [Rule 96A]

- **Rule 96A(1):** Any registered person availing the option to supply goods/services for export without payment of IGST shall furnish, prior to export, a bond/LUT in prescribed form to the jurisdictional Commissioner, binding himself to pay the tax due along with the interest @ 18% p.a. within a period of:
- (a) 15 days after the expiry of 3 months or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export, if the goods are not exported out of India; or
 - (b) 15 days after the expiry of 1 year, or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export, if the payment of such services is not received by the exporter in convertible foreign exchange or in Indian rupees, wherever permitted by the RBI.
- All registered persons who intend to supply goods or services for export without payment of IGST shall be eligible to furnish a LUT in place of a bond except those who have been prosecuted for any offence under the CGST Act or the IGST Act or any of the existing laws in force in a case where the amount of tax evaded exceeds Rs. 2,50,00,000.

Clarification in respect of admissibility of Refund where an exporter applies for refund subsequent to compliance of the provisions of rule 96A(1) [Circular No. 197/09/2023 - GST, dated 17.07.2023]

Issue: References have been received citing the instances where exporters have voluntarily made payment of due integrated tax, along with applicable interest, in cases where goods could not be exported or payment for export of services could not be received within time frame as prescribed in clause (a) or (b) of rule 96A(1) of CGST Rules. Clarification is being sought as to whether subsequent to export of the said goods or realization of payment in case of

export of services, the said exporters are entitled to claim not only refund of unutilized input tax credit on account of export but also refund of the IGST and interest so paid in compliance of the provisions of rule 96A(1) of CGST Rules.

Clarification: The above clarifications imply that as long as goods are actually exported or payment is realized in case of export of services, even if it is beyond the time frames as prescribed in rule 96A(1), the benefit of zero-rated supplies cannot be denied to the concerned exporters. Accordingly, it is clarified that in such cases, on actual export of the goods or on realization of payment in case of export of services, the said exporters would be entitled to refund of unutilized input tax credit in terms of section 54(3) of the CGST Act, if otherwise admissible.

It is also clarified that in such cases subsequent to export of the goods or realization of payment in case of export of services, the said exporters would be entitled to claim refund of the integrated tax so paid earlier on account of goods not being exported, or the payment not being realized for export of services. It is further being clarified that no refund of the interest paid in compliance of rule 96A(1) shall be admissible.

Rule 96B. Recovery of refund of unutilised ITC or IGST paid on export of goods where export proceeds not realized

- (1) Where any refund of unutilised ITC on account of export of goods or of IGST paid on export of goods has been paid to an applicant but the sale proceeds in respect of such export goods have not been realised, in full or in part, in India within the period allowed under FEMA, including any extension of such period, the person to whom the refund has been made shall deposit the amount so refunded, to the extent of non-realisation of sale proceeds, along with applicable interest **within 30 days** of the expiry of the said period or, as the case may be, the extended period, failing which the amount refunded shall be recovered in accordance with the provisions of section 73 or 74 of the Act, as the case may be, as is applicable for recovery of erroneous refund, along with interest u/s 50.

However, where sale proceeds, or any part thereof, in respect of such export goods are not realised by the applicant within the period allowed under the Foreign Exchange Management Act, 1999, but the **RBI writes off the requirement of realisation** of sale proceeds on merits, the **refund** paid to the applicant **shall not be recovered**.

- (2) Where the sale proceeds are realised by the applicant, in full or part, after the amount of refund has been recovered from him under sub-rule (1) and the applicant produces evidence about such realisation within a period of **3 months from the date of realisation** of sale proceeds, the **amount so recovered shall be refunded** by the proper officer, to the applicant to the extent of realisation of sale proceeds, provided the sale proceeds have been realised within such extended period as permitted by the RBI.

Imports by SEZ

All goods / Services imported by a unit or a developer in the Special Economic Zone for their authorized operations are exempt from whole of the IGST.

14.20 Refund of tax specified in section 77(1) of the CGST Act and section 19(1) of the IGST Act

Section 77 of the CGST Act, 2017 : Tax wrongfully collected and paid to Central Government or State Government

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

Section 19 of the IGST Act, 2017 : Tax wrongfully collected and paid to Central Government or State Government

- (1) A registered person who has paid integrated tax on a supply considered by him to be an inter-State supply, but which is **subsequently held** to be an intra-State supply, shall be granted refund of the amount of integrated tax so paid in such manner and subject to such conditions as may be prescribed.
- (2) A registered person who has paid central tax and State tax or Union territory tax, as the case may be, on a

Chapter

15

Assessment

Self Assessment (Sec 59)

- Every registered person shall himself assess tax liability and furnish return.

Provisional Assessment (Sec 60)

- Person unable to determine value of supply or rate of tax.
- Payment of tax on provisional basis on execution bond on a request made.
- Final Assessment:
 - Time: 6 months from the date of communication of order.
 - Extension: 6 months by Joint/ Additional Commissioner and further 4 years by Commissioner
 - on Final Assessment, if short paid, pay with interest u/s 50 (i.e. 18% p.a.)
 - If excess paid, refund with interest u/s 56 (i.e. 6% p.a.)

Scrutiny of Returns (Sec 61)

- In order to verify accuracy of return, the Proper Officer may examine return and seek explanation.
- If explanation offered is adequate, no further action.
- If no adequate explanation offered or no corrective measures, then, Action u/s 65, 66, 67, 73 or 74.

Assessment of Non-Filers of Return [Best Judgement Assessment by Proper Officer] (Sec 62)

- If return is not furnished even after service of notice u/s 46
- Proper officer shall assess the liability of tax within a period of 5 years from the due date specified u/s 44 for furnishing of annual return.
- Where the registered person furnishes a **valid return within 30 days 60 days** of the service of the assessment order), the said **assessment order shall be deemed to have been withdrawn** but the liability for payment of **interest** or for payment of **late fee** shall continue. ^(A)
- However, where the registered person fails to furnish a valid return within 60 days of the service of the assessment order under sub-section (1), he may furnish the same within a further period of 60 days on payment of an additional late fee of Rs. 100 for each day of delay beyond 60 days of the service of the said assessment order and in case he furnishes valid return within such extended period, the said assessment order shall be deemed to have been withdrawn, but the liability to pay interest u/s 50(1) or to pay late fee u/s 47 shall continue. [as amended by Finance Act, 2023, w.e.f. 01.10.2023] ^(A)

Assessment of Unregistered Person [Best Judgement Assessment by Proper Officer] (Sec 63)

- This Section is applicable to unregistered persons i.e., persons who are liable to obtain registration under Section 22 and have failed to obtain registration.
- This provision also covers the cases whose registration was cancelled.
- For assessment under this section, **notice** has to be issued by the proper officer. The notice would contain the

- (c) being a person other than a person specified in clause (a), has **not furnished the statement of outward supplies for any 2 months or quarters**, as the case may be; or
- (d) being a person, whose **registration has been suspended** under the provisions of sub-rule (1) or sub-rule (2) or sub-rule (2A) of rule 21A.

However, the Commissioner may, on receipt of an application from a registered person in FORM GST EWB-05, on sufficient cause being shown and for reasons to be recorded in writing, by order in FORM GST EWB-06, allow furnishing of the said information in PART A of FORM GST EWB 01, subject to such conditions and restrictions as may be specified by him:

Further, no order rejecting the request of such person to furnish the information in PART A of FORM GST EWB 01 under the first proviso shall be passed without affording the said person a reasonable opportunity of being heard:

Furthermore, the permission granted or rejected by the Commissioner of State tax or Commissioner of Union territory tax shall be deemed to be granted or, as the case may be, rejected by the Commissioner.

Rule 138F : Information to be furnished in case of intra-State movement of gold, precious stones, etc. and generation of e-way bills thereof

(1) Where -

ICAI → X

- (a) a Commissioner of State tax or Union territory tax mandates furnishing of information regarding intra-State movement of gold, precious stones, etc. specified against serial numbers 4 and 5 in the Annexure appended to rule 138(14), in accordance with rule 138F(1) of the SGST/UTGST Rules, and
- (b) the consignment value of such goods exceeds such amount, not below Rs. 2,00,000, as may be notified by the Commissioner of State tax or Union territory tax, in consultation with the jurisdictional Principal Chief Commissioner or Chief Commissioner of Central Tax, or any Commissioner of Central Tax authorised by him,

notwithstanding anything contained in Rule 138, every registered person who causes intra-State movement of such goods, -

- (i) in relation to a supply; or
- (ii) for reasons other than supply; or
- (iii) due to inward supply from an un-registered person,

shall, before the commencement of such movement within that State or Union territory, furnish information relating to such goods electronically, as specified in Part A of FORM GST EWB-01, against which a unique number shall be generated:

However, where the goods to be transported are supplied through an e-commerce operator or a courier agency, the information in Part A of FORM GST EWB-01 may be furnished by such e-commerce operator or courier agency.

- (2) The information as specified in PART B of FORM GST EWB-01 shall not be required to be furnished in respect of movement of goods referred to in the sub-rule (1) and after furnishing information in Part-A of FORM GST EWB-01, the e-way bill shall be generated in FORM GST EWB-01, electronically on the common portal.
- (3) The information furnished in Part A of FORM GST EWB-01 shall be made available to the registered supplier on the common portal who may utilize the same for furnishing the details in FORM GSTR-1.
- (4) Where an e-way bill has been generated under this rule, but goods are either not transported or are not transported as per the details furnished in the e-waybill, the e-way bill may be cancelled, electronically on the common portal, within 24 hours of generation of the e-way bill.

However, an e-way bill cannot be cancelled if it has been verified in transit in accordance with the provisions of rule 138B.

(5) Notwithstanding anything contained in this rule, no e-way bill is required to be generated -

- (a) where the goods are being transported from the customs port, airport, air cargo complex and land customs station to an inland container depot or a container freight station for clearance by Customs;
- (b) where the goods are being transported -

- (i) under customs bond from an inland container depot or a container freight station to a customs port, airport, air cargo complex and land customs station, or from one customs station or customs port to another customs station or customs port, or
 - (ii) under customs supervision or under customs seal.
- (6) The provisions of sub-rule (10), sub-rule (11) and sub-rule (12) of rule 138, rule 138A, rule 138B, rule 138C, rule 138D and rule 138E shall, mutatis mutandis, apply to an e-way bill generated under this rule.

Consignment Value of Rs. 50,000 includes GST amount also:

For the purposes of this rule, the consignment value of goods shall be the value, determined in accordance with the provisions of section 15, declared in an invoice, a bill of supply or a delivery challan, as the case may be, issued in respect of the said consignment and also includes the central tax, State tax or Union territory tax charged in the document and shall exclude the value of exempt supply of goods where the invoice is issued in respect of both exempt and taxable supply of goods.

Tax Invoice or bill of supply to accompany transport of goods [Rule 55A]

The person-in-charge of the conveyance shall carry a copy of the tax invoice or the bill of supply issued in accordance with the provisions of rules 46, 46A or 49 in a case where such person is not required to carry an e-way bill under these rules.

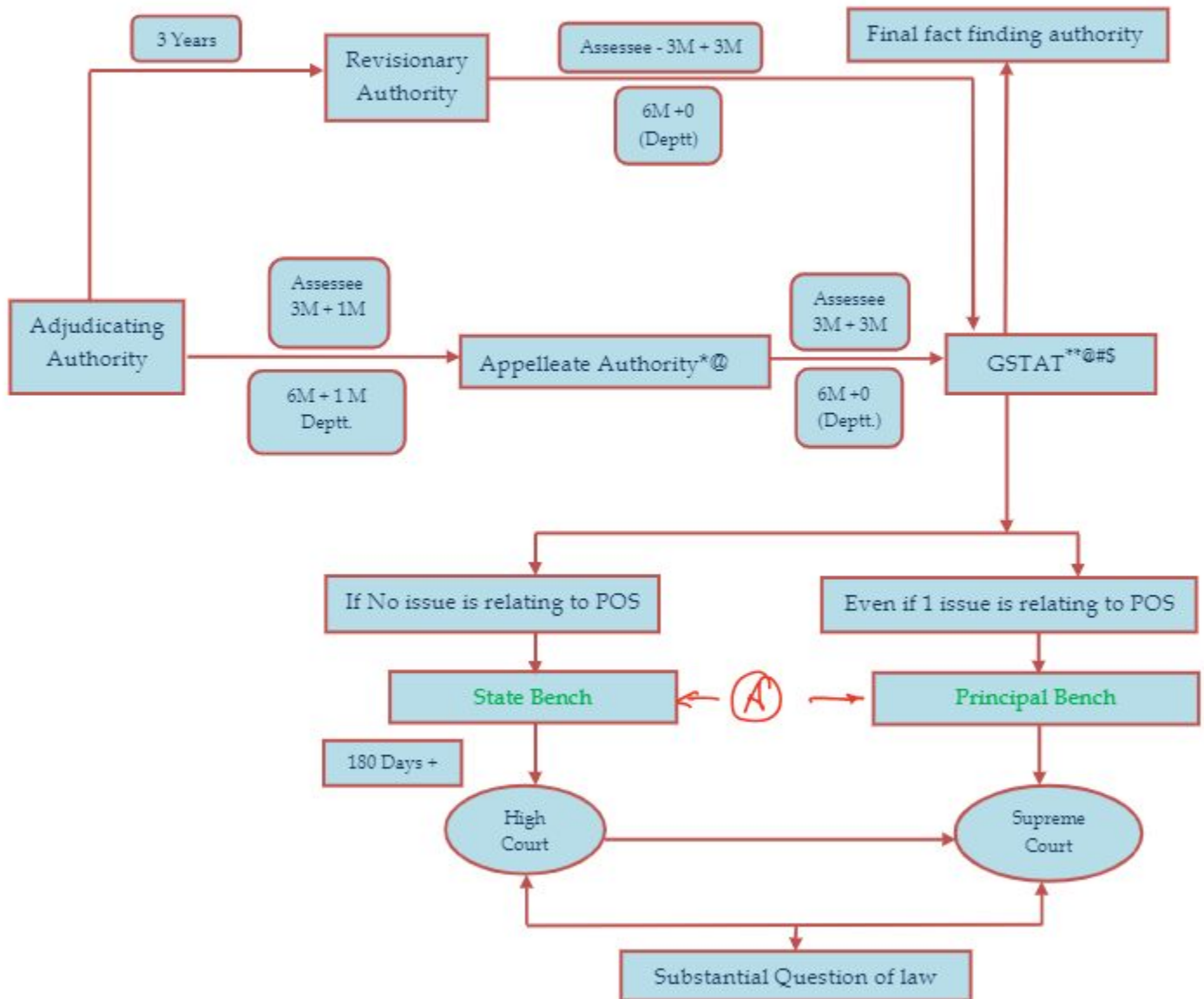
E-way bill in case of Storing of Goods in Godown of Transporter [Circular No. 61/35/2018-GST, dated 04.09.2018]

1. In case the consignee/recipient taxpayer stores his goods in the godown of the transporter, then the transporter's godown has to be declared as an additional place of business by the recipient taxpayer. In such cases, mere declaration by the recipient taxpayer to this effect with the concurrence of the transporter in the said declaration will suffice. Where the transporter's godown has been declared as the additional place of business by the recipient taxpayer, the transportation under the e-way bill shall be deemed to be concluded once the goods have reached the transporter's godown (recipient taxpayer's additional place of business). Therefore, e-way bill validity in such cases will not be required to be extended.
2. Further, whenever the goods are transported from the transporter's godown, which has been declared as the additional place of business of the recipient taxpayer, to any other premises of the recipient taxpayer then, the relevant provisions of the e-way bill rules shall apply.
3. Further, the obligation of the transporter to maintain accounts and records as specified in section 35 of the CGST Act read with rule 58 of the CGST Rules shall continue as a warehouse-keeper. Furthermore, the recipient taxpayer shall also maintain accounts and records as required under rules 56 and 57 of the CGST Rules. Furthermore, as per rule 56(7) of the CGST Rules, books of accounts in relation to goods stored at the transporter's godown (i.e., the recipient taxpayer's additional place of business) by the recipient taxpayer may be maintained by him at his principal place of business.

**Jise haarne ka darr nahi,
jeet usse door nahi!**

Chapter 22 Appeals and Revision

Timeline and Hierarchy Chart



*Pre Deposit = 10% of tax in dispute, subject to a maximum of Rs. 25 Cr. (CGST) or Rs. 50 Cr. (IGST)

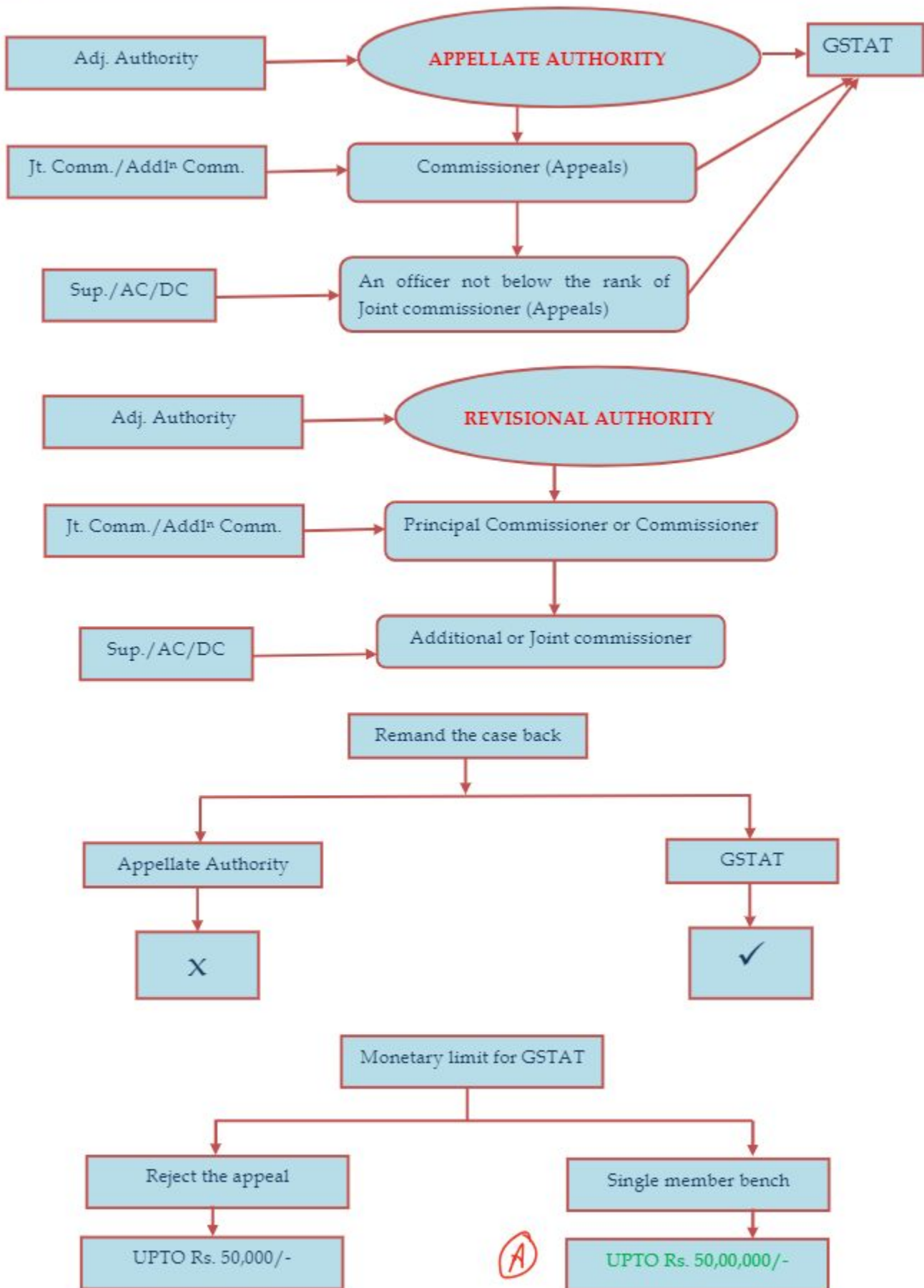
*Pre-deposit of a sum equal to 25% of the penalty imposed, in case of appeal to be filed against an order passed u/s 129(3). [Sec. 129 - Detention, seizure and release of goods and conveyances in transit]

**Additional 20% of tax in dispute, subject to a maximum of Rs. 50 Cr. (CGST) or Rs. 100 Cr. (IGST)

@ Order within 1 year, if possible

Rectification of mistake apparent from record - within 3 months

§ Memorandum of cross objection (MOCO) - 45 days + 45 days



Sec. 107 - Appeals to Appellate Authority

■ Filing of appeal by Assessee [Sec. 107(1) read with Rule 108]:

- (i) The appeal is to be filed by the assessee within a period of 3 months from the date of communication of decision or order in Form GST APL 01 electronically along with relevant documents and a provisional acknowledgement shall be issued to the appellant immediately.

However, an appeal to the Appellate Authority may be filed manually in FORM GST APL-01, along with the relevant documents, only if-

- (i) the Commissioner has so notified, or
 (ii) the same cannot be filed electronically due to non-availability of the decision or order to be appealed against on the common portal,

and in such case, a provisional acknowledgement shall be issued to the appellant immediately. [Inserted by NN. 38/2023 - CT, w.e.f. 04.08.2023]

- (ii) The grounds of appeal and form of verification must be duly signed.
- (iii) Where the decision or order appealed against is uploaded on the common portal, a final acknowledgment, indicating appeal number, shall be issued in FORM GST APL-02 by the Appellate Authority or an officer authorised by him in this behalf and the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal.
- (iv) However, where the decision or order appealed against is not uploaded on the common portal, the appellant shall submit a self-certified copy of the said decision or order within a period of 7 days from the date of filing of FORM GST APL-01 and a final acknowledgment, indicating appeal number, shall be issued in FORM GST APL-02 by the Appellate Authority or an officer authorised by him in this behalf, and the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal.
- (v) Further, where the said self-certified copy of the decision or order is not submitted within a period of 7 days from the date of filing of FORM GST APL-01, the date of submission of such copy shall be considered as the date of filing of appeal. [Rule 108(3) substituted by NN 26/2022 - CT, w.e.f. 26.12.2022]
- (vi) Further, the appeal shall be treated as filed only when the final acknowledgement, indicating the appeal number, is issued.

■ Filing of appeal/application by the Department [Sec. 107(2) & (3) read with Rule 109]:

- (i) The Commissioner of Central / State or any Union territory with a view to satisfying himself about the legality or propriety of any order or decision direct a subordinate officer to file an application before the Appellate Authority within 6 months from the date of communication of decision or order in Form APL GST 03 electronically along with relevant documents and a provisional acknowledgement shall be issued to the appellant immediately.

However, an appeal to the Appellate Authority may be filed manually in FORM GST APL-03, along with the relevant documents, only if-

- (iii) the Commissioner has so notified, or
 (iv) the same cannot be filed electronically due to non-availability of the decision or order to be appealed against on the common portal,

and in such case, a provisional acknowledgement shall be issued to the appellant immediately. [Inserted by NN. 38/2023 - CT, w.e.f. 04.08.2023]

- (ii) Where the decision or order appealed against is uploaded on the common portal, a final acknowledgment, indicating appeal number, shall be issued in FORM GST APL-02 by the Appellate Authority or an officer authorised by him in this behalf and the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal.
- (iii) However, where the decision or order appealed against is not uploaded on the common portal, the appellant shall submit a self-certified copy of the said decision or order within a period of 7 days from the date of filing

of FORM GST APL-03 and a final acknowledgment, indicating appeal number, shall be issued in FORM GST APL-02 by the Appellate Authority or an officer authorised by him in this behalf, and the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal.

- (iv) Further, where the said self-certified copy of the decision or order is not submitted within a period of 7 days from the date of filing of FORM GST APL-03, the date of submission of such copy shall be considered as the date of filing of appeal.

[Rule 109 substituted by NN 26/2022 - CT, w.e.f. 26.12.2022]

- The appellate authority in either of the above cases is empowered to condone the delay upto a period of 1 month.
- While Filing Appeal, amount of tax, interest/penalty which is ADMITTED by assessee → to be paid in full apart from amount of pre-deposit.
- Max. 3 adjournments shall be granted
- Appellate authority may allow additional grounds → if omission was not willful
- AA can confirm, modify or annul decision or order of adjudicating authority but cannot remand back
- AA has the power to issue show cause for the purpose of Sec 73 and 74 (short/non-payment of tax)
- AA issues a summary of the order in FORM GST APL - 04
- **Withdrawal of Appeal [Rule 109C] [inserted by NN 26/2022 - CT, w.e.f. 26.12.2022]:**
 - (i) The appellant may, at any time before issuance of show cause notice or order u/s 107(11), whichever is earlier, in respect of any appeal filed in FORM GST APL-01 or FORM GST APL-03, file an application for withdrawal of the said appeal by filing an application in FORM GST APL-01/03W.
 - (ii) However, where the final acknowledgment in FORM GST APL-02 has been issued, the withdrawal of the said appeal would be subject to the approval of the appellate authority and such application for withdrawal of the appeal shall be decided by the appellate authority within 7 days of filing of such application.
 - (iii) Further, any fresh appeal filed by the appellant pursuant to such withdrawal shall be filed within the time limit specified in sub-section (1) or sub-section (2) of section 107 (i.e. 3 months or 6 months), as the case may be.

Sec. 108 : Powers of Revisional Authority [RA]

Revisional Authority:

Can revise the order passed by subordinate officer, if in his views order passed is : <ul style="list-style-type: none"> ➤ Erroneous - Prejudicial to interest of revenue ➤ Illegal / improper ➤ Officer not taken into account material facts at the time of issuance of order 	Cannot Revise the order passed by subordinate officer, if: (a) Order subject to appeal before AA, GSTAT, HC, SC (can revise 'not decided' matters) (b) period of 6 months as specified in section 107(2) has not expired or (c) more than 3 years have expired after passing the decision or order (d) the order has already been taken for revision at any earlier stage (e) revisionary order has already been passed once.
If the order in revision is likely to affect the person adversely the RA shall serve on him a notice & shall give him a reasonable opportunity of being heard. RA shall issue a summary of order issued clearly indicating the final amount of demand confirmed.	Revisional Authority may pass an order on any point which has not been raised & decided in an appeal, referred to herein above, within 1 year from the date of order passed in such appeal or within 3 years from the date of such order sought to be revised, whichever is later.

Sec. 109 : Constitution of Appellate Tribunal and Benches thereof

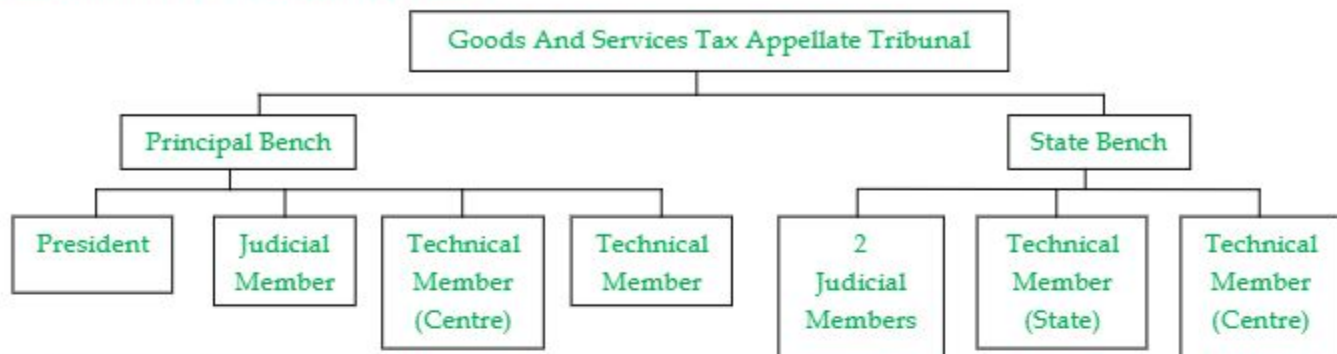
[Sec. 109 substituted by Finance Act, 2023, w.e.f. 01.08.2023] The Government shall establish an Appellate Tribunal known as the GST Appellate Tribunal for hearing appeals against the orders passed by the Appellate Authority or the Revisional Authority.



The jurisdiction, powers and authority conferred on the Appellate Tribunal shall be exercised by the Principal Bench and the State Benches.

(A)

Composition of the Appellate Tribunal:



Single member bench:

The cases can be heard by a bench consisting of a single member, if following conditions are fulfilled:

- Amount of tax or ITC involved or the amount of fine, fee or penalty determined does not exceed Rs. 50,00,000,
- Matter does not involve any question of law and
- Prior approval of the President has been obtained

And all other cases shall be heard together by one Judicial Member and one Technical Member.

Majority rule in case of difference of opinion

If, after hearing the case, the Members differ in their opinion on any point or points, such Member shall state the point or points on which they differ, and the President shall refer such case for hearing, –

- where the appeal was originally heard by Members of a State Bench, to another Member of a State Bench within the State or, where no such other State Bench is available within the State, to a Member of a State Bench in another State;
- where the appeal was originally heard by Members of the Principal Bench, to another Member from the Principal Bench or, where no such other Member is available, to a Member of any State Bench,

and such point or points shall be decided according to the majority opinion including the opinion of the Members who first heard the case.

Defect in constitution not to render proceedings invalid

No act or proceedings of the Appellate Tribunal shall be questioned or shall be invalid merely on the ground of the existence of any vacancy or defect in the constitution of the Appellate Tribunal.

The Appellate Tribunal shall, for the purposes of discharging its functions under this Act, have the same powers as are vested in a **civil court** under the Code of Civil Procedure, 1908.

All the proceedings before the Appellate Tribunal shall be deemed to be **judicial proceedings** within the meaning of Section 193, 228 & 196 of IPC.

Sec. 112 : Appeals to Appellate Tribunal

Appeal by person/revenue aggrieved against the decision or order passed by → Appellate authority / revisionary authority

- Appellate Tribunal (AT) - Discretion to refuse to admit appeal if Tax amount or ITC or the difference in Tax or ITC or Fine/Fees/Penalty → Does not Exceed Rs. 50,000/-
- Appeal to be filed by assessee within 3 months (extendable for further 3 more months) and by revenue within 6 months (not extendable) from date of communication of order appealed against

CGST (Ninth Removal of Difficulties) Order, 2019, dated 03.12.2019

- Any person, who has retired or resigned after serving more than 2 years in the indirect tax departments of Government of India or any State Government as a gazetted officer, shall not be entitled to appear as authorised representative for a period of 1 year from the date of retirement or resignation.
- Any person,
 - who has been dismissed or removed from government service; or
 - who is convicted of an offence under CGST Act, SGST Act, IGST Act, UTGST Act or under existing laws
 - who is found guilty of misconduct by the prescribed authority,
 - Any person, who has become insolvent during the period of insolvency,
 shall not be qualified as authorised representative.

Sec. 117 : Appeal to High Court (HC)

- Appeal to HC shall lie against the order passed by State Benches A
- No order shall lie to HC, if order passed by Principal Bench
- Appeal to be filed within 180 days (extendable) from the date of receipt of order.
- High Court may admit an appeal if it is satisfied that the case involves a substantial question of law.
- Appeal to be heard by bench of not less than 2 judges of HC and decision should be decided by majority
- Difference of opinion → reference to other judges of HC - Such point decided by opinion of majority

Sec. 118 : Appeal to Supreme Court (SC)

- An Appeal to SC can lie in case of judgement or order passed by Principal Bench or HC A

Sec. 119 : Sums Due to be Paid Notwithstanding Appeal, etc.

- The sums due to the Government as a result of an order passed by the Appellate Tribunal or High Court shall be paid notwithstanding that an appeal has been preferred to High Court or Supreme Court, as the case may be.

Sec. 120 : Appeal not to be filed in certain cases

- Board's power to issue instructions regulating filing of appeal/revision by Department
- Non filing of appeal, etc. as per aforesaid instructions, No bar on department to file appeal in future
- Non filing of appeal, etc. as per aforesaid instruction, Assessee cannot contend that matter was accepted by the department
- The Commissioner (Appeals) or Appellate Tribunal or court to have regard to this section when appeal, etc. not filed

Sec. 121 : Non - Appealable Decisions and Orders

- Order of commissioner → to direct transfer of proceedings from one officer to another
- Seizure or retention of books of accounts, register or other docs by department
- Order sanctioning prosecution
- Order passed u/s 80 of CGST Act (Payment of tax in installments).

"The best way to predict your future is to create it."

Chapter

23

Offences and Penalties

Section 122 : Penalty for certain offences

Sec 122(1) - Where a taxable person who -

- (i) Supplies Goods or Services or both without or with false invoice
- (ii) Issues invoice without supply
- (iii) Collects any amount as tax but fails to pay to government beyond 3 months from due date
- (iv) Collects any tax in contravention but fails to pay to government beyond 3 months from due date
- (v) Fails to deduct tax u/s 51 or deducts less
- (vi) Fails to collect tax u/s 52 or collects less
- (vii) Takes/utilizes ITC without actual receipt of goods/services
- (viii) Fraudulently obtains refund
- (ix) Distributes ITC in contravention of Sec. 20
- (x) Falsifies or substitutes financial records
- (xi) Fails to obtain registration when liable
- (xii) Furnishes false info. with regard to registration particulars
- (xiii) Obstructs officer on duty
- (xiv) Transports any taxable goods without the cover of documents
- (xv) Suppresses turnover
- (xvi) Fails to maintain books/documents
- (xvii) Fails to furnish information/documents
- (xviii) Supplies/ transports goods liable for confiscation
- (xix) Issues invoice using other's registration no.
- (xx) Tamper/destroy evidence/document
- (xxi) Disposes off or tempers detained, seized or attached goods.

Sec 122(1A) - Any person who retains the benefit of a transaction covered under clauses (i), (ii), (vii) or clause (ix) of sub-section (1) and at whose instance such transaction is conducted, shall be liable to a penalty of an amount equivalent to the tax evaded or input tax credit availed of or passed on. This sub-section is introduced to penalize the persons who are involved in bogus transactions.

Sec 122(2) - Where certain offences committed are not due to either fraud or wilful misstatement or suppression of facts. Penalty will get reduced to 10% of tax involved subject to a minimum of Rs. 10,000 (under CGST).

Where the offence committed is due to either fraud or any wilful misstatement or suppression of facts to evade tax. Penalty equal to tax involved subject to a minimum of Rs. 10,000 (under CGST).

Sec 122(3) - Where the person is not directly involved in any evasion but may be a party to evasion or if he does not attend summons or produce documents. Penalty in such a case would be upto Rs. 25,000 (CGST).

Penalty can be higher of Tax amount involved or Rs. 10,000 (CGST)

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Sec 122(1B) [inserted by Finance Act, 2023, w.e.f. 01.10.2023]: Any electronic commerce operator who -

- (a) allows a supply of goods or services or both through it by an unregistered person other than a person exempted from registration by a notification issued under this Act to make such supply;
- (b) allows an inter-State supply of goods or services or both through it by a person who is not eligible to make such inter-State supply; or
- (c) fails to furnish the correct details in GSTR-~~8~~⁸ of any outward supply of goods effected through it by a person exempted from obtaining registration under this Act,

shall be liable to pay a penalty of Rs. 10,000, or an amount equivalent to the amount of tax involved had such supply been made by a registered person (other than a person paying tax u/s 10), whichever is higher.

Sec. 131 : Confiscation or Penalty Not to Interfere With Other Punishments

This Section provides that in addition to confiscation of goods or penalty already imposed, all /any other proceedings may also be initiated or continued under the GST law or any other law, as applicable. This could be prosecution, arrest, cancellation of registration etc., as applicable and provided for the relevant non-compliances

Sec. 132 : Punishment of Certain Offences

➤ In this section the law makers have identified situations whereby there can be a leakage or revision of government revenue. This section enables institution of prosecution proceedings against all those persons whoever commits, or causes to commit and retain the benefits arising out of, any of the following offences:

- (a) Supply of goods/services without invoice with intend to evade tax
- (b) Issue of invoice or bill without actual supply leading to wrongful availment or utilisation of ITC or refund of tax
- (c) avails ITC on the basis of invoice or bill referred to in clause (b) or fraudulently avails ITC without any invoice or bill
- (d) Collection of taxes without payment to the government for a period beyond 3 months of due date
- (e) Evasion of tax, or obtaining refund with an intent of fraud where such offence is not covered under clause (a) to (d) above
- (f) Falsifying records/production of false documents → with intent to evade tax
- (g) ~~Obstructs or prevents any officer from doing his duties under the act~~
- (h) Acquires/ transports/ deals with goods liable for confiscation
- (i) Receives/ deals with services in contravention of this law
- (j) ~~Tampers/ destroys any material evidence or document~~
- (k) ~~Fails to supply information or supply false information~~
- (l) Attempts to commit or abets the commission of any of the offences mentioned above.

[Clauses (g), (j) & (k) omitted by Finance Act, 2023, w.e.f. 01.10.2023]

Amount of tax evaded/ erroneous refund/ wrong ITC availed or utilized	Fine	Imprisonment*
Exceeding Rs. 5 Crore	Yes	Upto 5 Yrs
Exceeding Rs. 2 crore - upto Rs. 5 Crore	Yes	Upto 3 Yrs
Exceeding Rs. 1 crore - upto Rs. 2 Crore	Yes	Upto 1 Yr
[in the case of an offence specified in clause (b)] [As amended by Finance Act, 2023, w.e.f. 01.10.2023]		

*The imprisonment referred to shall be for a **term not less than 6 months** in the absence of special and adequate reasons to the contrary to be recorded in the judgement of the court.

- If any person commits any offence specified in clause (f), (g) or (j) above, he shall be punishable with imprisonment for a term which may extend to **6 months** or with fine or with both.
- In case of **repetitive offences** - an imprisonment term of not less than 6 months which could extend to **5 years** plus with a fine.
- All offences mentioned in this section are **non-cognizable and bailable** except the following cases: Instances covered by (a) to (d) where the amount exceeds Rs. 5 Crores.
- Every prosecution proceeding requires **prior sanction of commissioner**.

Sec. 69 : Power to Arrest

- (a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable; or
- (b) when the person who made the statement is examined as a witness in the case before the court and the court is of the opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interest of justice.

Sec. 137 : Offences by Companies

This section states that where an offence is committed by companies, every person/director/manager/secretary or any other officer who at the time of commitment of the offence, was in charge of and was responsible to the company for the conduct of business of the company, as well as the company shall be deemed to be guilty of such offence and proceeded against and punished accordingly.

Where such offences are committed by the person being Partnership Firm, LLP, HUF or trust, AOP or BOI then the partner or Karta or Managing Trustee (as the case may be) shall be deemed to be guilty and liable to be proceeded against and punished.

Further if the accused person proves that he was in no way related to the offence being committed or he had exercised all possible measures to prevent commission of such offences, then he is not punishable under this section.

Sec. 138 : Compounding of Offences

1. Compounding means payment of money instead of undergoing prosecution. Any offence may be compounded by the Commissioner, either before or after the institution of prosecution, upon payment of such compounding amount.

However, the compounding of offence is not permissible in case of the following offences:

- (a) a person who has been allowed to compound once in respect of any of the offences specified in clauses (a) to (f), (h), (i) and (l) of sub-section (1) of section 132; [as amended by Finance Act, 2023, w.e.f. 01.10.2023]
- (b) ~~a person who has been allowed to compound once in respect of any offence, other than those in clause (a), under this Act or under the provisions of any SGST Act or the UTGST Act or the IGST Act in respect of supplies of value exceeding Rs-1 crore; [Omitted by Finance Act, 2023, w.e.f. 01.10.2023]~~
- (c) a person who has been accused of committing an offence under clause (b) of sub-section (1) of section 132; [as substituted by Finance Act, 2023, w.e.f. 01.10.2023]
- (d) a person who has been convicted for an offence under this Act by a court;
- (e) ~~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; [Omitted by Finance Act, 2023, w.e.f. 01.10.2023] and~~
- (f) any other class of persons or offences as may be prescribed.

Further, any compounding allowed under the provisions of this section shall not affect the proceedings, if any, instituted under any other law.

Furthermore, compounding shall be allowed only after making payment of tax, interest and penalty involved in such offences.

2. The amount for compounding of offences under this section shall be such as may be prescribed, subject to the minimum amount not being less than 25% of the tax involved and the maximum amount not being more than 100% of the tax involved [as amended by Finance Act, 2023, w.e.f. 01.10.2023].

As per Rule 162(3A), the Commissioner shall determine the compounding amount as per the Table below:-

Sl.	Offence	Compounding amount if offence is punishable u/s 132(1)(i)	Compounding amount if offence is punishable u/s 132(1)(ii)
1.	Section 132(1)(a)	Minimum 50% and Maximum	Minimum 40% and Maximum

2.	Section 132(1)(c)	75% of the amount of tax evaded or the amount of ITC wrongly availed or utilised or the amount of refund wrongly taken.	60% of the amount of tax evaded or the amount of ITC wrongly availed or utilised or the amount of refund wrongly taken.
3.	Section 132(1)(d)		
4.	Section 132(1)(e)		
5.	Section 132(1)(f)	Amount equivalent to 25% of tax evaded.	Amount equivalent to 25% of tax evaded.
6.	Section 132(1)(h)		
7.	Section 132(1)(i)		
8.	Attempt to commit the offences or abets the commission of offences mentioned in clause (a), (c) to (f) and clauses (h) and (i) of Sec. 132(1)	Amount equivalent to 25% of such amount of tax evaded or the amount of ITC wrongly availed or utilised or the amount of refund wrongly taken.	Amount equivalent to 25% of such amount of tax evaded or the amount of ITC wrongly availed or utilised or the amount of refund wrongly taken.

However, where the offence committed by the person falls under more than one category specified in the Table above, the compounding amount, in such case, shall be the amount determined for the offence for which higher compounding amount has been prescribed.

Further, the applicant shall pay the compounding amount as ordered by the Commissioner within a period of 30 days from the date of the receipt of the compounding order and shall furnish the proof of such payment to him.

- 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.

Sl.	Issues	Clarification
1.	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" u/s 7 of CGST Act and whether any demand and recovery can be made from 'A' in respect of the said transaction u/s 73 or 74 of CGST Act. Also, whether any penal action can be taken against registered person 'A' in such cases.	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 u/s 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' u/s 73 or 74 of CGST Act in respect of the same. Besides, no penal action u/s 73 or 74 is required to be taken against 'A' in respect of the said transaction. The registered person 'A' shall, however, be liable for penal action under section 122(1)(ii) of the CGST Act for issuing tax invoices without actual supply of goods or services or both.
2.	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	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

Exceptions to non-disclosure: The following details can be disclosed in the following cases :

- | | |
|---|---|
| 1 - required under other Law | 2 - for verification purposes |
| 3 - for service of notice / demand | 4 - for Civil Court / Tribunal proceeding |
| 5 - for Audit by Government | 6 - for inquiry on any GST Officer |
| 7 - to levy or realise tax / duty | 8 - to public servant |
| 9 - to conduct inquiry on professionals | 10 - to data entry agency for department |
| 11 - to Government | 12 - for publication |

Sec. 158A : Consent based Sharing of Information furnished by Taxable Person [inserted by Finance Act, 2023, w.e.f. 01.10.2023]

- (1) The following details furnished by a registered person may be shared by the common portal with such other systems as may be notified by the Government, namely :—
 - (a) particulars furnished in the application for registration under section 25 or in the return filed under section 39 or under section 44;
 - (b) the particulars uploaded on the common portal for preparation of invoice, the details of outward supplies furnished under section 37 and the particulars uploaded on the common portal for generation of documents under section 68;
 - (c) such other details as may be prescribed.
- (2) For the purposes of sharing details under sub-section (1), the consent shall be obtained, of —
 - (a) the supplier, in respect of details furnished under clauses (a), (b) and (c) of sub-section (1); and
 - (b) the recipient, in respect of details furnished under clause (b) of sub-section (1), and under clause (c) of sub-section (1) only where such details include identity information of the recipient.
- (3) Notwithstanding anything contained in any law for the time being in force, no action shall lie against the Government or the common portal with respect to any liability arising consequent to information shared under this section and there shall be no impact on the liability to pay tax on the relevant supply or as per the relevant return.

Rule 163 : Consent based sharing of information

- (1) Where a registered person opts to share the information furnished in—
 - (a) FORM GST REG-01 as amended from time to time;
 - (b) return in FORM GSTR-3B for certain tax periods;
 - (c) FORM GSTR-1 for certain tax periods, pertaining to invoices, debit notes and credit notes issued by him, as amended from time to time,
 with a requesting system referred to in section 158A(1), the requesting system shall obtain the consent of the said registered person for sharing of such information and shall communicate the consent along with the details of the tax periods to the common portal.
- (2) The registered person shall give his consent for sharing of information under clause (c) of sub-rule (1) only after he has obtained the consent of all the recipients, to whom he has issued the invoice, credit notes and debit notes during the said tax periods, for sharing such information with the requesting system and where he provides his consent, the consent of such recipients shall be deemed to have been obtained.
- (3) The common portal shall communicate the information referred to in sub-rule (1) with the requesting system on receipt from the said system-
 - (a) the consent of the said registered person, and
 - (b) the details of the tax periods or the recipients, as the case may be, in respect of which the information is required.

Note [NN. 33/2023 - Central Tax, w.e.f. 01.10.2023]: The Central Government has notified "Account Aggregator" as the systems with which information may be shared by the common portal based on consent u/s 158A of the CGST Act, 2017.

(A)

Explanation : For the purpose of this notification, "Account Aggregator" means a non-financial banking company which undertakes the business of an Account Aggregator in accordance with the policy directions issued by the RBI u/s 45JA of the RBI Act, 1934 and defined as such in the Non-Banking Financial Company - Account Aggregator (Reserve Bank) Directions, 2016.

Sec. 159 : Publication of Information in Respect of Persons in Certain Cases

- Commissioner or any other officer if of the opinion that is necessary in public interest to publish, it may cause to be published:
 - ➔ the name of any person
 - ➔ other particulars relating to any proceedings/prosecution under the Act in respect of such person in such manner as it thinks fit.
- In addition, the Competent Authority may also decide to publish the following:

Nature of Organisation	Additional Details
In case of Firm	Names of partners
In case of Company	Names of directors / Managing Agents / Secretaries and Treasurers / Managers
In case of Association of Persons	Names of the members

- However, no publications shall be made until :
 - ➔ the time for presenting an appeal to the Appellate Authority under section 107 has expired without an appeal having been presented or;
 - ➔ the appeal, if presented, has been disposed of against such persons.

Sec. 169 : Service of Notice in Certain Circumstances

1. **Communication :** Any decision, order, summons, notice or other communication under the Act or the rules.
2. **Modes of Communication :** The above documents can be served on the assessee in the following modes:
 - (a) **Mode 1 - Physical Delivery**
 - ➔ Giving or tendering it directly or
 - ➔ Delivery through a messenger including a courier
 - ➔ The documents can be delivered to:
 - (i) The addressee/the taxpayer/to his manager
 - (ii) The agent duly authorized/an advocate/a tax practitioner (who holds authority to appear in the proceeding on behalf of the taxpayer)
 - (iii) A person regularly employed by him in connection with the business
 - (iv) Any adult member of family residing with the taxpayer or
 - (b) **Mode 2 - Regd. Post /speed post or Courier with acknowledgement due:** It should be sent to intended person or his authorised representative at his last known place of business or residence.

Latest Selected Circulars issued under GST

Clarification on taxability of shares held in a subsidiary company by the holding company [Circular No. 196/08/2023 – GST, dated 17.07.2023]

Issue: Whether the activity of holding shares by a holding company of the subsidiary company will be treated as a supply of service or not and whether the same will attract GST or not.

Clarification: Securities are considered neither goods nor services under GST. Further, purchase or sale of shares or securities, in itself is neither a supply of goods nor a supply of services. Therefore, the activity of holding of shares of subsidiary company by the holding company per se cannot be treated as a supply of services by a holding company to the said subsidiary company and cannot be taxed under GST.

Clarification regarding applicability of GST on certain services [Circular No. 201/13/2023 – GST, dated 01.08.2023]

Clarification 1: Services supplied by a director of a company or body corporate to the company or body corporate in his private or personal capacity such as services supplied by way of renting of immovable property to the company or body corporate are not taxable under RCM. Only those services supplied by director of company or body corporate, which are supplied by him as or in the capacity of director of that company or body corporate shall be taxable under RCM in the hands of the company or body corporate.

Clarification 2: Supply of food or beverages in a cinema hall is taxable as 'restaurant service' as long as:

- a. the food or beverages are supplied by way of or as part of a service, and
- b. supplied independent of the cinema exhibition service.

It is further clarified that where the sale of cinema ticket and supply of food and beverages are clubbed together, and such bundled supply satisfies the test of composite supply, the entire supply will attract GST at the rate applicable to service of exhibition of cinema, the principal supply.

Clarification on issues pertaining to taxability of personal guarantee and corporate guarantee in GST [Circular No. 204/16/2023 – GST, dated 27.10.2023]

Issue 1: Whether the activity of providing personal guarantee by the Director of a company to the bank/ financial institutions for sanctioning of credit facilities to the said company without any consideration will be treated as a supply of service or not and whether the same will attract GST or not.

Clarification:

1. As per Explanation (a) to section 15 of CGST Act, the director and the company are to be treated as related persons. As per section 7(1)(c) of the CGST Act, 2017, read with S. No. 2 of Schedule I of CGST Act, supply of goods or services or both between related persons, when made in the course or furtherance of business, shall be treated as supply even if made without consideration. Accordingly, the activity of providing personal guarantee by the Director to the banks/ financial institutions for securing credit facilities for their companies is to be treated as a supply of service, even when made without consideration.
2. Rule 28 of CGST Rules prescribes value of the supply between related parties, which is the open market value of such supply.
3. As per mandate provided by RBI, no consideration by way of commission, brokerage fees or any other form, can be paid to the director by the company, directly or indirectly, in lieu of providing personal guarantee to the bank for borrowing credit limits.

4. Therefore, there is no question of such supply/ transaction having any open market value. Accordingly, the open market value of the said transaction/ supply may be treated as zero and therefore, no tax is payable on such supply of service by the director to the company.

Issue 2: Whether the activity of providing corporate guarantee by a person on behalf of another related person, or by the holding company for sanction of credit facilities to its subsidiary company, to the bank/ financial institutions, even when made without any consideration will be treated as a taxable supply of service or not, and if taxable, what would be the valuation of such supply of services.

Clarification:

- Where the corporate guarantee is provided by a company (say, holding company) to the bank/ financial institutions for providing credit facilities to the other company (say, subsidiary company), where both the companies are related, the activity is to be treated as a supply of service between related parties as per provisions of Schedule I of CGST Act, even when made without any consideration.
- The taxable value of such supply of services, will be determined as per the provisions of the sub-rule (2) of Rule 28 of CGST Rules, irrespective of whether full ITC is available to the recipient of services or not.

Clarification on availability of ITC in respect of warranty replacement of parts and repair services during warranty period [Circular No. 195/07/2023 - GST, dated 17.07.2023]

S.N.	Issue	Clarification
1	Whether GST would be payable on such replacement of parts or supply of repair services by original equipment manufacturer, without any consideration from the customer, as part of warranty?	The value of original supply of goods (provided along with warranty) by the manufacturer to the customer includes the likely cost of replacement of parts and / or repair services to be incurred during the warranty period, on which tax would have already been paid at the time of original supply of goods. Therefore, no further GST is chargeable on such replacement of parts and/ or repair service during warranty period. However, if any additional consideration is charged by the manufacturer from the customer, either for replacement of any part or for any service, then GST will be payable on such supply with respect to such additional consideration.
2	Whether in such cases, the manufacturer is required to reverse the ITC in respect of such replacement of parts or supply of repair services as part of warranty, in respect of which no additional consideration is charged from the customer?	In such cases, the value of original supply of goods (provided along with warranty) by the manufacturer to the customer includes the likely cost of replacement of parts and/ or repair services to be incurred during the warranty period. Therefore, these supplies cannot be considered as exempt supply and accordingly, the manufacturer is not required to reverse the ITC in respect of the said replacement parts or on the repair services provided.
3	Whether GST would be payable on replacement of parts and/ or repair services provided by a distributor without any consideration from the customer, as part of warranty on behalf of the manufacturer?	In such cases, as no consideration is being charged by the distributor from the customer, no GST would be payable by the distributor on the said activity of providing replacement of parts and/ or repair services to the customer. However, if any additional consideration is charged by the distributor from the customer, either for replacement of any part or for any service, then GST will be payable on such supply with respect to such additional consideration.
4	In the above scenario where the distributor provides replacement of parts to the customer as part of warranty on behalf of the manufacturer, whether any supply is	a. There may be cases where the distributor replaces the part(s) to the customer under warranty either by using his stock or by purchasing from a third party and charges the consideration for the part(s) so replaced from the manufacturer, by issuance of a tax invoice, for the said supply made by him to the manufacturer. In such a case, GST

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	<p>involved between the distributor and the manufacturer and whether the distributor would be required to reverse the ITC in respect of such replacement of parts?</p>	<p>would be payable by the distributor and the manufacturer would be entitled to avail the ITC of the same. In such case, no reversal of ITC by the distributor is required in respect of the same.</p> <p>b. There may be cases where the distributor raises a requisition to the manufacturer for the part(s) to be replaced by him under warranty and the manufacturer then provides the said part(s) to the distributor for the purpose of such replacement to the customer as part of warranty.</p> <p>In such a case, where the manufacturer is providing such part(s) to the distributor for replacement to the customer during the warranty period, without separately charging any consideration at the time of such replacement, no GST is payable on such replacement of parts by the manufacturer. Further, no reversal of ITC is required to be made by the manufacturer in respect of the parts so replaced by the distributor under warranty.</p> <p>c. There may be cases where the distributor replaces the part(s) to the customer under warranty out of the supply already received by him from the manufacturer and the manufacturer issues a credit note in respect of the parts so replaced subject to provisions of section 34(2) of the CGST Act. Accordingly, the tax liability may be adjusted by the manufacturer, subject to the condition that the said distributor has reversed the ITC availed against the parts so replaced.</p>
<p>5</p>	<p>Where the distributor provides repair service, in addition to replacement of parts or otherwise, to the customer without any consideration, as part of warranty, on behalf of the manufacturer but charges the manufacturer for such repair services either by way of issue of tax invoice or a debit note, whether GST would be payable on such activity by the distributor?</p>	<p>Yes, GST would be payable on such provision of service by the distributor to the manufacturer and the manufacturer would be entitled to avail the ITC of the same.</p>
<p>6</p>	<p>Sometimes companies provide offers of Extended warranty to the customers which can be availed at the time of original supply or just before the expiry of the standard warranty period. Whether GST would be payable in both the cases?</p>	<p>a. If a customer enters in to an agreement of extended warranty with the manufacturer at the time of original supply, then the consideration for such extended warranty becomes part of the value of the composite supply, the principal supply being the supply of goods, and GST would be payable accordingly.</p> <p>b. However, in case where a consumer enters into an agreement of extended warranty at any time after the original supply, then the same is a separate contract and GST would be payable by the service provider, whether manufacturer or the distributor or any third party, depending on the nature of the contract (i.e. whether the extended warranty is only for goods or for services or for composite supply involving goods and services)</p>

Clarification regarding taxability of services provided by an office of an organisation in one State to the office of that organisation in another State, both being distinct persons [Circular No. 199/11/2023 – GST, dated 17.07.2023]

S.N.	Issues	Clarification
<p>1.</p>	<p>Whether HO can avail the ITC in respect of common input services procured from a</p>	<p>HO has an option to distribute ITC in respect of such common input services by following ISD mechanism. It is not</p>

	third party but attributable to both HO and BOs or exclusively to one or more BOs, issue tax invoices u/s 31 to the said BOs for the said input services and the BOs can then avail the ITC for the same or whether is it mandatory for the HO to follow the Input Service Distributor ('ISD') mechanism for distribution of ITC in respect of common input services procured by them from a third party but attributable to both HO and BOs or exclusively to one or more BOs?	mandatory to distribute such ITC by ISD mechanism. HO can also issue tax invoices u/s 31 of CGST Act to the concerned BOs in respect of common input services procured from a third party by HO but attributable to the said BOs and the BOs can then avail ITC on the same.
2.	Whether the HO is mandatorily required to issue invoice to BOs for internally generated services, and/or whether the cost of all components including salary cost of HO employees involved in providing the said services has to be included in the computation of value of services provided by HO to BOs when full ITC is available to the concerned BOs.	In cases where full ITC is available to a BO, the value declared on the invoice by HO to the said BO in respect of a supply of services shall be deemed to be the open market value of such services, irrespective of the fact whether cost of any particular component of such services, like employee cost etc., has been included or not in the value of the services in the invoice (2 nd proviso to rule 28). Further, in such cases where full ITC is available to the recipient, <u>if HO has not issued a tax invoice to the BO</u> in respect of any particular services being rendered by HO to the said BO, the <u>value</u> of such services may be deemed to be declared as <u>NIL</u> by HO to BO, and may be deemed as open market value in terms of second proviso to rule 28.
3.	In respect of internally generated services provided by the HO to BOs, in cases where full ITC is not available to the concerned BOs, whether the cost of salary of employees of the HO involved in providing said services to the BOs, is mandatorily required to be included while computing the taxable value of the said supply of services provided by HO to BOs.	Such costs are <u>not mandatorily</u> required to be included while computing the taxable value of the supply of such services, even in cases where full ITC is not available to the concerned BO.

Clarification relating to Export of Services – Section 2(6)(iv) of the IGST Act 2017 [Circular No. 202/14/2023 – GST, dated 27.10.2023]

Issue: Various representations have been received requesting for clarification regarding admissibility of export remittances received in Special INR Vostro account, as permitted by RBI, for the purpose of consideration of supply of services to qualify as export of services [Sec. 2(6)(iv) of IGST Act].

Clarification: It is clarified that when the Indian exporters, undertaking export of services, are paid the export proceeds in INR from the Special Rupee Vostro Accounts of correspondent bank(s) of the partner trading country, opened by Authorised Dealer (AD) banks, the same shall be considered to be fulfilling the conditions of sec. 2(6)(iv) of IGST Act.

Clarification regarding determination of Place of Supply in various cases [Circular No. 203/15/2023 - GST, dated 27.10.2023]

Matter 1: Place of supply in case of supply of service of transportation of goods, including through mail and courier

Issue: Sub-section (9) of section 13 of IGST Act has been omitted vide section 162 of Finance Act, 2023 w.e.f. 01.10.2023. After the said amendment, doubts have been raised as to whether the place of supply in case of service of transportation of goods, including through mail and courier, in cases where location of supplier of services or location of recipient of services is outside India, will be determined as per sub-section (2) of section 13 of IGST Act or will be determined as per sub-section (3) of section 13 of IGST Act.

Clarification: The place of supply of services of transportation of goods, other than through mail and courier, will be determined by the default rule u/s 13(2) of IGST Act and not as performance based services u/s 13(3) of IGST Act.

Further, the place of supply in case of service of transportation of goods by mail or courier will continue to be determined by the default rule under section 13(2) of IGST Act.

Matter 2: Place of supply in case of supply of services in respect of advertising sector

Issue: Advertising companies are often involved in procuring space on hoardings/ bill boards erected and mounted on buildings/land, in different States, from various suppliers ("vendors") for providing advertisement services to its corporate clients. There may be variety of arrangements between the advertising company and its vendors as below:

Case 1: There may be a case wherein there is supply (sale) of space or supply (sale) of rights to use the space on the hoarding/ structure (immovable property) belonging to vendor to the client/advertising company for display of their advertisement on the said hoarding/ structure. What will be the place of supply of services provided by the vendor to the advertising company in such case?

Case 2: There may be another case where the advertising company wants to display its advertisement on hoardings/ billboards at a specific location availing the services of a vendor. The responsibility of arranging the hoardings/ bill boards lies with the vendor who may himself own such structure or may be taking it on rent or rights to use basis from another person. The vendor is responsible for display of the advertisement of the advertising company at the said location. During this entire time of display of the advertisement, the vendor is in possession of the hoarding/structure at the said location on which advertisement is displayed and the advertising company is not occupying the space or the structure. In this case, what will be the place of supply of such services provided by the vendor to the advertising company?

Clarification:

Place of supply in Case 1: The hoarding/structure erected on the land should be considered as immovable structure or fixture as it has been embedded in earth. Further, place of supply of any service provided by way of supply (sale) of space on an immovable property or grant of rights to use an immovable property shall be governed by the provisions of section 12(3)(a) of IGST Act. Therefore, the place of supply of service provided by way of supply of sale of space on hoarding/ structure for advertising or for grant of rights to use the hoarding/ structure for advertising in this case would be the location where such hoarding /structure is located.

Place of supply in Case 2: In this case, as the service is being provided by the vendor to the advertising company and there is no supply (sale) of space/ supply (sale) of rights to use the space on hoarding/structure (immovable property) by the vendor to the advertising company for display of their advertisement on the said display board/structure, the said service does not amount to sale of advertising space or supply by way of grant of rights to use immovable property. Accordingly, the place of supply of the same shall not be covered under section 12(3)(a) of IGST Act. Vendor is in fact providing advertisement services by providing visibility to an advertising company's advertisement for a specific period of time on his structure possessed/taken on rent by him at the specified location. Therefore, such services provided by the Vendor to advertising company are purely in the nature of advertisement services in respect of which Place of Supply shall be determined in terms of Section 12(2) of IGST Act.

Matter 3: Place of supply in case of supply of the "co-location services"

ICAI - X

Issue: Co-location is a data center facility in which a business/company can rent space for its own servers and other Computing hardware along with various other bundled services related to Hosting and information technology (IT) infrastructure.

A business/company who avails the co-location services primarily seek security and up keep of its server/s, storage and network hardware; operating systems, system software and may require to interact with the system through a web-based interface for the hosting of its websites or other applications and operation of the servers.

In this respect, various doubts have been raised as to

- i. whether supply of co-location services are renting of immovable property service (as it involves renting of space for keeping /storing company's hardware/servers) and hence the place of supply of such services is to be determined in terms of provision of clause (a) of sub-section (3) of Section 12 of the IGST Act which is the location where the immovable property is located; or

- ii. whether the place of supply of such services is to be determined by the default place of supply provision under sub-section (2) of section 12 of the IGST Act as the supply of service is Hosting and Information Technology (IT) Infrastructure Provisioning services involving providing services of hosting the servers and related hardware, security of the said hardware, air conditioning, uninterrupted power supply, fire

Clarification:

3.1 It is clarified that the Co-location services are in the nature of "Hosting and information technology (IT) infrastructure provisioning services" (S.No. 3 of Explanatory notes of SAC- 998315). Such services do not appear to be limited to the passive activity of making immovable property available to a customer as the arrangement of the supply of co-location services not only involves providing of a physical space for server/network hardware along with air conditioning, security service, fire protection system and power supply but it also involves the supply of various services by the supplier related to hosting and information technology infrastructure services like network connectivity, backup facility, firewall services, and monitoring and surveillance service for ensuring continuous operations of the servers and related hardware, etc. which are essential for the recipient business/company to interact with the system through a web based interface relating to the hosting and operation of the servers.

3.2 In such cases, supply of co-location services cannot be considered as the services of supply of renting of immovable property. Therefore, the place of supply of the co-location services shall not be determined by the provisions of clause (a) of sub-section (3) of Section 12 of the IGST Act but the same shall be determined by the default place of supply provision under sub-section (2) of Section 12 of the IGST Act i.e. location of recipient of co-location service.

3.3 However, in cases where the agreement between the supplier and the recipient is restricted to providing physical space on rent along with basic infrastructure, without components of Hosting and Information Technology (IT) Infrastructure Provisioning services and the further responsibility of upkeep, running, monitoring and surveillance, etc. of the servers and related hardware is of recipient of services only, then the said supply of services shall be considered as the supply of the service of renting of immovable property. Accordingly, the place of supply of these services shall be determined by the provisions of clause (a) of sub-section (3) of Section 12 of the IGST Act which is the location where the immovable property is located.

Ethical Aspects under GST

Meaning of Ethics

Ethics provides a framework for distinguishing between right and wrong, guiding decision-making, and determining what is considered morally acceptable in a given context.

Ethics are fundamental to the effective functioning of any taxation system; this also holds true for the GST regime in India. Ethical conduct contributes to increased regulatory compliance and reduced tax evasion which in turn leads to increased Government revenue collection.

Unethical practices like issuing bogus invoice without underlying supply, wrongful availment of ITC, etc. not only undermine the tax revenues, but also create an uneven playing field for honest taxpayers. Ethical behavior may also reduce tax-related disputes and litigations.

Role of Chartered Accountant in ensuring ethics under GST

The professional behaviour of a Chartered Accountant is governed by a set of ethical guidelines and principles - known as Code of Ethics - laid down by the ICAI. Every Chartered Accountant has to abide by this code of ethics.

The fundamental principles are: integrity, objectivity, professional competence and due care, confidentiality, and professional behaviour.

A Chartered Accountant in practice would be deemed to be guilty of professional misconduct under clause (7) of Part I of the Second Schedule to the CA Act, 1949, if he does not exercise due diligence, or is grossly negligent in the conduct of his professional duties. Further, as per clause (8) of Part I of the Second Schedule to the CA Act, 1949, a chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he fails to obtain sufficient information which is necessary for expression of an opinion or its exceptions are sufficiently material to negate the expression of an opinion.

Chartered Accountants play a crucial role in ensuring GST compliance within their clients' organizations. This involves assisting in the process of obtaining registration, structuring the transactions and conditions stipulated in agreements for making /receiving supply, optimizing tax positions, ensuring the necessary GST compliances including e-way bill, payment of taxes, TDS/TCS compliances, compliances with anti-profiteering provisions and timely filing of periodic returns.

Generally, Chartered Accountants are responsible for ensuring the maintenance of accurate and detailed records of all GST-related transactions. This includes invoices, receipts, and other relevant documents. Such meticulous record-keeping is a legal requirement as well as an ethical duty of the Chartered Accountant.

Another major responsibility of a Chartered Accountant in the realm of GST is to act as a tax advisor to their clients. This entails a comprehensive understanding of the client's business operations and goals.

A Chartered Accountant, who holds a certificate of practice and who has not been debarred from practice, can also appear on behalf of his client before a GST officer, GST Appellate Authority or GST Appellate Tribunal in connection with any proceedings under GST law, as an authorised representative of the client.

Furthermore, Chartered Accountants play a vital role in the GST ecosystem by providing certifications that affirm compliance with GST laws and regulations. These certifications are mandatory in specific situations and are required to ensure compliance with GST regulations.

They primarily aim at curbing the unethical practices and preventing the leakage of revenue. Thus, it is the duty of every Chartered Accountant to exercise utmost care and due diligence while granting these certifications.

While providing said certification, the Chartered Accountant has to comply with the ethical requirements of the Code of Ethics issued by the ICAI, the relevant applicable requirements of the Standard on Quality Control (SQC - 1), Quality Control for Firms that Perform Audits and Reviews of Historical Financial Information, and Other Assurance and Related Services Engagements.

The certifications/reports required to be furnished by a Chartered Accountant under GST law have been explained in detail hereunder:

Certifications/reports to be furnished by a Chartered Accountant required under the GST law

1. Certification of the amount of ITC claimed at the time of registration/voluntary registration or switching to regular tax paying status or coming into tax-paying status [Sub-section (1) of section 18 read with rule 40]

In these cases, the registered person has to make an electronic declaration in Form ITC-01 on the common portal, clearly specifying the details relating to the inputs held in stock, inputs contained in semi-finished or finished goods held in stock and capital goods. The declaration is to be filed within 30 days (extendable by Commissioner) from the date when the registered person becomes eligible to avail ITC. If the claim of ITC pertaining to CGST, SGST/UTGST, IGST put together exceeds Rs. 2,00,000, the declaration needs to be certified by a practicing Chartered Accountant or Cost Accountant.

A Chartered Accountant is required to examine the books of accounts and other relevant documents / records of the taxpayer and to provide a reasonable assurance that the amounts declared in the Form GST ITC- 01 have been accurately drawn from the books of accounts and other relevant documents / records of the taxpayer and is claimed as ITC.

2. Certification of the amount of ITC to be reversed on cancellation of registration or on switching to composition levy/exit from tax-paying status, in respect of inputs for which tax invoices are not available [Section 29(5)/section 18(4) read with rule 44(5)]

Section 29(5) requires reversal of ITC on cancellation of registration of a registered person. Similarly, section 18(4) requires reversal of ITC when a registered person who has availed ITC switches to composition levy or when his supplies get wholly exempted from tax.

ITC on inputs should be reversed proportionately on the basis of corresponding invoices on which credit had been availed on such inputs. If invoices are not available, ITC can be reversed on the basis of the prevailing market price of such goods on the date of switch over/exemption/cancellation of registration. The details so furnished on the basis of prevailing market value need to be duly certified by a practicing Chartered Accountant or Cost Accountant.

The certification by the Chartered Accountant should be based on meticulous examination of the books of accounts and other relevant documents / records of the taxpayer thereby providing a reasonable assurance as regards the correctness of the quantum of the amount of ITC to be reversed in case where the tax invoices related to the inputs held in stock are not available.

3. Certification that the sale, merger, demerger, amalgamation, lease or transfer of business done with a specific provision for the transfer of liabilities [Section 18(3) read with rule 41]

In case of sale, merger, demerger, amalgamation, transfer or change in ownership of business etc., the ITC that remains unutilized in the electronic credit ledger of the registered person can be transferred to the new entity, provided there is a specific provision for transfer of liabilities in such change of constitution. The registered person should furnish the details of change in constitution in Form ITC - 02 on the common portal. Further, he needs to submit a certificate from practicing Chartered Accountant or Cost Accountant certifying that the change in constitution has been done with a specific provision for transfer of liabilities.

A Chartered Accountant is required to examine the books of accounts and other relevant documents / records of the taxpayer and to provide a reasonable assurance that the sale, merger, demerger, amalgamation, lease or transfer or business has been done with a specific provision for the transfer of liabilities.

4. Certification that in case of refund claim exceeding Rs. 2 lakh by the applicant, there is no unjust enrichment [Section 54 read with rule 89(2)(m)]

A certificate in Annexure 2 of Form GST RFD-01 is to be issued by a Chartered accountant or Cost Accountant to the effect that the incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person (i.e., there is no unjust enrichment in the case of the applicant) in a case where the amount of refund claimed exceeds Rs. 2 lakh.

The certification by the Chartered Accountant should be based on meticulous examination of the books of accounts and other relevant documents / records supporting the refund claim thereby providing a reasonable assurance that the incidence of tax, interest or any other amount claimed as refund, has not been passed on to any other person.

5. Audit report under section 66 [Special Audit]

Section 66 provides that if at any stage of scrutiny, inquiry, investigation or any other proceedings before him, any officer not below the rank of Assistant Commissioner, having regard to the nature and complexity of the case and the interest of revenue, is of the opinion that -

- The value (of goods and/or services) has not been correctly declared; or
- The credit availed is not within the normal limits,

he may, with the prior approval of the Commissioner, issue a direction to the registered person to get his records including books of account examined and audited by a Chartered Accountant or a Cost Accountant as may be nominated by the Commissioner and specified in the said direction.

A Chartered Accountant must approach the Special Audit with an unbiased and impartial mindset, free from any external influences or conflicts of interest. This ensures that the audit findings are based on factual evidence and professional judgment, rather than personal biases. He should first go through the terms of reference provided by the GST authorities to understand the scope and objectives of the special audit. This document outlines the specific areas and tax periods to be audited. He should conduct a comprehensive review of all relevant documents, including financial statements, invoices, transaction records, and any other documentation provided by the taxpayer. This ensures that the audit findings are based on accurate and reliable information. He should take steps to identify and mitigate any potential conflicts of interest that may arise during the special audit. This includes refraining from engaging in any activities or relationships that could compromise their objectivity or independence. If a conflict of interest does arise, it should be promptly disclosed to the relevant parties.

6. Apart from the aforesaid specific roles defined in the GST Law for Chartered Accountants, there may be specific scenarios where the attested documents, certificates issued by the Chartered Accountants are relied during the proceedings under GST Law by the tax authorities and also judicial forums, as a general practice while dealing with the GST Law related disputes.

**"Don't limit your challenges,
challenge your limits."**

- (ii) Article imported from the member country of the **World Trade Organisation** or from a country with whom Government of India has a **most favoured nation agreement** unless a determination has been made that import of such article into India causes or threatens material injury to any established industry in India or materially retards the establishment of any industry in India.
- (iii) Articles that enjoys exemptions from duties or taxes or refund of duties or taxes when meant for **consumption in the country of origin or exportation**.
- (iv) The provisional countervailing and anti-dumping duties shall not be levied on any **article imported from specified countries** unless preliminary findings have been made of subsidy or dumping and consequent injury to domestic industry and a further determination has also been made that a duty is necessary to prevent injury being caused during the investigation.
- (v) Where CG receives an **undertaking from the Government of the exporting country** to eliminate or limit the subsidy or take other measures to revise the price of the article.
- (vi) Where CG receives an **undertaking from the exporter** to revise its price or to cease the exports to the area at dumped price.

■ Appeal [Sec. 9C]

(A)

- (1) An appeal against the **order-of** imposing / reviewing thereof shall lie to the CESTAT, in respect of the existence, degree and effect of—
 - (i) any subsidy or dumping in relation to import of any article; or
 - (ii) import of any article into India in such increased quantities and under such condition so as to cause or threatening to cause serious injury to domestic industry requiring imposition of safeguard duty in relation to import of that article.
- (2) Every appeal under this section shall be filed **within 90 days** (plus extension allowed by CESTAT) of the date of **determination or review** under appeal.

(A)

Explanation.— For the purposes of this section, "determination" or "review" means the determination or review done in such manner as may be specified in the rules made under sections 8B, 9, 9A and 9B [Sec. 9C, as amended by Finance Act, 2023, retrospectively w.e.f. 01.01.1995].

Mode of Calculation of Additional Duty of Customs u/s 3(7) and 3(9)

Assessable value	(A)	Xx
Add : BCD and other duties [See note (i)]	(B)	Xx
Add : Social welfare surcharge on customs duty [10% of (B)]	(C)	Xx
<i>Value for the purposes of levy of additional duty of customs [A + B + C]</i>	(D)	Xx
Add : ACD u/s 3(7) of CTA i.e. IGST computed on [D] above	(E)	Xx
Add : ACD u/s 3(9) of CTA i.e. GST Compensation Cess computed on (D) above	(F)	Xx
<i>Total cost of imported goods [D + E + F]</i>	(G)	Xx

Project Imports, Eligible Projects and Minimum Investment Criteria

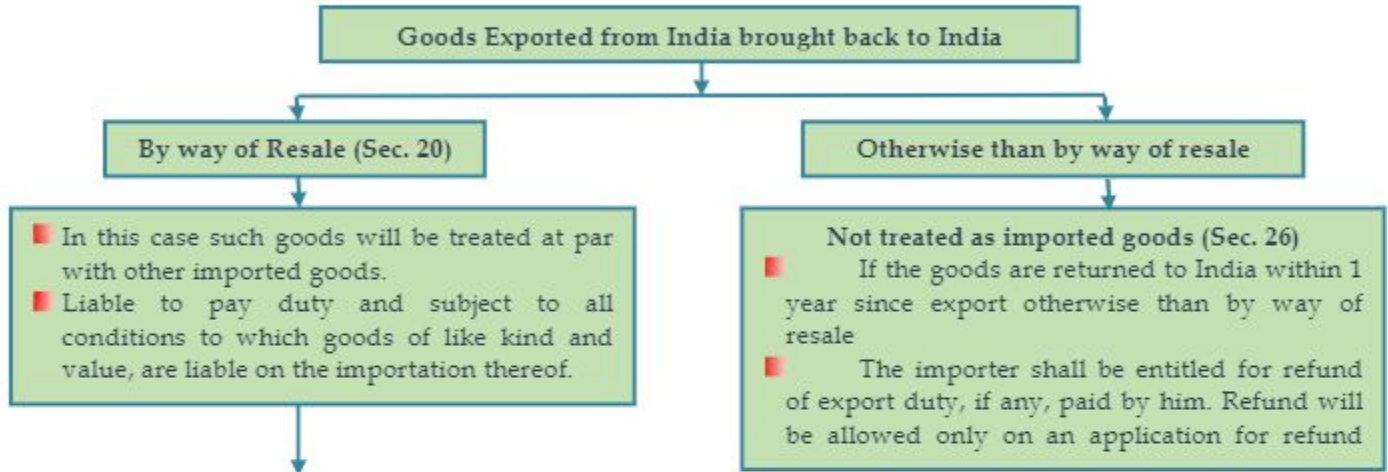
A new Tariff item under the **Heading 9801** has been incorporated in the Customs Tariff Act, 1975 covering all machinery, instruments, apparatus and appliances etc., which are utilized for initial setting up of project or substantial expansion of the existing project (i.e. increase in installed capacity by more than 25%). Spares etc. essential for maintenance of plant or a project are eligible only upto 10% of the value of goods and can be imported under project imports.

Eligible projects: The eligible projects are industrial plants, irrigation power, mining projects, oil and other mineral exploration projects and any other project notified by the CG.
There is no minimum investment criterion for the purpose.

Section 24 : Denaturing of Goods or Mutilation of Goods

(E.g. Alcohol or spirit)

- “Denature” means to have essential nature of things changed or to render the product permanently unfit for human consumption.
- “Mutilation” means something less than total destruction.
- This Section authorizes the CG to make rules for Denaturing of the goods.
- The rules provide that on an application of the importer, the customs officer will mix the prescribed substance in prescribed quantity so that the goods remain capable of a particular use only.
- After denaturing, the duty will be chargeable according to the nature of the goods.



Re-imports are entitled for following concessions as have been notified by the Government:

S.N	Condition	Importer will be liable to pay customs duties equal to
1.	Goods exported under claim of duty drawback, refund of IGST paid on export goods or under bond without payment of IGST, etc. and re-imported within 3 years (extendable to 5 years) without being re-manufactured/re-processed through melting, recycling or recasting abroad.	The amount of benefit availed when the goods were exported.
1A.	Goods exported under claim for RoDTEP (Remission of Duties and Taxes on Exported Products) or RoSCTL (Rebate of State and Central Taxes and Levies as notified by the Ministry of Textiles) under Foreign Trade Policy and re-imported within 3 years (extendable to 5 years) without being re-manufactured/re-processed through melting, recycling or recasting abroad.	Amount of RoDTEP or RoSCTL allowed at the time of export. [inserted by NN 46/2023 - Cus, w.e.f. 27.07.2023]
2.	Goods exported under duty exemption scheme (DEEC / Advance Authorisation / DFIA) or Export Promotion Capital Goods Scheme (EPCG) and re-imported within 1 year (extendable to 2 years) without being re-manufactured/re-processed through melting, recycling or recasting abroad.	Amount of IGST and Compensation Cess leviable at the time and place of importation of goods subject to specified conditions.
3.	Goods exported for repairs abroad and re-imported by the same person within 3 years (extendable to 5	Duty, tax or cess leviable on a value = Fair cost of repairs carried out including cost of materials used in

Explanation : For the purpose of this notification :

- (i) AEO means Authorised Economic Operator;
- (ii) Authorised Public Undertaking means Authorised Public Undertaking, approved by the Directorate of International Customs under the Central Board of Indirect Taxes and Customs.

■ **Sec. 47(2): The importer shall pay the import duty -**

- (a) on the date of presentation of the bill of entry, in the case of self-assessment; or
- (b) within one day (excluding holidays) from the date on which the bill of entry is returned to him.

■ If assessee fails to pay the duty within the time so specified, he shall pay interest, at rate, not less than 10% but not exceeding 36%, as fixed by CG (at present, 15% p.a.).

■ **Deferred Payment of Import Duty Rules, 2016**

Due dates for deferred payment of import duty [Rule 4] :

Sr. No.	Goods corresponding to bill of entry returned for payment from	Due date of payment of duty, inclusive of the period (excluding holidays) as mentioned in section 47(2)
1	1 st day to 15 th day of any month	16 th day of that month
2	16 th day till the last day of any month other than march	1 st day of the following month
3	16 th day till the 31 st day of march	31 st march

A However, the Central Government may, under exceptional circumstances, and for reasons to be recorded in writing, allow payment to be made on a different due date. [Proviso inserted by NN 58/2023 - Customs (N.T.), w.e.f. 03.08.2023]

The eligible importer shall pay the duty electronically.

If there is default in payment of duty by due date more than once in 3 consecutive months, this facility of deferred payment will not be allowed unless the duty with interest has been paid in full.

A However, the eligible importer shall be permitted to make the deferred payment if he has-

1. paid the duty for a bill of entry within due date in terms of rule 4; and
2. paid the differential duty for the same bill of entry along with the interest on account of reassessment within 1 day (excluding holidays).

[Proviso inserted by NN 58/2023 - Customs (N.T.), w.e.f. 03.08.2023]

The benefit of deferred payment of duty will not be available in respect of the goods which have not been assessed or not declared by the importer in the Bill of Entry.

■ **The following classes of importers shall pay Customs duty electronically :**

- (i) Importers registered under Authorised Economic Operator Programme.
- (ii) Importers paying customs duty of Rs. 10,000/- or more per BOE.

The dedicated payment gateway set up by the Board is called 'ICEGATE'. [Indian Customs Electronic Commerce / Electronic Data Interchange (EC/EDI) Gateway]

■ For Clearances of Goods for Home Consumption "Out of Customs Charge order" is passed.

■ If the Goods are not removed **within 30 days** since unloading then **demurrage** becomes payable.

Section 51A : Payments Through Electronic Cash Ledger

A new system to leverage payments-automation is enabled in Customs clearance (imports or exports) by way of insertion of section 51A. It provides for advance deposit which would enable payment of duties, taxes, fee, interest, and penalty through electronic cash ledger. This is a welcome measure that will avoid delays in payment of duty or amounts being transferred to CHA towards payment of duty. With this ECL, money can be transferred in advance and appropriated in respect of each demand.

With the use of an authorized mode of payment, persons who regularly make payment of duty, interest and even penalty, if any, are permitted to 'deposit' a certain amount of money. And then when the occasion to make payment arises, they can pay by debit to the balance in this deposit account (electronic cash ledger balance). Person who may be required to regularly make payment are importer, exporter (of dutiable goods) or Customs Brokers.

- (1) Every deposit made towards duty, interest, penalty, fee or any other sum payable by a person under the provisions of this Act or under the Customs Tariff Act, 1975 or under any other law for the time being in force or the rules and regulations made thereunder, using authorised mode of payment shall, subject to such conditions and restrictions, be credited to the electronic cash ledger of such person, to be maintained in such manner, as may be prescribed.
- (2) The amount available in the electronic cash ledger may be used for making any payment towards duty, interest, penalty, fees or any other sum payable under the provisions of this Act or under the Customs Tariff Act, 1975 or under any other law for the time being in force or the rules and regulations made thereunder in such manner and subject to such conditions and within such time as may be prescribed.
- (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.

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 31.03.2023. [NN 47/2022 - Cus (N.T.), dated 31.05.2022, as amended by NN 98/2022 - Cus (N.T.), dated 29.11.2022]

Specified deposits exempted from provisions of Electronic Cash Ledger [NN. 19/2022 - Cus (N.T.), dated 30.03.2022, NN 99/2022 - Cus (N.T.), dated 29.11.2022, NN 18/2023 - Cus (N.T.), dated 30.03.2023, NN 19/2023 - Cus (N.T.), dated 30.03.2023, NN 30/2023 - Cus (N.T.), dated 26.04.2023, NN 31/2023 - Cus (N.T.), dated 26.04.2023, NN 48/2023 - Cus (N.T.), dated 30.06.2023, NN 49/2023 - Cus (N.T.), dated 30.06.2023, NN 69/2023 - Cus (N.T.), dated 27.09.2023, NN 70/2023 - Cus (N.T.), dated 27.09.2023]

The CBIC has exempted following deposits from all of the provisions of Sec. 51A (i.e. exempted from payment through electronic cash ledger):

- (i) deposits with respect to goods imported or exported in customs stations where customs automated system is not in place;
- (ii) deposits with respect to goods imported or exported in International Courier Terminals [exempted only till 30.11.2023] (In other words, payments relating to Courier shipments would be required to be done through ECL from 01.12.2023 onwards);
- (iii) deposits with respect to accompanied baggage;
- (iv) deposits other than those used for making electronic 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 Customs Act, or the Customs Tariff Act, 1975.

Section 51B : Electronic Duty Credit Ledger

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, -

Chapter

32

Exemptions, Refunds
And Audit

Section 25 : EXEMPTIONS

- The CG has power to exempt any goods from Customs duty, if it is required in public interest.
- Exemptions may be partial or full.
- Exemption may be conditional or unconditional.
- By issue of notification in Official Gazette - Any eligible assessee can avail exemption. Where goods are FULLY exempted UNCONDITIONALLY, the assessee SHALL not pay any duty.
- **By an order** - Only under exceptional circumstances. CG may pass special order of exemption. Exemption is valid only for respective assessee.
- The CG may add a **Clarification** in the notification or order within 1 year since issue of notification or order.
- No Customs Duty shall be collected if the amount of duty leviable is equal to or less than Rs. 100/-.
- Exemption from duty on smuggled goods is not available. However, if the Customs Tariff Act provides for 'NIL' rate of duty then, no duty can be charged even on the smuggled goods.
- **Sec. 25(4A)**: Where any conditional exemption is granted, such exemption shall, unless otherwise specified or varied or rescinded, be valid upto 31st day of March falling immediately after 2 years from the date of such grant or variation.

However, nothing contained in this sub-section shall apply to any such exemption granted to, or in relation to, –

- (a) any multilateral or bilateral trade agreement;
- (b) obligations under international agreements, treaties, conventions or such other obligations including with respect to United Nations agencies, diplomats and international organisations;
- (c) privileges of constitutional authorities;
- (d) schemes under the Foreign Trade Policy;
- (e) the Central Government schemes having validity of more than 2 years;
- (f) re-imports, temporary imports, goods imported as gifts or personal baggage;
- (g) any duty of customs under any law for the time being in force, including IGST leviable u/s 3(7) of the Customs Tariff Act, 1975, other than duty of customs leviable under section 12.

[Proviso inserted by Finance Act, 2023, w.e.f. 01.04.2023]

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]

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