

**IDT Summary Book
Amendment Notes By CA. Yashvant Mangal**

Applicable For Nov. 2023

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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 added to his output tax liability along with applicable interest while furnishing the return in Form GSTR-3B for the tax period in which the said 180 days expired.

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

Note:

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

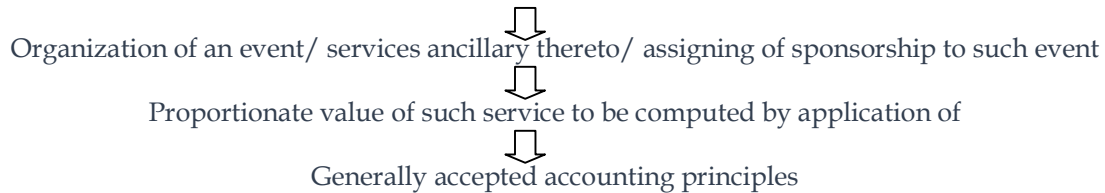
However, subsequently, when the recipient makes the payment to the supplier, the recipient will be entitled to re-avail the credit again without any time limit specified u/s 16(4). In case part payment has been made, proportionate credit will be allowed.

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

	<p>(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 during the Financial Year ____ under forward charge."</p> <p>[also refer analysis given at the end of this table]</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;</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 Reverse Charge Mechanism, in so far as they apply to the Central Government and State Governments, 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.	Services supplied by the Central Government, State Government, Union territory or local authority by way of renting of immovable property to a person registered under the CGST Act, 2017.	Central Government, State Government, Union Territory or Local Authority	Any person registered under the CGST Act, 2017
5AA.	Service by way of renting of residential dwelling to a registered person	Any person	Any Registered person
5B.	Services supplied by any person by way of Transfer of Development Rights (TDR) or Floor Space Index (FSI) (including additional FSI) for construction of a project by a promoter.	Any person	Promoter

	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.

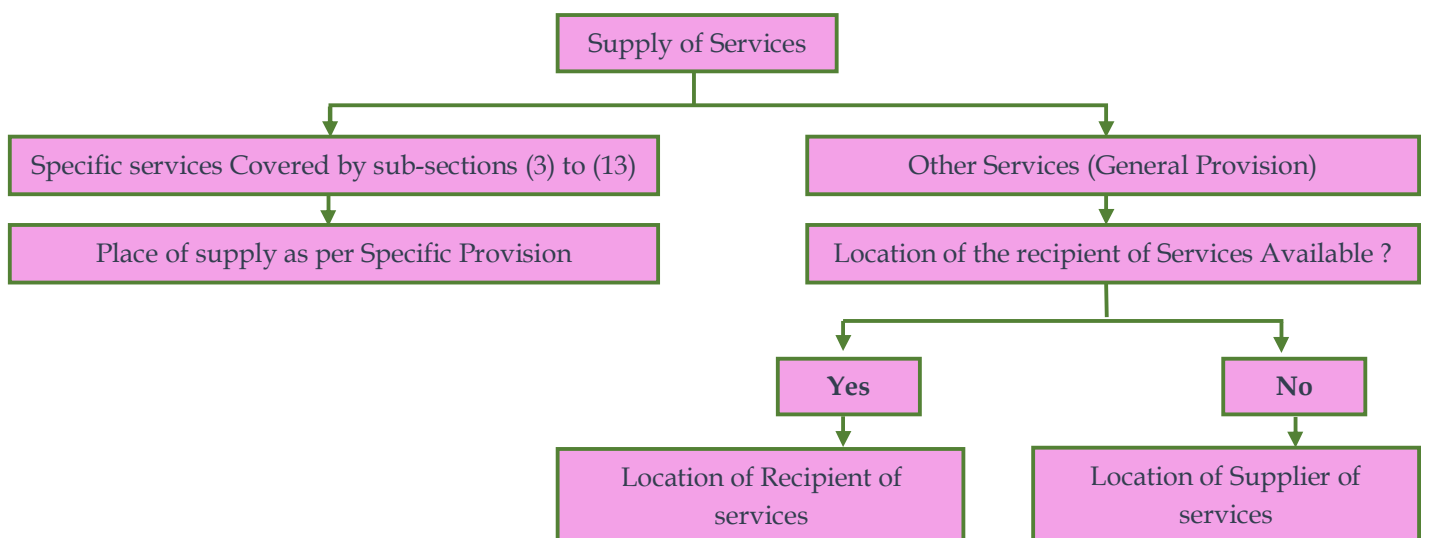
Clarification on the entitlement of ITC where the Place of Supply is determined in terms of the proviso to section 12(8) of the IGST Act [Circular No. 184/16/2022-GST, dated 27.12.2022]

1. The proviso to section 12(8) of the IGST Act provides that where the transportation of goods is to a place outside India, the place of supply of the said service shall be the place of destination of such goods (i.e. foreign destination).
2. In such cases, as the place of supply of services is the concerned foreign destination and not the State where the recipient is registered under GST, doubts are being raised regarding the availability of input tax credit of the said services to the recipient located in India. Therefore, the CBIC hereby clarifies the issues as under:

S.N.	Issue	Clarification
1.	Illustration of Proviso to Sec. 12(8) of the IGST Act: X is a person registered under GST in the state of West Bengal who intends to export goods to a person Y located in Singapore. X avails the services for transportation of goods by air to Singapore from an air cargo operator Z, who is also registered under GST in the state of West Bengal.	In this case, the place of supply of the services provided by Z to X is the place of destination of goods i.e.,

	Singapore, in terms of the proviso to section 12(8) of the IGST Act.	
2.	In the case given in Sl. No. 1, whether the supply of services will be treated as inter-State supply or intra-State supply?	The aforesaid supply of services would be considered as inter-State supply in terms of section 7(5) of the IGST Act since the location of the supplier is in India and the place of supply is outside India. Therefore, IGST would be chargeable on the said supply of services. In respect of the illustration given in Sl. No. 1. above, Z would charge IGST from X in terms of section 7(5) of the IGST Act, for supply of services by way of transportation of goods.
3.	In the case given in Sl. No. 1, whether the recipient of service of transportation of goods would be eligible to avail input tax credit in respect of the said input service of transportation of goods?	Section 16 & 17 of the CGST Act do not restrict availment of input tax credit by the recipient located in India if the place of supply of the said input service is outside India. Thus, the recipient of service of transportation of goods shall be eligible to avail input tax credit in respect of the IGST so charged by the supplier, subject to the fulfilment of other conditions laid down in section 16 and 17 of the CGST Act. In the illustration given in Sl. No. 1 above, X would be eligible to take input tax credit of IGST in respect of supply of services received by him from Z, subject to the fulfilment of other conditions laid down in section 16 and 17 of the CGST Act.
4.	In the case mentioned at Sl. No. 1, what state code has to be mentioned by the supplier of the said service of transportation of goods, where the transportation of goods is to a place outside India, while reporting the said supply in FORM GSTR-1?	The supplier of service shall report place of supply of such service by selecting State code as '96- Foreign Country' from the list of codes in the drop- down menu available on the portal in FORM GSTR-1.

Place of supply of services where location of supplier OR location of recipient is outside India [Section 13]



Specific Provisions:

Sec. 13	Nature of Service	Place of Supply
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- pre-school education and education up to higher secondary school or equivalent;
- education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force;
- education as a part of an approved vocational education course.

- (2) For removal of doubts, it is clarified that the Central and State Educational Boards shall be treated as Educational Institution for the limited purpose of providing services by way of conduct of examination to the students.

Clarification regarding GST on supply of various services by Central and State Board [such as National Board of Examination - (NBE)] [Circular No. 151/07/2021-GST, dated 17.06.2021]

- (i) GST is exempt on services provided by Central or State Boards (including the boards such as NBE) by way of conduct of examination for the students, including conduct of entrance examination for admission to educational institution [under sl. no. 66(aa) of NN 12/2017 - CT (R)]. Therefore, GST shall not apply to any fee or any amount charged by such Boards for conduct of such examinations including entrance examinations.
- (ii) GST is also exempt on input services relating to admission to, or conduct of examination, such as online testing service, result publication, printing of notification for examination, admit card and questions papers etc, when provided to such Boards [under sl. no. 66(b)(iv) of NN 12/2017 - CT (R)].
- (iii) Further, GST at the rate of 18% applies to other services provided by such Boards, namely of providing accreditation to an institution or to a professional (accreditation fee or registration fee such as fee for FMGE screening test) so as to authorise them to provide their respective services.
- (3) For removal of doubts, it is clarified that any authority, board or body set up by the Central Government or State Government including National Testing Agency for conduct of entrance examination for admission to educational institutions shall be treated as educational institution for the limited purpose of providing services by way of conduct of entrance examination for admission to educational institutions. [Inserted by NN 01/2023 - CT (R) w.e.f. 01.03.2023]
- (4) **Clarification regarding applicability of GST on supply of food in Anganwadis and Schools under Mid-Day Meals Scheme if such supplies are funded by government grants and/or corporate donations [Circular No. 149/05/2021 - GST, dated 17.06.2021]**

As per recommendation of the GST Council, it is clarified that services provided to an educational institution by way of serving of food (catering including mid- day meals) is exempt from levy of GST irrespective of its funding from government grants or corporate donations [under said entry 66(b)(ii)]. Educational institutions as defined in the notification include anganwadi. Hence, serving of food to anganwadi shall also be covered by said exemption, whether sponsored by government or through donation from corporates.

- (5) [Circular No. 28/02/2018- GST, dated 08.01.2018] & [Circular No. 85/04/2019- GST, dated 01.01.2019]

Mess Facility / food and beverage provided by Educational Institution	Exempt
Mess Facility / food and beverage provided by anyone other Than Educational Institution	Taxable

- (6) **Applicability of GST on various programmes conducted by the Indian Institutes of Management (IIMs) [Circular No. 82/01/2019- GST, dated 01.01.2019]**
All long duration programs (one year or more) conferring degree/ diploma including one- year Post Graduate Programs for Executives are exempt from GST. And, all short duration executive development programs or need based specially designed programs (less than one year) which are not a qualification recognized by law are not exempt from GST.
- (7) **Clarification on applicability of GST exemption to the DG Shipping approved maritime courses conducted by Maritime Training Institutes of India - [Circular No. 117/36/2019 - GST, dated 11.10.2019]**
Maritime Institutes are educational institutions under GST Law and the courses conducted by them are

	<p>(a) any factory registered under or governed by the Factories Act, 1948; or</p> <p>(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</p> <p>(c) any co-operative society established by or under any law for the time being in force; or</p> <p>(d) any body corporate established, by or under any law for the time being in force; or</p> <p>(e) any partnership firm whether registered or not under any law including association of persons; and</p> <p>(f) any casual taxable person registered under the GST.</p>
12.	<p>Services provided by a goods transport agency, by way of transport of goods in a goods carriage, to, -</p> <p>(a) a Department or Establishment of the Central Government or State Government or Union territory; or</p> <p>(b) local authority; or</p> <p>(c) Governmental agencies,</p> <p>which has taken registration under the GST only for the purpose of deducting tax (TDS) u/s 51 and not for making a taxable supply of goods or services.</p>
13.	<p>Supply of services associated with transit cargo to Nepal & Bhutan (landlocked countries). [Circular No. 177/09/2022 - GST, dated 03.08.2022] It is also clarified that movement of empty containers from Nepal and Bhutan, after delivery of goods there, is a service associated with the transit cargo to Nepal and Bhutan. Therefore, return of empty containers is also covered by this exemption.</p>
14.	<p>Services by way of giving on hire-</p> <p>(a) to a state transport undertaking, a motor vehicle meant to carry more than 12 passengers; or</p> <p>(aa) to a local authority, an Electrically operated vehicle meant to carry more than 12 passengers [Explanation.- For the purposes of this entry, "Electrically operated vehicle" means vehicle falling under Chapter 87 in the First Schedule to the Customs Tariff Act, 1975 which is run solely on electrical energy derived from an external source or from one or more electrical batteries fitted to such road vehicle.]; or</p> <p>(b) to a goods transport agency, a means of transportation of goods; or</p> <p>(c) motor vehicle for transport of students, faculty and staff, to a person providing services of transportation of students, faculty and staff to an educational institution providing services by way of pre-school education and education upto higher secondary school or equivalent.</p> <p>[Circular No. 164/20/2021 - GST, dated 06.10.2021] As recommended by the GST Council, it is clarified that the expression "<u>giving on hire</u>" in Sl. No. 22 of the NN 12/2017 - CT (R) <u>includes renting of vehicles</u>. Accordingly, services where the said vehicles are rented or given on hire to State Transport Undertakings or Local Authorities are eligible for the said exemption irrespective of whether such vehicles are run on routes, timings as decided by the State Transport Undertakings or Local Authorities and under effective control of State Transport Undertakings or Local Authorities which determines the rules of operation or plying of vehicles.</p>
15.	<p>Service by way of access to a road or a bridge on payment of toll charges.</p> <p>[Circular No. 164/20/2021 - GST, dated 06.10.2021] Overloading fees are effectively higher toll charges. Therefore, it is clarified that overloading charges at toll plazas would get the same treatment as given to toll charges and hence, will be exempt from GST.</p> <p>[Circular No. 177/09/2022 - GST, dated 03.08.2022] It is clarified that additional fee collected in the form of higher toll charges from vehicles not having Fastag is essentially payment of toll for allowing access to roads or bridges to such vehicles and may be given the same treatment as given to toll charges and hence, will be exempt from GST.</p>
16.	<p>Service by way of access to a road or a bridge on payment of annuity. [Omitted by NN 15/2022 - CT (R), w.e.f. 01.01.2023]</p>

17. Services by way of **granting National Permit to a goods carriage** to operate through-out India/contiguous States.

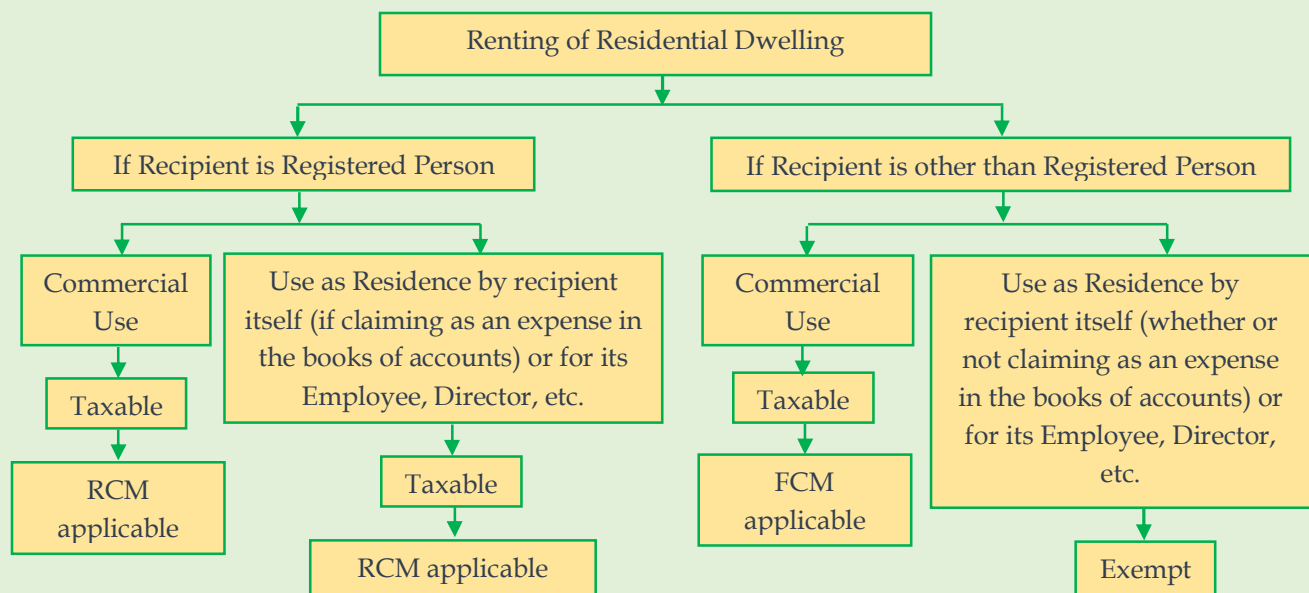
Construction Related Services

- Services by way of **pure labour contracts** of construction, erection, commissioning, or installation of **original works** pertaining to a **single residential unit otherwise than as a part of a residential complex**.
- Services provided by way of **pure labour contracts of construction**, erection, commissioning, installation, completion, fitting out, **repair, maintenance, renovation, or alteration of a civil** structure or any other original works pertaining to the beneficiary led individual house construction or enhancement under the **Housing for All (Urban) Mission or Pradhan Mantri Awas Yojana**.
- Supply of **Transfer of Development Rights (TDR), Floor Space Index (FSI) including additional FSI, Long Term Lease** (premium, salami, cost, price, development charges or by any other name) of land by a landowner to a developer are exempted subject to the **condition** that the **constructed flats are sold before issuance of completion certificate** and tax is paid on them.

Exemption of TDR, FSI, long term lease (premium, salami, cost, price, development charges or by any other name) shall be withdrawn in case of flats sold after issue of completion certificate. But, in this case, GST is payable only @ 1% of value in case of affordable houses and 5% of value in case of other than affordable houses.

Renting of Immovable Property Related Services

- Services by way of **renting of residential dwelling for use as residence** except where the residential dwelling is rented to a registered person. [As amended by NN 04/2022 – CT (R), w.e.f. 18.07.2022]
Explanation [inserted by NN 15/2022 – CT (R), w.e.f. 01.01.2023] - For the purpose of exemption under this entry, this entry shall cover services by way of renting of residential dwelling to a registered person where, -
 - the registered person is proprietor of a proprietorship concern and rents the residential dwelling in his personal capacity for use as his own residence; and
 - such renting is on his own account and not that of the proprietorship concern.



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

Clarification on Applicability of GST on Accommodation Services supplied by Air Force Mess to its Personnel – [Circular No. 190/02/2023 - GST, dated 13.01.2023]

As recommended by the GST Council, it is hereby clarified that accommodation services provided by Air Force Mess and other similar messes, such as, Army mess, Navy mess, Paramilitary and Police forces mess to their personnel or any person other than a business entity are covered by Sl. No. 6 of NN. 12/2017 – CT (R), provided the services supplied by such messes qualify to be considered as services supplied by Central Government, State Government, Union Territory or local authority.

Banking Related Services					
1.	Services by the Reserve Bank of India : [omitted by NN. 04/2022 CT (R), w.e.f. 18.07.2022]				
2.	Services received by the RBI, from outside India in relation to management of foreign exchange reserves. [omitted by NN 04/2022 IT (R), w.e.f. 18.07.2022]				
3.	<p>Services by way of -</p> <p>(a) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services);</p> <p>(b) inter se sale or purchase of foreign currency amongst banks or authorized dealers of foreign exchange or amongst banks and such dealers.</p> <p>Note: The services in the case of the Credit Card are by way of levy of issuing charges or the commission charged from merchants, etc. The interest charged for failure to pay due amount at the due date have been specifically excluded from this exemption entry. Therefore, these are taxable.</p> <p>Clarification regarding applicability of GST on additional / penal interest [Circular No. 102/21/2019, dated 28.06.2019]</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 5px;">Penal Interest charged for delay in making payment of value of goods or services or both</td> <td style="padding: 5px;">Penal Interest is included in value of Supply for Charging GST</td> </tr> <tr> <td style="padding: 5px;">Penal Interest charged in respect of loan account</td> <td style="padding: 5px;">Not Taxable</td> </tr> </table>	Penal Interest charged for delay in making payment of value of goods or services or both	Penal Interest is included in value of Supply for Charging GST	Penal Interest charged in respect of loan account	Not Taxable
Penal Interest charged for delay in making payment of value of goods or services or both	Penal Interest is included in value of Supply for Charging GST				
Penal Interest charged in respect of loan account	Not Taxable				
4.	Services provided by a banking company to Basic Saving Bank Deposit (BSBD) account holders under Pradhan Mantri Jan Dhan Yojana (PMJDY).				
5.	<p>Services by an acquiring bank, to any person in relation to settlement of an amount upto Rs. 2,000/- in a single transaction transacted through credit card, debit card, charge card or other payment card service.</p> <p>Clarification on Applicability of GST on incentive paid by Ministry of Electronics and Information Technology (MeitY) to Acquiring Banks under Incentive scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions [Circular No. 190/02/2023 - GST, Dated 13.01.2023]:</p> <p>(i) Under the Incentive scheme for promotion of RuPay Debit Cards and low value BHIM- UPI transactions, the Government pays the acquiring banks an incentive as a percentage of value of RuPay Debit card transactions and low value BHIM-UPI transactions up to Rs. 2,000/-.</p> <p>(ii) The Payments and Settlements Systems Act, 2007 prohibits banks and system providers from charging any amount from a person making or receiving a payment through RuPay Debit cards or BHIM-UPI.</p>				

	<p>(iii) The service supplied by the acquiring banks in the digital payment system in case of transactions through RuPay/BHIM UPI is the same as the service that they provide in case of transactions through any other card or mode of digital payment. The only difference is that the consideration for such services, instead of being paid by the merchant or the user of the card, is paid by the central government in the form of incentive. However, it is not a consideration paid by the central government for any service supplied by the acquiring bank to the Central Government. The incentive is in the nature of a subsidy directly linked to the price of the service and the same does not form part of the taxable value of the transaction in view of the provisions of section 2(31) and section 15 of the CGST Act, 2017.</p> <p>(iv) As recommended by the Council, it is hereby clarified that incentives paid by MeitY to acquiring banks under the Incentive scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions are in the nature of subsidy and thus not taxable.</p>
6.	<p>Services by the following persons in respective capacities -</p> <ol style="list-style-type: none"> business facilitator or a business correspondent to a banking company with respect to accounts in its rural area branch; any person as an intermediary to a business facilitator or a business correspondent with respect to services mentioned in entry (a); or business facilitator or a business correspondent to an insurance company in a rural area. <p>[Circular No. 86/05/2019- GST, dated 01.01.2019] The banking company is liable to pay GST on the entire value of service charge or fee charged to customers whether or not received via business facilitator or the business correspondent.</p>

Insurance Related Services	
1.	<p>Services of general insurance business provided under following schemes -</p> <ol style="list-style-type: none"> Hut Insurance Scheme; Cattle Insurance under Swarnajayanti Gram Swarozgar Yojna; Scheme for Insurance of Tribals; Janata Personal Accident Policy and Gramin Accident Policy; Group Personal Accident Policy for Self-Employed Women; Agricultural Pumpset and Failed Well Insurance; Premia collected on export credit insurance; Restructured Weather Based Crop Insurance Scheme (RWCIS), approved by the Government of India and implemented by the Ministry of Agriculture; Jan Arogya Bima Policy; Pradhan Mantri Fasal Bima Yojana (PMFBY); Pilot Scheme on Seed Crop Insurance; Central Sector Scheme on Cattle Insurance; Universal Health Insurance Scheme; Rashtriya Swasthya Bima Yojana; Coconut Palm Insurance Scheme; Pradhan Mantri Suraksha Bima Yojna; Niramaya Health Insurance Scheme implemented by the Trust constituted under the provisions of the National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999; Bangla Shasya Bima [Under this scheme, the West Bengal Government will provide crop insurance

3. **Late payment fees or surcharge:** The facility of accepting late payments with interest or late payment fee, fine or penalty is a facility granted by supplier naturally bundled with the main supply. Since, it is ancillary to and naturally bundled with the principal supply such as of electricity, water, telecommunication, cooking gas, insurance etc., it should be assessed at the same rate as the principal supply.
4. **Fixed Capacity charges for Power:** The minimum fixed charge or part of it is not a charge for tolerating the act of not scheduling or consuming the minimum the contracted or available capacity or a minimum threshold. Both the components of the price, the minimum fixed charges/capacity charges and the variable/energy charges are charged for sale of electricity and are thus not taxable as electricity is exempt from GST.
5. **Cancellation charges:** The amount forfeited in the case of non-refundable ticket for air travel or security deposit or earnest money forfeited in case of the customer failing to avail the travel, tour operator or hotel accommodation service or such other intended supplies are elements of composite supply and should be assessed at the same rate as applicable to the service contract, say air transport or tour operator service, or other such services.

Clarification on Taxability of No Claim Bonus offered by Insurance Companies - [Circular No. 186/18/2022 - GST, dated 27.12.2022]

Issue 1: Whether the deduction on account of No Claim Bonus allowed by the insurance company from the insurance premium payable by the insured, can be considered as consideration for the supply provided by the insured to the insurance company, for agreeing to the obligation to refrain from the act of lodging insurance claim during the previous year(s)?

Clarification: As per practice prevailing in the insurance sector, the insurance companies deduct No Claim Bonus from the gross insurance premium amount, when no claim is made by the insured person during the previous insurance period(s). The customer/insured procures insurance policy to indemnify himself from any loss/ injury as per the terms of the policy, and is not under any contractual obligation not to claim insurance claim during any period covered under the policy, in lieu of No Claim Bonus.

It is, therefore, clarified that there is no supply provided by the insured to the insurance company in form of agreeing to the obligation to refrain from the act of lodging insurance claim during the previous year(s) and No Claim Bonus cannot be considered as a consideration for any supply provided by the insured to the insurance company.

Issue 2: Whether No Claim Bonus provided by the insurance company to the insured can be considered as an admissible discount for the purpose of determination of value of supply of insurance service provided by the insurance company to the insured?

Clarification: As per section 15(3)(a) of the CGST Act, value of supply shall not include any discount which is given before or at the time of supply if such discount has been duly recorded in the invoice issued in respect of such supply.

The insurance companies make the disclosure of the fact of availability of discount in form of No Claim Bonus, subject to certain conditions, to the insured in the insurance policy document itself and also provide the details of the no claim Bonus in the invoices also. The pre-disclosure of NCB amount in the policy documents and specific mention of the discount in form of No Claim Bonus in the invoice is in consonance with the conditions laid down for deduction of discount from the value of supply under section 15(3)(a) of the CGST Act.

It is, therefore, clarified that No Claim Bonus (NCB) is a permissible deduction under section 15(3)(a) of the CGST Act for the purpose of calculation of value of supply of the insurance services provided by the insurance company to the insured. Accordingly, where the deduction on account of No claim bonus is provided in the invoice issued by the insurer to the insured, GST shall be leviable on actual insurance premium amount, payable by the policy holders to the insurer, after deduction of No Claim Bonus mentioned on the invoice.

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 Permanent Account Number.

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.

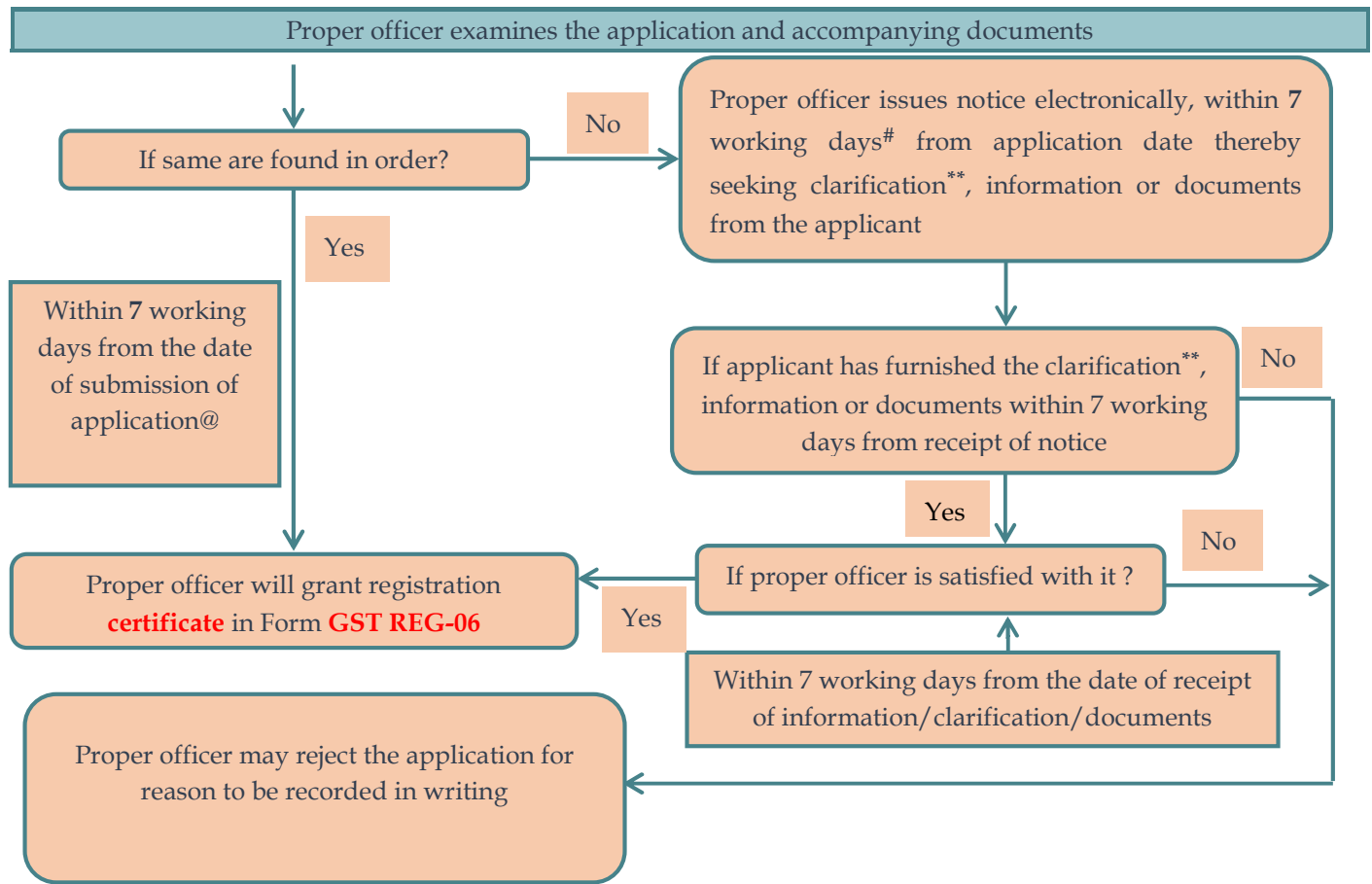
Rule 8(4A): Where an applicant, other than a person notified u/s 25(6D), opts for authentication of Aadhaar number, he shall, while submitting the application, undergo authentication of Aadhaar number and the date of submission of the application in such cases shall be the date of authentication of the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

Further, w.e.f. 26.12.2022, if the applicant is applying for GST registration in the State of Gujarat, 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]

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) 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]*
- (b) 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)]

#However, where-

- (a) 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]*
- (b) 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)]

11	Amount of Advance Taken	-	-	-	-	✓	✗	✗
12	Amount of Refund Made	-	-	-	-	✗	✓	✗
13	Amount Paid	-	-	-	-	✗	✗	✓
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)	✓	✓	✓	✓	✗	✗	✗

Further, 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 and the said address 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]

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

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

2. 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~~ **10 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 from Rs. 500 crores to Rs. 100 w.e.f. 01.01.2021 by NN 88/2020 - CT, which is further reduced to Rs. 50 w.e.f. 01.04.2021 by NN 05/2021 - CT, which is further reduced to Rs. 20 crores w.e.f. 01.04.2022 by NN 01/2022 - CT, which is further reduced to Rs. 10 crores w.e.f. 01.10.2022 by NN 17/2022 - CT]

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

- (i) A Special Economic Zone unit [Not SEZ Developer]
- (ii) Insurer, Banking Company, financial institution including a NBFC;
- (iii) Goods Transport Agency;
- (iv) Passenger Transport Service Supplier;
- (v) Supplier of services by way of admission or exhibition of cinematograph films in multiplex screens;
- (vi) A Government Department or a Local Authority

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

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

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

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

"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.

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, as amended by NN 71/2020 – CT, dated 30.09.2020], 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.
2.	What parameters/ details are required to be captured in the Quick Response (QR) Code?	Dynamic QR Code is required to contain the following information: i. Supplier GSTIN number ii. Supplier UPI ID iii. Payee's Bank A/C number and IFSC iv. Invoice number & invoice date, v. Total Invoice Value and vi. GST amount along with breakup i.e. CGST, SGST, IGST, CESS, etc. Further, Dynamic QR Code should be such that it can be scanned to make a digital payment.
3.	If a supplier provides/ displays Dynamic QR Code, but the	If the supplier has issued invoice having Dynamic QR Code for payment, the said invoice shall be deemed to have complied with Dynamic QR Code

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

- **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.

However, non-resident taxable persons or casual taxable persons are required to make advance deposit of tax of an amount equivalent to the estimated tax liability of such person for a period for which registration is sought or extension of registration is sought in terms of section 27(2).

- **Quarterly Return Monthly Payment [QRMP] Scheme [Circular No. 143/13/2020- GST, dated 10.11.2020]**

- (i) As a trade facilitation measure and in order to further ease the process of doing business, the GST Council in its 42nd meeting held on 05.10.2020, had recommended that registered person having aggregate turnover up to Rs. 5 crore rupees may be allowed to furnish return on quarterly basis along with monthly payment of tax, with effect from 01.01.2021. Government has issued notifications to implement the Scheme of quarterly return filing along with monthly payment of taxes (hereinafter referred to as “QRMP Scheme/ Scheme”).
- (ii) Various issues related to notifications issued to implement the QRMP Scheme have been examined and issues have been clarified in this circular.
- (iii) Eligibility for the Scheme

In terms of notification No. 84/2020- Central Tax, dated 10.11.2020, a registered person who is required to furnish a return in FORM GSTR-3B, and who has an aggregate turnover of up to Rs. 5 crore in the preceding financial year, is eligible for the QRMP Scheme. It is clarified that the aggregate annual turnover for the preceding financial year shall be calculated in the common portal taking into account the details furnished in the returns by the taxpayer for the tax periods in the preceding financial year. This new Scheme will be effective from 01.01.2021. Further, in case the aggregate turnover exceeds 5 crore rupees during any quarter in the current financial year, the registered person shall not be eligible for the Scheme from the next quarter.

- (iv) Exercising option for QRMP Scheme

- a. Facility to avail the Scheme on the common portal would be available throughout the year. In terms of rule 61A of the CGST Rules, a registered person can opt in for any quarter from first day of second month of preceding quarter to the last day of the first month of the quarter. In order to exercise this option, the registered person must have furnished the last return, as due on the date of exercising such option.

For example: A registered person intending to avail of the Scheme for the quarter ‘July to September’ can exercise his option during 1st of May to 31st of July.

If he is exercising his option on 27th July for the quarter (July to September), in such case, he must have furnished the return for the month of June which was due on 20th July.

- b. Registered persons are not required to exercise the option every quarter. Where such option has been exercised once, they shall continue to furnish the return as per the selected option for future tax periods, unless they revise the said option.
- c. Similarly, the facility for opting out of the Scheme for a quarter will be available from first day of second month of preceding quarter to the last day of the first month of the quarter.

(D) TCS Statement by ECO [Section 52]

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

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

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

3. **Late fees levied for delay in filing annual return [Section 47(2)]:** Any registered person who fails to furnish the Annual Return by the due date shall be liable to pay a late fee = Rs. 100 per day (CGST Act) during which such failure continues or 0.25% (CGST Act) of the turnover of registered person in the State/UT, whichever is lower.

However, the Government has reduced the late fees for delay in filing of annual return for the financial year 2022-23 onwards, as under [NN 07/2023 - CT, dated 31.03.2023]:

S. N.	Class of Registered Person	Late Fee per day [CGST]	Max. Fee [CGST]
1.	Registered persons having an aggregate turnover of up to Rs. 5 crores in the relevant financial year.	Rs. 25	0.02% of turnover in the State or Union territory
2.	Registered persons having an aggregate turnover of more than Rs. 5 crores and up to Rs. 20 crores in the relevant financial year.	Rs. 50	0.02% of turnover in the State or Union territory

4. It may be noted that the late fee payable by a registered person for delayed filing of a return and/or annual return, as mentioned above, is with reference to only the CGST Act. An equal amount of late fee would be payable by such person under the respective SGST/UTGST Act as well.

4.	In case of zero-rated supply of goods or services or both to a SEZ developer or a SEZ unit where a refund of tax paid is available in respect of such supplies themselves, or the inputs or input services used in such supplies	Due date for furnishing of return u/s 39 in respect of such supplies
5.	Where tax becomes refundable as a consequence of judgment , decree, order or direction of the Appellate Authority, Appellate Tribunal or any court	Date of communication of such judgment, decree, order or direction
6.	In case of refund of unutilized ITC in case of zero-rated supplies or accumulated ITC on account of inverted duty structure	Due date for furnishing of return u/s 39 for the period in which such claim for refund arises.
7.	In the case where tax is paid provisionally under this Act or the rules made there under	Date of adjustment of tax after the final assessment thereof
8.	In the case of a person, other than the supplier	Date of receipt of such goods or services or both by such person
9.	Any other case	Date of payment of tax

DOCUMENTS FOR FILING REFUND CLAIM

Documents required for filing refund claim has been provided under the provisions of section 54(4) read with rule 89(2).

Section 54(4) of the CGST Act stipulates that the application shall be accompanied by –

- such documentary evidence as may be prescribed to establish that a refund is due to the applicant; and
- such documentary or other evidence (including the documents referred to in section 33) as the applicant may furnish to establish that there is no unjust enrichment (i.e. the amount of tax and interest, if any, paid on such tax or any other amount paid in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such tax and interest had not been passed on to any other person).

Where the amount of refund claimed **exceeds Rs. 2 lakh**, a Certificate by a **Chartered Accountant or a Cost Accountant** is required. Otherwise, a self declaration will be required.

Further, neither a declaration by the applicant nor a certificate by a Chartered Accountant/Cost Accountant is required to be furnished in the following cases:

- Refund of tax paid on **zero-rated supplies** of goods or services or both or on inputs or input services used in making such zero-rated supplies;
- Refund of **unutilized ITC** in case of **zero rated supplies** or accumulated ITC on account of inverted duty structure;
- 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. The expression “invoice” referred here means invoice conforming to the provisions contained in section 31.
- Refund of tax in pursuance of **section 77**, i.e. tax paid tax on a transaction treating it as an **intra-State supply**, but which is subsequently held to be an inter-State supply or vice-versa.
- The tax or interest borne by such other class of applicants as the **Government** may, on the recommendations of the Council, by notification, **specify**.

Note:

- Where the amount of tax has been recovered from the recipient, it shall be deemed that THE ‘INCIDENCE OF TAX HAS BEEN PASSED ON TO THE ULTIMATE CONSUMER’. [Explanation (ii) to rule 89(2)]
- Further, a certificate by a Chartered Accountant/Cost Accountant is not required to be furnished in cases where refund is claimed by an unregistered person who has borne the incidence of tax. [Proviso to Rule 89(2)(m), inserted by NN 26/2022 – CT, dated 26.12.2022]

14.2.5 Deficiencies in the Refund Application [Rule 90(3)]

hereby clarified that the treatment of refund of such ITC relating to imports, ISD invoices and the inward supplies liable to Reverse Charge (RCM supplies) will continue to be same as it was before the issuance of Circular No. 135/05/2020-GST, because these invoices are not uploaded by the suppliers in Form GSTR - 1. [Circular No. 139/09/2020 GST dated 10.06.2020]

Refund of Inverted-tax Structure [Rule 89(5)]

As per Rule 89(5) of the CGST Rules, 2018, in the case of refund on account of inverted duty structure, refund of input tax credit shall be granted as per the following formula:-

Maximum Refund Amount = [(Turnover of inverted rated supply of goods and services) x Net ITC ÷ Adjusted Total Turnover] - [Tax payable on such inverted rated supply of goods and services x (Net ITC ÷ ITC availed on inputs and input services)] [as amended by NN 14/2022 - CT, w.e.f. 05.07.2022]

Explanation:- **Net ITC** shall mean input tax credit availed on **inputs** (not input services & capital goods) during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both.

Analysis of Amendment made by NN 14/2022 - CT, w.e.f. 05.07.2022:

Rule 89(5) of the CGST Rules is amended vide NN. 14/2022 - CT, dated 05.07.2022, to change the formula for calculation of Maximum Refund Amount under this rule. This change is done to take into account utilization of ITC on account of inputs as well as input services for payment of output tax on inverted rated supplies in the same ratio in which ITC has been availed on inputs and input services during the said period. This would help those taxpayers who are availing ITC on input services also.

Analytical Example: M/s Yash Enterprises is a registered manufacturer in Mumbai, Maharashtra indulged in the business of processing of woven fabrics which is taxable @ 5%. The inputs used for making such product are taxable @ 12%. The company wants to determine the amount of input tax credit eligible for refund.

Following are the information provided by the company during the period January to March, 2023:

S. N.	Particulars	Amount (Rs. in Lakhs)	Tax Amount (Rs. in Lakhs)
1	Raw materials used (inward supply) @ 12%	500	60
2	Woven fabrics (outward supply) @ 5%	300	15
3	Consultancy service @ 18% (other inward supply)	100	18

Solution:

Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services) x Net ITC Adjusted Total Turnover} - tax payable on supply of goods and services x (Net ITC - ITC availed on inputs and input services)

Maximum Refund amount = {(300*60)/300} - {15*(60/78)} = 60 - 11.53 = 48.47 Lakhs

Prior to the amendment in formula for calculation of refund under this rule, the maximum refund amount would be calculated as under:

Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services) x Net ITC - Adjusted Total Turnover} - tax payable on such inverted rated supply of goods and services.

Maximum Refund Amount = {(300*60)/300} - 15 = 45 lakhs

Circulars

- Vide NN. 14/2022 - CT, dated 05.07.2022, amendment has been made in rule 89(5) of CGST Rules, 2017, modifying the formula prescribed therein. The said amendment is not clarificatory in nature and is applicable prospectively with effect from 05.07.2022. Accordingly, it is clarified that the said amended formula under rule 89(5) of the CGST Rules, 2017 for calculation of refund of input tax credit on account of inverted duty structure would be applicable in respect of refund applications filed on or after 05.07.2022. The refund applications filed before 05.07.2022 will be

dealt as per the formula as it existed before the amendment made vide NN. 14/2022 - CT, dated 05.07.2022. [Circular No. 181/13/2022-GST, dated 10-11-2022]

- Refund of accumulated ITC of input services and capital goods is not allowed in case of inverted duty structure. [Circular No. 79/53/2018-GST, dated 31-12-2018]
- The term Net ITC covers the ITC availed on all inputs in the relevant period, irrespective of their rate of tax. [Circular No. 79/53/2018-GST, dated 31-12-2018]
- Refund of accumulated ITC on account of reduction in GST rate on goods, not available [Circular No. 135/05/2020 - GST, dated 31.03.2020]: For example, an applicant trading in goods has purchased, say goods "X" attracting 18% GST. However, subsequently, the rate of GST on "X" has been reduced to, say 12%. It is clarified that, in such cases, refund of accumulated ITC under said clause would not be applicable in cases where the input and the output supplies are the same.

Further, there may however, be cases where though inputs and output goods are same but the output supplies are made under a concessional notification due to which the rate of tax on output supplies is less than the rate of tax on inputs. In such cases, as the rate of tax of output supply is less than the rate of tax on inputs at the same point of time due to supply of goods by the supplier under such concessional notification, the credit accumulated on account of the same is admissible for refund under the provisions of clause (ii) of the first proviso to section 54(3) of the CGST Act.

However, no refund shall be allowed in cases where output supply is either Nil rated or fully exempted.

Further, no refund shall be allowed in case of supply of such goods or services which are notified by the Government for their exclusion from refund of accumulated ITC under this clause. [Circular No. 173/05/2022 - GST, dated 06.07.2022]

Who is Entitled to Refund Under Section 55 ?

- Government may, on the recommendations of the Council, by notification, specify:
 - (i) any specialized agency of the United Nations Organization; or
 - (ii) any Multilateral Financial Institution and Organization notified under the United Nations (Privileges and Immunities) Act, 1947; or
 - (iii) Consulate or Embassy of foreign countries;
 - (iv) Retail outlets established in departure area of an international Airport, beyond the immigration counters, making tax free supply to an outgoing international tourist; and
 - (v) any other person or class of persons as may be specified in this behalf,
 who shall, subject to such conditions and restrictions as may be prescribed, be entitled to claim a refund of taxes paid on the notified inward supplies of goods or services or both received by them.
- **Note:** The specialised agencies will also get the refund of the IGST paid on imported goods. [Circular No. 23/2019 - Customs, dated 01.08.2019]
- Time limit for filing refund claim - Quarterly - 2 years from the last day of the quarter in which such supply was received.

Consumer Welfare Fund [Sections 57 & 58 of CGST Act]

■ Amount to be credited to Consumer Welfare Fund

Section 57 of the CGST Act stipulates that the Government shall constitute a Fund, to be called the Consumer Welfare Fund and there shall be credited to the Fund:

- (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,

2. Furnishing of certification/declaration under Rule 89(2)(l) or 89(2)(m) of the CGST Rules, 2017 for not passing the incidence of tax to any other person is not required in cases of refund of excess balance in electronic cash ledger as unjust enrichment clause is not applicable in such cases.
3. The amount deducted/collected as TDS/TCS by TDS/ TCS deductors under the provisions of section 51 /52 of the CGST Act, as the case may be, and credited to electronic cash ledger of the registered person, is equivalent to cash deposited in electronic cash ledger. It is not mandatory for the registered person to utilise the TDS/TCS amount credited to his electronic cash ledger only for the purpose for discharging tax liability. The registered person is at full liberty to discharge his tax liability in respect of the supplies made by him during a tax period, either through debit in electronic credit ledger or through debit in electronic cash ledger, as per his choice and availability of balance in the said ledgers.

Any amount, which remains unutilized in electronic cash ledger, after discharge of tax dues and other dues payable under CGST Act and rules made thereunder, can be refunded to the registered person as excess balance in electronic cash ledger.

4. The relevant date in respect of refund of GST paid on the supply of goods regarded as deemed exports, shall be “the date on which the return relating to such deemed exports is furnished by the supplier” irrespective of the fact whether the refund claim is filed by the supplier or the recipient.

Clarification in respect of Refund claimed by the recipients of supplies regarded as Deemed Export [Circular No. 172/04/2022 - GST, dated 06.07.2022]

S.N.	Issue	Clarification
1.	Whether the Input Tax Credit (ITC) availed by the recipient of deemed export supply for claiming refund of tax paid on supplies regarded as deemed exports would be subjected to provisions of Sec. 17 of the CGST Act, 2017.	The refund in respect of deemed export supplies is the refund of tax paid on such supplies. However, the recipients of deemed export supplies were facing difficulties on the portal to claim refund of tax paid due to requirement of the portal to debit the amount so claimed from their electronic credit ledger. Considering this difficulty, the tax paid on such supplies, has been made available as ITC to the recipients vide Circular No. 147/03/2021-GST dated 12.03.2021 only for enabling them to claim such refunds on the portal. The ITC of tax paid on deemed export supplies, allowed to the recipients for claiming refund of such tax paid, is not ITC in terms of the provisions of Chapter V of the CGST Act, 2017. Therefore, the ITC so availed by the recipient of deemed export supplies would not be subjected to provisions of Sec. 17 of the CGST Act, 2017.
2.	Whether the ITC availed by the recipient of deemed export supply for claiming refund of tax paid on supplies regarded as deemed exports is to be included in the “Net ITC” for computation of refund of unutilised ITC under rule 89(4) & rule 89 (5) of the CGST Rules, 2017.	The ITC of tax paid on deemed export supplies, allowed to the recipients for claiming refund of such tax paid, is not ITC in terms of the provisions of Chapter V of the CGST Act, 2017. Therefore, such ITC availed by the recipient of deemed export supply for claiming refund of tax paid on supplies regarded as deemed exports is not to be included in the “Net ITC” for computation of refund of unutilised ITC on account of zero-rated supplies under rule 89(4) or on account of inverted rated structure under rule 89(5) of the CGST Rules, 2017.

Prescribing manner of filing an application for refund by unregistered persons [Circular No. 188/20/2022 - GST, dated 27.12.2022]

1. Instances have been brought to the notice where the unregistered buyers, who had entered into an agreement/ contract with a builder for supply of services of construction of flats/ building, etc. and had paid the amount towards consideration for such service, either fully or partially, along with applicable tax, had to get the said contract/ agreement cancelled subsequently due to non-completion or delay in construction activity in time or any

other reasons. In a number of such cases, the period for issuance of credit note on account of such cancellation of service under the provisions of section 34 of the CGST Act may already have got expired by that time. In such cases, the supplier may refund the amount to the buyer, after deducting the amount of tax collected by him from the buyer.

2. Similar situation may arise in cases of long-term insurance policies where premium for the entire period of term of policy is paid upfront along with applicable GST and the policy is subsequently required to be terminated prematurely due to some reasons. In some cases, the time period for issuing credit note under the provisions of section 34 of the CGST Act may have already expired and therefore, the insurance companies may refund only the proportionate premium net off GST.
3. Representations have been received requesting for providing a facility to such unregistered buyers/ recipients for claiming refund of amount of tax borne by them in the event of cancellation of the contract/agreement for supply of services of construction of flat/ building or on termination of long-term insurance policy.
4. It would be pertinent to mention that section 54(1) of the CGST Act already provides that any person can claim refund of any tax and interest or any other amount paid by him, by making an application before the expiry of 2 years from the relevant date in such form and manner as may be prescribed. Further, in terms of section 54(8)(e) of the CGST Act, in cases where the unregistered person has borne the incidence of tax and not passed on the same to any other person, the said refund shall be paid to him instead of being credited to Consumer Welfare Fund (CWF).
5. For this purpose, a new functionality has been made available on the common portal which allows unregistered persons to take a temporary registration and apply for refund under the category 'Refund for Unregistered person'.
6. **Filing of refund application:**

- (i) In cases where the contract/agreement for supply of services of construction of flat/building has been cancelled or where long-term insurance policy has been terminated, the unregistered person, who wants to file an application for refund u/s 54(1) of CGST Act, shall obtain a temporary registration on the common portal using his Permanent Account Number (PAN). While doing so, the unregistered person shall select the same state/UT where his/her supplier, in respect of whose invoice refund is to be claimed, is registered. Further, separate applications for refund have to be filed in respect of invoices issued by different suppliers. Further, where the suppliers are registered in different States/UTs, the applicant shall obtain temporary registration in the each of the concerned States/UTs where the said suppliers are registered.
- (ii) Thereafter, the unregistered person would be required to undergo Aadhaar authentication in terms of provisions of rule 10B of the CGST Rules. Further, the unregistered person would be required to enter his bank account details in which he seeks to obtain the refund of the amount claimed. The applicant shall provide the details of the bank account which is in his name and has been obtained on his PAN.
- (iii) The application for refund shall be filed in FORM GST RFD-01 on the common portal under the category 'Refund for unregistered person' along with requisite documents to support his claim that he has paid and borne the incidence of tax and that the said amount is refundable to him. The refund amount claimed shall not exceed the total amount of tax declared on the invoices in respect of which refund is being claimed.
- (iv) Where the time period for issuance of credit note under section 34 of the CGST Act has not expired at the time of cancellation/termination of agreement/contract for supply of services, the concerned suppliers can issue credit note to the unregistered person. In such cases, the supplier would be in a position to also pay back the amount of tax collected by him from the unregistered person and therefore, there will be no need for filing refund claim by the unregistered persons in these cases. Accordingly, the refund claim can be filed by the unregistered persons only in those cases where at the time of cancellation/termination of agreement/contract for supply of services, the time period for issuance of credit note under section 34 of the CGST Act has already expired.

7. Documents For Filing Refund Claim by Unregistered Persons:

In a case where the refund is claimed by an unregistered person where the agreement or contract for supply of service has been cancelled or terminated, the following documentary evidences shall be required to be submitted along with application of refund:

- (i) a statement containing the details of invoices viz. number, date, value, tax paid and details of payment, in respect of which refund is being claimed along with copy of such invoices, proof of making such payment to

the supplier, the copy of agreement or registered agreement or contract, as applicable, entered with the supplier for supply of service, the letter issued by the supplier for cancellation or termination of agreement or contract for supply of service, details of payment received from the supplier against cancellation or termination of such agreement along with proof thereof;

- (ii) a certificate issued by the supplier to the effect that he has paid tax in respect of the invoices on which refund is being claimed by the applicant; that he has not adjusted the tax amount involved in these invoices against his tax liability by issuing credit note; and also, that he has not claimed and will not claim refund of the amount of tax involved in respect of these invoices.

[clauses (ka) & (kb) of Rule 89(2), inserted by NN 26/2022 - CT, dated 26.12.2022]

8. Relevant date for filing of refund:

In respect of cases of refund by a person other than supplier, the time period of 2 years shall be from the date of receipt of goods or services or both by such person. However, in respect of cases of long-term contract/ agreement where the contract is cancelled/ terminated before completion of service for any reason, there may be no date of receipt of service, to the extent supply has not been made/ rendered. Therefore, in such type of cases, date of issuance of letter of cancellation of the contract/ agreement for supply by the supplier will be considered as the date of receipt of the services by the applicant.

9. **Minimum refund amount:** As per section 54(14), minimum refund amount should be Rs. 1,000/-. Therefore, no refund shall be claimed if the amount is less than Rs. 1,000/-.
10. The proper officer shall process the refund claim filed by the unregistered person in a manner similar to other RFD-01 claims. The proper officer shall scrutinize the application with respect to completeness and eligibility of the refund claim to his satisfaction and issue the refund sanction order in FORM GST RFD-06 accordingly. The proper officer shall also upload a detailed speaking order along with the refund sanction order in FORM GST RFD-06.
11. Further, in cases where the amount paid back by the supplier to the unregistered person on cancellation/termination of agreement/contract for supply of services is less than amount paid by such unregistered person to the supplier, only the proportionate amount of tax involved in such amount paid back shall be refunded to the unregistered person.

“Kar Har Maidaan Fateh”

- (h) 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;
- (i) where the goods being transported are transit cargo from or to Nepal or Bhutan;
- (j) where the goods being transported are exempt from tax under notification No. 7/2017-Central Tax (Rate), dated 28th June 2017 [Supply of goods by the Canteen Stores Department (CSD) to the Unit Run Canteens or to the authorized customers and the supply of goods by the Unit Run Canteens to the authorized customers] and notification No. 26/2017-Central Tax (Rate), dated the 21st September, 2017 [Supply of Heavy water and nuclear fuels by the Department of Atomic Energy to the Nuclear Power Corporation of India Ltd. (NPCIL)];
- (k) any movement of goods caused by defence formation under Ministry of defence as a consignor or consignee;
- (l) where the consignor of goods is the Central Government, Government of any State or a local authority for transport of goods by rail;
- (m) where empty cargo containers are being transported; and
- (n) where the goods are being transported upto a distance of 20 kilometers from the place of the business of the consignor to a weighbridge for weighment or from the weighbridge back to the place of the business of the said consignor subject to the condition that the movement of goods is accompanied by a delivery challans issued in accordance with rule 55.
- (o) where empty cylinders for packing of liquefied petroleum gas are being moved for reasons other than supply

ANNEXURE
[(See Rule 138 (14))]

S.N.	Description of Goods
1.	Liquefied petroleum gas for supply to household and non domestic exempted category (NDEC) customers
2.	Kerosene oil sold under PDS
3.	Postal baggage transported by Department of Posts
4.	Natural or cultured pearls and precious or semi-precious stones; precious metals and metals clad with precious metal (Chapter 71)
5.	Jewellery, goldsmiths' and silversmiths' wares and other articles (Chapter 71) excepting Imitation Jewellery (7117) [Words 'excepting Imitation Jewellery (7117)' inserted by NN 26/2022 - CT, w.e.f. 26.12.2022]
6.	Currency
7.	Used personal and household effects
8.	Coral, unworked (0508) and worked coral (9601)

Points to remember

1. E-way bill is not valid for movement of goods without vehicle number on it.
2. Once E-way bill is generated, it cannot be edited for any mistake. However, it can be cancelled within 24 hours of generation.
3. E- Way Bill may be updated with vehicle number any number of times.
4. The latest vehicle number should be available on e-way bill and should match with the vehicle carrying it in case checked by the department.

Rule 138A: Documents and devices to be carried by a person-in-charge of a conveyance

- (1) The person in charge of a conveyance shall carry –

Effect of amendment w.e.f. 15.10.2020: Now, **it is optional (not compulsory)** for the proper officer to serve pre-notice communication to the assessee.

- Where the person referred to in Rule 142(1A) has made partial payment of the amount communicated to him or desires to file any submissions against the proposed liability, he may make such submission.

Sec. 75: General Provisions Relating to Determination of Tax

- The **period of stay will get excluded** from the period of issuance of order i.e. 3 years or 5 years as the case may be.
- An issue on which appellate authority or Tribunal or High Court has given its decision which is **prejudicial** to the **interest of the revenue** and an **appeal** to the Appellate Tribunal or High Court or Supreme Court respectively **against such decision is pending**, then the **period** spent between the two dates of decision shall be **excluded** in computing the period of **3 years or 5 years** respectively, **for issue of order**.
- When a notice has been issued considering the case to be for **fraud** or for wilful representation or for suppression of facts, and whereas the charges of fraud, suppression and misstatement of facts were not sustainable or **not established** by an order of Appellate Authority or Appellate Tribunal, then in such case the officer shall determine the tax as if the notice is issued for the **normal period of 3 years**.
- An **order** required to be issued in pursuance of the **direction** of the **Tribunal or a Court** shall be issued within **2 years** from the date of communication of the **said direction**.
- Opportunity of **personal hearing** has to be granted when requested for in writing. Personal hearing **adjournment** can be granted for a maximum of **3 times**.
- The relevant facts and basis of the decision shall be set out in the order, which means a **speaking order** needs to be placed.
- The **amount** of tax along with interest and penalty should **not exceed** the amount mentioned in the **notice** and the **grounds** shall **not go beyond** what is mentioned in the **notice**.
- When the decision of Tribunal/ Court/ **Appellate** authority **modifies** the **amount of tax**, correspondingly **interest and penalty** shall **also be modified** to that extent by the proper officer.
- Interest** shall be **payable in all cases** whether specifically mentioned or not.
- If the order is not issued within the time limits**, the adjudication proceedings shall be **deemed to be concluded**.
- Notwithstanding anything contained in section 73 or section 74, where any amount of **self-assessed tax** in accordance with a return furnished u/s 39 **remains unpaid**, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same **shall be recovered** under the provisions of section 79.

Explanation - For the purposes of this sub-section, the expression "self-assessed tax" shall include the tax payable in respect of details of outward supplies furnished under section 37, but not included in the return furnished under section 39.

- It is also provided that **when** the **penalty is imposed u/s 73 or 74**, then, **no penalties** shall be imposed **under any other provisions** of this Act for the same act or omission.

Clarification with regard to applicability of provisions of section 75(2) of CGST Act, 2017 and its effect on limitation [Circular No. 185/17/2022 - GST, dated 27.12.2022]

- Section 75(2) of CGST Act which provides that in cases where the appellate authority or appellate tribunal or court concludes that the notice issued by proper officer u/s 74(1) is not sustainable for reason that the charges of fraud or any willful-misstatement or suppression of facts to evade tax have not been established against the person to whom such notice was issued (hereinafter called as "noticee"), then the proper officer shall determine the tax payable by the noticee, deeming as if the notice was issued u/s 73(1).
- Doubts have been raised by the field formations seeking clarification regarding the time limit within which the proper officer is required to re-determine the amount of tax payable considering notice to be issued u/s 73(1), specially in cases where time limit for issuance of order as per section 73(10) has already been over. Further, doubts have also been expressed regarding the methodology for computation of such amount payable by the noticee, deeming the notice to be issued u/s 73(1).

3. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168(1) of the CGST Act, hereby clarifies the issues as under:

Issue 1: In some of the cases where the show cause notice has been issued by the proper officer to a noticee u/s 74(1) of CGST Act for demand of tax not paid/ short paid or erroneous refund or input tax credit wrongly availed or utilized, the appellate authority or appellate tribunal or the court concludes that the said notice is not sustainable u/s 74(1) of CGST Act for the reason that the charges of fraud or any willful-misstatement or suppression of facts to evade tax have not been established against the noticee and directs the proper officer to re-determine the amount of tax payable by the noticee, deeming the notice to have been issued u/s 73(1) of CGST Act, in accordance with the provisions of section 75(2) of CGST Act. What would be the time period for re-determination of the tax, interest and penalty payable by the noticee in such cases?

Clarification:

- ✓ Section 75(3) of CGST Act provides that an order, required to be issued in pursuance of the directions of the appellate authority or appellate tribunal or the court, has to be issued within 2 years from the date of communication of the said direction.
- ✓ Accordingly, in cases where any direction is issued by the appellate authority or appellate tribunal or the court to re-determine the amount of tax payable by the noticee by deeming the notice to have been issued u/s 73(1) of CGST Act in accordance with the provisions of section 75(2) of the said Act, the proper officer is required to issue the order of redetermination of tax, interest and penalty payable within the time limit as specified in u/s 75(3) of the said Act, i.e. within a period of 2 years from the date of communication of the said direction by appellate authority or appellate tribunal or the court, as the case may be.

Issue 2: How the amount payable by the noticee, deeming the notice to have been issued u/s 73(1), shall be re-computed/ re-determined by the proper officer as per provisions of section 75(2)?

Clarification:

- ✓ In cases where the amount of tax, interest and penalty payable by the noticee is required to be re-determined by the proper officer in terms of section 75(2) of CGST Act, the demand would have to be re-determined keeping in consideration the provisions of section 73(2), read with section 73(10) of CGST Act.
- ✓ Section 73(1) of CGST Act provides for issuance of a show cause notice by the proper officer for tax not paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilized, 73 read with section 73(10) of CGST Act. Thus, only the amount of tax short paid or not paid, or input tax credit wrongly availed or utilized, along with interest and penalty payable, in terms of section 73 of CGST Act relating to such financial years can be re-determined, where show cause notice was issued within 2 years and 9 months from the due date of furnishing of annual return for the respective financial year. Similarly, the amount of tax payable on account of erroneous refund along with interest and penalty payable can be re-determined only where show cause notice was issued within 2 years and 9 months from the date of erroneous refund.
- ✓ In case, where the show cause notice u/s 74(1) was issued for tax short paid or tax not paid or wrongly availed or utilized input tax credit beyond a period of 2 years and 9 months from the due date of furnishing of the annual return for the financial year to which such demand relates to, and the appellate authority concludes that the notice is not sustainable under u/s 74(1) of CGST Act thereby deeming the notice to have been issued u/s 73(1), the entire proceeding shall have to be dropped, being hit by the limitation of time as specified in section 73. Similarly, where show cause notice u/s 74(1) of CGST Act was issued for erroneous refund beyond a period of 2 years and 9 months from the date of erroneous refund, the entire proceeding shall have to be dropped.
- ✓ In cases, where the show cause in terms of section 74(1) of CGST Act was issued for tax short paid or not paid tax or wrongly availed or utilized input tax credit or on account of erroneous refund within 2 years and 9 months from the due date of furnishing of the annual return for the said financial year, to which such demand relates to, or from the date of erroneous refund, as the case may be, the entire amount of the said demand in the show cause notice would be covered under re-determined amount.
- ✓ Where the show cause notice u/s 74(1) was issued for multiple financial years, and where notice had been issued before the expiry of the time period as per section 73(2) for one financial year but after the expiry of the said due date for the other financial years, then the amount payable in terms of section 73 shall be re-

determined only in respect of that financial year for which show cause notice was issued before the expiry of the time period as specified in section 73(2).

Sec. 160 : Assessment proceedings, etc., not to be invalid on certain grounds

- No assessment, re-assessment, adjudication, review, revision, appeal, rectification, notice, summons or other proceedings done, accepted, made, issued, initiated, or purported to have been done, accepted, made, issued, initiated in pursuance of any of the provisions of this Act shall be invalid or deemed to be invalid merely by reason of any mistake, defect or omission therein, if such proceedings are in substance and effect in conformity with or according to the intents, purposes and requirements of this Act or any existing law.
- The service of any notice, order or communication shall not be called in question, if the notice, order or communication, as the case may be, has already been acted upon by the person to whom it is issued or where such service has not been called in question at or in the earlier proceedings commenced, continued or finalised pursuant to such notice, order or communication.

Sec. 161 : Rectification of Errors Apparent on the Face of Record

- Without prejudice to the provisions of section 160, and notwithstanding anything contained in any other provisions of this Act, any authority, who has passed or issued any decision or order or notice or certificate or any other document, may **rectify any error which is apparent on the face of record** in such decision or order or notice or certificate or any other document, either on its own motion or where such error is brought to its notice by any officer appointed under this Act or an officer appointed under the SGST Act or an officer appointed under the UTGST Act or by the affected person within a period of 3 months from the date of issue of such decision or order or notice or certificate or any other document, as the case may be.
- However, no such rectification shall be done after a period of 6 months from the date of issue of such decision or order or notice or certificate or any other document.
- Further, the said period of 6 months shall not apply in such cases where the rectification is purely in the nature of correction of a clerical or arithmetical error, arising from any accidental slip or omission.
- Furthermore, where such rectification adversely affects any person, the principles of natural justice shall be followed by the authority carrying out such rectification.
- The power to rectify is for **any error or mistake which is apparent from record**.
- The error must be **self-evident** and should **not** be discoverable by a **long process of reasoning**.

Sec. 76: Tax Collected But Not Paid to Government

- Every person who has collected from any other person any amount representing “tax under this Act”, is required pay the said amount to the credit of the Central or a State Government regardless of whether the supplies in respect of which the amount was collected are taxable or not.
- Interest at the rate specified under section 50 (i.e. 18% p.a.) shall be paid on the amount collected as representing tax (either paid voluntarily or on determination by the Proper Officer). Interest shall be calculated from the date of collection of amount till the date of deposit of amount.

Sec. 77: Tax Wrongfully Collected and Paid To Central Government or State Government

- If a taxable person wrongly pays CGST/SGST or CGST/UTGST on the transaction treating it as intra-state supply, but which is subsequently held to be inter-state supply, than upon payment of IGST on such transaction, the CGST/SGST or CGST/UTGST will be refunded in such manner and subject to prescribed conditions.
- If a taxable person wrongly pays IGST by treating a supply as inter-state supply, which is subsequently held to be intra-state supply, interest is not required to be paid on the CGST/SGST or CGST/UTGST payable.

Sec. 78: Initiation of Recovery Proceedings

- The transfer will be void, when it is or was with an intention of defrauding the Government revenue.

Sec. 82: Tax To Be First Charge on Property

If any dues are payable by a taxable person or any other person to the government, then it would have first charge on the property of such taxable or other person (except as provided in Insolvency and Bankruptcy Code).

Sec. 83: Provisional Attachment to Protect Revenue in Certain Cases

- (1) Where, after the initiation of any proceeding under Chapter XII, Chapter XIV or Chapter XV, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue it is necessary so to do, he may, by order in writing, attach provisionally, any property, including bank account, belonging to the taxable person or any person specified in sub-section (1A) of section 122, in such manner as may be prescribed. [sub-section (1) substituted by Finance Act, 2021, w.e.f. 01.01.2022]
- (2) Every such provisional attachment shall cease to have effect after the expiry of a period of 1 year from the date of the order made under sub-section (1).

For Reference:

Chapter XII – Assessment

Chapter XIV – Inspection, Search, Seizure and Arrest

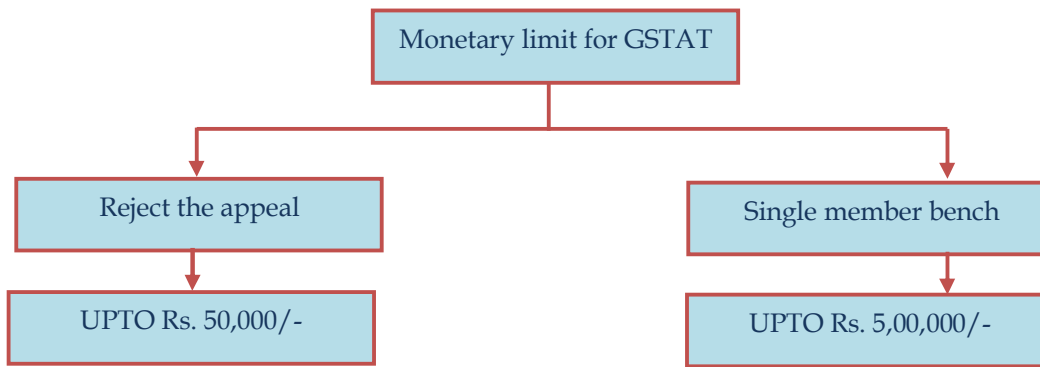
Chapter XV – Demands and Recovery

Sec. 84: Continuation and Validation of Certain Recovery Proceedings

Any recovery proceedings which are initiated prior to the disposal of appeal, revision application or other proceeding may be continued in relation to the recoverable amount from the stage at which such proceedings stood immediately before such disposal.

Clarification regarding the treatment of statutory dues under GST law in respect of the taxpayers for whom the proceedings have been finalised under IBC [Circular No. 187/19/2022 - GST, dated 27.12.2022]

1. Circular No. 134/04/2020-GST dated 23.03.2020 was issued wherein it was clarified that no coercive action can be taken against the corporate debtor with respect to the dues of the period prior to the commencement of Corporate Insolvency Resolution Process (CIRP). Such dues will be treated as 'operational debt' and the claims may be filed by the proper officer before the NCLT in accordance with the provisions of the IBC.
2. Representations have been received from the trade as well as tax authorities, seeking clarification regarding the modalities for implementation of the order of the adjudicating authority under Insolvency and Bankruptcy Code, 2016 (IBC) with respect to demand for recovery against such corporate debtor under CGST Act as well under the existing laws and the treatment of such statutory dues under CGST Act and existing laws, after finalization of the proceedings under IBC.
3. As per Section 84 of CGST Act, if the government dues against any person under CGST Act are reduced as a result of any appeal, revision or other proceedings in respect of such government dues, then an intimation for such reduction of government dues has to be given by the Commissioner to such person and to the appropriate authority with whom the recovery proceedings are pending. Further, recovery proceedings can be continued in relation to such reduced amount of government dues.
4. The word 'other proceedings' is not defined in CGST Act. As the proceedings conducted under IBC also adjudicate the government dues pending under the CGST Act or under existing laws against the corporate debtor, the same appear to be covered under the term 'other proceedings' in Section 84 of CGST Act.
5. Accordingly, in cases where a confirmed demand for recovery has been issued by the tax authorities and where the proceedings have been finalised against the corporate debtor under IBC reducing the amount of statutory dues payable by the corporate debtor to the government under CGST Act or under existing laws, the jurisdictional Commissioner shall issue an intimation reducing such demand, to the taxable person or any other person as well as the appropriate authority with whom recovery proceedings are pending.



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.
- (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.
- (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:

<p>Can revise the order passed by subordinate officer, if in his views order passed is :</p> <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 	<p>Cannot Revise the order passed by subordinate officer, if:</p> <ul style="list-style-type: none"> (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.
<p>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.</p>	<p>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.</p>

Sec. 109 – 111 : Appellate Tribunal under GST Law

- Upon recommendation of Council, Central Government to constitute two tier Goods & Service Tax Appellate Tribunal.
- Hear the appeals
 - ➡ The National Bench or Regional Benches - one of the issues involved relates to the place of supply.

- (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.
- (c) **Mode 3 - Electronic Means**
- Email or notifying in common portal (GSTN).
- (d) **Mode 4 - Media:** Publication in a newspaper (in the locality in which the taxpayer or the person to whom it is issued is known to have resided, carried on business or personally worked for gain)
- (e) **Mode 5 - Other Modes:** If above modes fail, then it can be served by
- Affixing it in some conspicuous place at his last known place of business or residence or
 - If above mode is not practicable, service of notice can be by affixing a copy on the notice board of the officer or authority issuing such communication.
- 3. Date of Service:**
- **Normal Cases:** The above communications shall be treated as served on the date on which it is tendered or published or a copy thereof is affixed (as mentioned above).
 - **Registered or Speed Post:** If such communications are sent by registered/speed post, it shall be treated as received by the addressee at the expiry of the normal period taken by such post in transit (unless the contrary is proved).

Sec. 170 : Rounding Off of Tax, etc.

- (i) Tax, interest, penalty, fine or any other sum payable, and refund or any other sum due, under the Act.

The above amounts shall be rounded off as under:

If amount contains a part of the rupee	Effect
≥ 50 paise	Must be increased to one rupee
< 50 paise	Part to be ignored

Sec. 171 : Anti-Profiteering Measure

Section 171 makes it mandatory that any reduction in rate of tax on any supply of goods or services or both; or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices.

The Central Government had constituted National Anti-profiteering Authority (NAA) for this purpose. But, NAA ceased to exist w.e.f. 01.12.2022.

W.e.f. 01.12.2022, the Central Government, on the recommendation of the GST Council, has empowered the Competition Commission of India established u/s 7(1) of the Competition Act, 2002, to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in commensurate reduction in the price of the goods or services or both supplied by him. [NN 23/2022 - CT, w.e.f. 01.12.2022]

Functions of the Authority [Rule 127]

The authority shall discharge the following functions, namely-

- (i) to determine whether the reduction in tax rate or the benefit of input tax credit has been passed on by the seller to the buyer (hereinafter collectively referred to as 'benefit') by reducing the prices
- (ii) to identify the taxpayer who has not passed on the benefit
- (iii) to order
 - (a) reduction in prices

- (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]

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 30.06.2023] (In other words, payments relating to Courier shipments would be required to be done through ECL from 01.07.2023 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,—
 - (a) in lieu of remission of any duty or tax or levy, chargeable on any material used in the manufacture or processing of goods or for carrying out any operation on such goods in India that are exported; or
 - (b) in lieu of such other financial benefit subject to such conditions and restrictions as may be specified therein.