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

Applicable For Nov. 2023

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(4)	No input tax credit shall be availed by a registered person in respect of invoices or debit notes the details of which are required to be furnished under sub- section (1) of section 37 unless,- (a) the details of such invoices or debit notes have been furnished by the supplier in the statement of outward supplies in FORM GSTR-1 or using the invoice furnishing facility; and (b) the details of input tax credit in respect of such invoices or debit notes have been communicated to the registered person in FORM GSTR-2B under sub-rule (7) of rule 60. [As amended by NN 19/2020 – CT, w.e.f. 01.10.2022] [Rule 36(4) Substituted by NN 40/2021 – CT, w.e.f. 01.01.2022]
Rule 37	**Reversal of input tax credit in the case of non-payment of consideration**
(1)	A registered person, who has availed of input tax credit on any inward supply of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, but fails to pay to the supplier thereof, the amount towards the value of such supply, ***whether wholly or partly,*** along with the tax payable thereon, within the time limit specified in the second proviso to sub-section (2) of section 16, shall pay ***or reverse*** an amount equal to the input tax credit availed in respect of such supply, ***proportionate to the amount not paid to the supplier,*** along with interest payable thereon under section 50, while furnishing the return in FORM GSTR-3B for the tax period immediately following the period of one hundred and eighty days from the date of the issue of the invoice: Provided that the value of supplies made without consideration as specified in Schedule I of the said Act shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16. Provided further that the value of supplies on account of any amount added in accordance with the provisions of clause (b) of sub-section (2) of section 15 shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16. [Rule 37(1) Substituted by NN 19/2022 – CT, w.e.f. 01.10.2022] ***[Bold & italic words inserted by NN 26/2022 – CT, retrospectively w.e.f. 01.10.2022]***
(2)	Where the said registered person subsequently makes the payment of the amount towards the value of such supply along with tax payable thereon to the supplier thereof, he shall be entitled to re-avail the input tax credit referred to in sub-rule (1). [Rule 37(2) Substituted by NN 19/2022 – CT, w.e.f. 01.10.2022]
(3)	~~The registered person shall be liable to pay interest at the rate notified under sub-section (1) of section 50 for the period starting from the date of availing credit on such supplies till the date when the amount added to the output tax liability, as mentioned in sub-rule (2), is paid.~~ [Rule 37(3) omitted by NN 19/2022 – CT, w.e.f. 01.10.2022]
(4)	The time limit specified in sub-section (4) of section 16 shall not apply to a claim for re- availing of any credit, in accordance with the provisions of the Act or the provisions of this Chapter, that had been reversed earlier.
Rule 37A	**Reversal of input tax credit in the case of non-payment of tax by the supplier and re-availment thereof**

Where input tax credit has been availed by a registered person in the return in FORM GSTR-3B for a tax period in respect of such invoice or debit note, the details of which have been furnished by the supplier in the statement of outward supplies in FORM GSTR-1 or using the invoice furnishing facility, but the return in FORM GSTR-3B for the tax period corresponding to the said statement of outward supplies has not been furnished by such supplier till the 30th day of September following the end of financial year in which the input tax credit in respect of such invoice or debit note has been availed, the said amount of input tax credit shall be reversed by the said registered person, while furnishing a return in FORM GSTR-3B on or before the 30th day of November following the end of such financial year:

Provided that where the said amount of input tax credit is not reversed by the registered person in a return in FORM GSTR-3B on or before the 30th day of November following the end of such financial year during which such input tax credit has been availed, such amount shall be payable by the said person along with interest thereon under section 50:

Provided further that where the said supplier subsequently furnishes the return in FORM GSTR-3B for the said tax period, the said registered person may re-avail the amount of such credit in the return in FORM GSTR-3B for a tax period thereafter.

[Rule 37A Inserted by NN 26/2022 – CT, w.e.f. 26.12.2022]

- ITC can be re-availed once the supplier pays the tax.

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] :

Where input tax credit has been availed by a registered person in the return in FORM GSTR-3B for a tax period in respect of such invoice or debit note, the details of which have been furnished by the supplier in the statement of outward supplies in FORM GSTR-1 or using the invoice furnishing facility, but the return in FORM GSTR-3B for the tax period corresponding to the said statement of outward supplies has not been furnished by such supplier till the 30th day of September following the end of financial year in which the input tax credit in respect of such invoice or debit note has been availed, the said amount of input tax credit shall be reversed by the said registered person, 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 input tax credit is not reversed by the registered person in a return in FORM GSTR-3B on or before the 30th day of November following the end of such financial year during which such input tax credit has been availed, such amount shall be payable by the said person along with interest thereon under section 50.

Further, where the said supplier subsequently furnishes the return in FORM GSTR-3B for the said tax period, the said registered person may re-avail the amount of such credit in the return in FORM GSTR-3B for a tax period thereafter.

Analysis:

- ***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 Furinishing 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 under section 39 (i.e. GSTR – 3B).

Illustration 4 :

Explain the conditions necessary for obtaining input tax credit? ***(IPCC MTP May 2018, 5 Marks)***

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

(a) he is in possession of tax invoice or debit note or such other tax paying documents as may be prescribed;

(aa) the details of such invoices or debit notes have been furnished by the supplier in the statement of outward supplies in FORM GSTR-1 or using the invoice furnishing facility and the details of input tax credit in respect of such invoices or debit notes have been communicated to the recipient in FORM GSTR-2B;

(b) he has received the goods or services or both;

(ba) the details of input tax credit in respect of the said supply communicated to such registered person under section 38 has not been restricted;

(c) GST should actually have been paid to the Government in respect of the goods/services for which ITC is being taken; and

(d) he has furnished the return under section 39.

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

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

Illustration 5 :

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

Illustration 6 :

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

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

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

If the 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 ***reversed or*** 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, if part payment has been made, proportionate credit will be allowed.

Illustration 7 :

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

M/S PQR Pvt. Ltd. withheld 10% of the amount payable as retention money for 1 year (i.e. more than 180 days) as per the terms of the contract which is not a failure in making payment on the part of recipient. Therefore, in such case, No

notified for reverse charge under IGST Act. Further, following two services are additionally included under RCM for IGST purposes:

S.N.	Category of Supply of Service	Supplier of Service	Recipient of Service
1	Any service **supplied by any person who is located in a non taxable territory** to any person, other than non-taxable online recipient.	Any person located in a non-taxable territory	Any person located in the taxable territory, other than non taxable online recipient.
2	Services **supplied by a person located in non-taxable territory by way of transportation of goods by a vessel** from a place outside India up to the customs station of clearance in India.	A person located in non-taxable territory	Importer, as defined in section 2(26) of the Customs Act, 1962, located in the taxable territory. **Importer**, in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes any owner, beneficial owner or any person holding himself out to be the importer [Sec. 2(26) of the Customs Act, 1962].

Explanation: For purpose of this notification, -

(a) "Body Corporate" has the same meaning as assigned to it in clause (11) of section 2 of the Companies Act, 2013. As per section 2(11) of the Companies Act, 2013, body corporate or corporation includes a company incorporated outside India, but does not include -

(i) a co-operative society registered under any law relating to co-operative societies; and

(ii) any other body corporate (not being a company as defined in this Act), which the Central Government may, by notification, specify in this behalf.

(b) The words and expressions used and not defined in this notification but defined in the Central Goods and Services Tax Act, the Integrated Goods and Services Tax Act, and the Union Territory Goods and Services Tax Act shall have the same meanings as assigned to them in those Acts.

(c) A **"Limited Liability Partnership"** formed and registered under the provisions of the Limited Liability Partnership Act, 2008 shall also be **considered as a partnership firm** or a firm.

(d) "renting of immovable property" means allowing, permitting or granting access, entry, occupation, use or any such facility, wholly or partly, in an immovable property, with or without the transfer of possession or control of the said immovable property and includes letting, leasing, licensing or other similar arrangements in respect of immovable property.

(e) provisions of this notification, 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***]

(f) The term "apartment", "promoter" and "Real Estate Project (REP)" shall have the same meaning as assigned in section 2 of the Real Estate (Regulation and Development) Act, 2016.

(g) the term "project" shall mean a Real Estate Project (REP) or a Residential Real Estate Project (RREP);

(h) The term "Residential Real Estate Project (RREP)" shall mean a REP in which the carpet area of the commercial apartments is not more than 15% of the total carpet area of all the apartments in the REP.

(i) "floor space index (FSI)" shall mean the ratio of a building's total floor area (gross floor area) to the size of the piece of land upon which it is built.

7.2 Sec. 9(5) of CGST Act : Tax Payable by the Electronic Commerce Operator (ECO) on Notified Services

customers of 'A' and addressing/ processing their queries / complains. 'B' charges 'A' for this service. 'B' is involved in supply of main service 'customer care service' to 'A', and therefore, ''B' is not an intermediary.

Further, the above illustrations are only indicative and not exhaustive.

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.*

(i) pre-school education and education up to higher secondary school or equivalent; or

(ii) education as a part of an approved vocational education course.

Notes :

(1) As per clause (y) under this notification, **'Educational institution'** means an institution providing services by way of, -

- 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.

As per clause (h) under this notification, **'Approved vocational education course'** means, - a course run by an industrial training institute or an industrial training centre affiliated to the National Council for Vocational Training or State Council for Vocational Training offering courses in designated trades notified under the Apprentices Act, 1961 or a Modular Employable Skill Course, approved by the National Council of Vocational Training, run by a person registered with the Directorate General of Training, Ministry of Skill Development and Entrepreneurship.

(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. [Inserted by NN 14/2018 – CT (R), w.e.f. 27.07.2018]

(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]

Analysis:

(1) **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]**

1. Services supplied by Central and State Board include entrance examination (on charging a fee) for admission to educational institution, input services for conducting such entrance examination for students, accreditation of educational institutions or professional so as to authorise them to provide their respective services.

2. Illustratively, NBE provides services of conducting entrance examinations for admission to courses including Diplomat National Board (DNB) and Fellow of National Board (FNB), prescribes courses and curricula for PG medical studies, holds examinations and grant degrees, diplomas and other academic distinctions. It carries out all functions as are normally carried out by central or state educational boards and is thus a central educational board.

3. Further, "Central and State Educational Boards" are treated as Educational Institution for the limited purpose of providing services by way of conduct of examination to the students.

   Therefore, NBE is an 'Educational Institution' in so far as it provides services by way of conduct of examination, including any entrance examination, to the students.

   3.1 Following services supplied by an educational institution are exempt from GST vide sl. no. 66 of the NN 12/2017 - CT (R):

   Services provided -

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

   (aa) by an educational institution by way of conduct of entrance examination against consideration in the form of entrance fee;

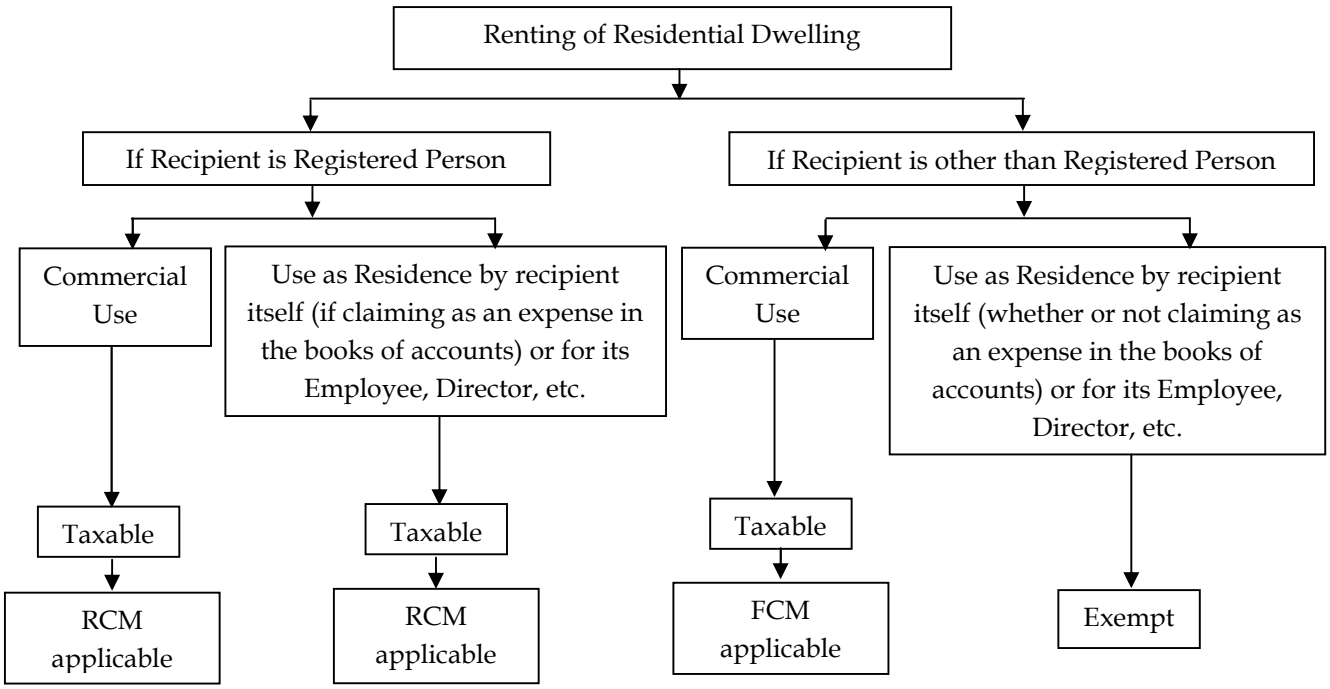
   3.2 Similarly, services provided to an educational institution, relating to admission to, or conduct of examination is also exempt from GST [sl. no. 66(b)(iv) of NN 12/2017 - CT (R)].

	plazas would get the same treatment as given to toll charges. • Therefore, it is clarified that additional fee collected in the form of higher toll charges from vehicles not having Fastag is essentially payment of toll for allowing access to roads or bridges to such vehicles and may be given the same treatment as given to toll charges and hence, will be exempt from GST.
16.	~~Service by way of **access to a road** or a bridge on payment of **annuity**~~. **[Entry No. 23A of NN. 12/2017 - CT (R), Omitted by NN 15/2022 – CT (R), w.e.f. 01.01.2023]**
17.	Services by way of **granting National Permit to a goods carriage** to operate through-out India/contiguous States. **[Entry No. 61A of NN. 12/2017 CT (R)]**

Construction Related Services	
1.	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.** **[Entry No. 11 of NN. 12/2017 CT (R)]** **Notes :** (1) As per clause (zza) under this notification, **'Residential complex'** means any complex comprising of a building or buildings, having more than one single residential unit; (2) As per clause (zzd) under this notification, **'Single residential unit'** means a self-contained residential unit which is designed for use, wholly or principally, for residential purposes for one family. (3) As per clause (zr) under this notification, **'Original works'** means - • all new constructions; • all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable; • erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise.
2.	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. [Entry No. 10 of NN. 12/2017 CT (R)]**
3.	Service by way of **Transfer of Development Rights (TDR)** or **Floor Space Index (FSI)** (including additional FSI) **for construction of residential apartments** by a promoter in a project, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier. The amount of GST exemption available for construction of residential apartments in the project under this notification shall be calculated as under: [GST payable on TDR or FSI (including additional FSI) or both for construction of the project] x (carpet area of the residential apartments in the project) ÷ (Total carpet area of the residential and commercial apartments in the project). **Conditions:** (i) Provided that the promoter shall be liable to pay tax at the applicable rate, on reverse charge basis, on such proportion of value of development rights, or FSI (including additional FSI), or both, as is attributable to the residential apartments, which remain un-booked on the date of issuance of completion certificate, or first occupation of the project, as the case may be, in the following manner: [GST payable on TDR or FSI (including additional FSI) or both for construction of the residential apartments in the project but for the exemption contained herein] x (carpet area of the residential apartments in the project which remain un- booked on the date of issuance of completion certificate or first

	on which such development rights or FSI is transferred to the promoter. (b) Value of portion of residential or commercial apartments remaining un-booked on the date of issuance of completion certificate or first occupation, as the case may be, shall be deemed to be equal to the value of similar apartments charged by the promoter nearest to the date of issuance of completion certificate or first occupation, as the case may be.

Renting of Immovable Property Related Services	
1.	Services by way of **renting of residential dwelling for use as residence except** where the residential dwelling is rented **to a registered person**. [as amended by NN 04/2022 – CT (R), w.e.f. 18.07.2022] ***Explanation. - 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, –*** ***1. 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*** ***2. such renting is on his own account and not that of the proprietorship concern.*** ***[Explanation inserted by NN 15/2022 – CT (R), w.e.f. 01.01.2023]*** **[Entry No. 12 of NN. 12/2017 CT (R)]** **Analysis :** (1) W.e.f. 18.07.2022, if the residential dwelling (house/flat) is taken on rent by a GST registered person (claiming as an expense in his books of accounts), then, it will be chargeable to GST, irrespective of its use. Further, in this case, GST is payable by the recipient (i.e. registered person) under Reverse Charge Mechanism irrespective of the supplier of the service. (2) A residential dwelling given on rent which is used for commercial or non-residential use would not be covered in this entry irrespective of recipient of service and hence, would be taxable. (3) A residential dwelling given on rent to a person, other than registered person, which is used only for residential purpose is covered in this entry and hence, exempt from GST. (4) Renting of a residential dwelling to a person, other than registered person, which is used partly for residence and partly for non-residential purpose like an office of a lawyer or a clinic of a doctor in a rented house would be a case of bundled services as renting service is being provided both for residential use and for non-residential use. Taxability of such bundled services has to be determined in terms of the principles laid down in Sec. 8 of the Act. And, since, this is not naturally bundled service, therefore, it is a case of mixed supply and hence, entire rent would be chargeable to GST. And, if residential dwelling is rented to registered person, then, anyways it is chargeable to GST, irrespective of its use (that too under RCM). (5) If a house is given on rent and the same is used as a hotel or a lodge, such renting transaction is not covered in this exemption entry because the person taking it on rent is using it for commercial purpose. Renting of rooms in a hotel or a lodge let out whether or not for temporary stay would not be covered in this exemption entry because a hotel or a lodge is not a residential dwelling, hence, it is chargeable to GST. (6) Govt. department allotting owned houses to its employees for residential purpose and charging a license fee for such service would also be covered under this exemption entry and hence, not taxable. (7) Furnished flats (service apartments) given on rent for temporary stay are in the nature of lodges or guest houses and hence, not treatable as a residential dwelling, therefore, it will be taxable. (8) The phrase 'residential dwelling' is not defined under GST. It has therefore to be interpreted in terms of the normal trade parlance as per which it is any residential accommodation, but does not include hotel, motel, inn, guest house, campsite, lodge, house boat, or like places meant for temporary stay. (9) **Tabular Presentation for easy understandability:**



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

Analysis :

(1) W.e.f. 18.07.2022, Services by a hotel, inn, guest house, club or campsite, by whatever name called (including Hostel, Dharmshala, Ashram, etc.), for residential or lodging purposes are made taxable, irrespective of the value of supply per day per room.

(2) However, services by way of renting of rooms located within the precincts of a religious place are still exempt from GST, if room rent is below Rs. 1,000 per day per room (Discussed in next entry).

3. Services by a person by way of -

(a) conduct of any **religious ceremony;**

(b) **renting of precincts of a religious place** meant for general public, owned or managed by an entity registered as a charitable or religious trust under section 12AA or 12AB of the Income-tax Act, 1961 or a trust or an institution registered under section 10(23C)(v) of the Income-tax Act or a body or an authority covered under section 10(23BBA) of the said Income-tax Act.

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

(i) renting of **rooms** where charges are **Rs. 1,000 or more per day;**

(ii) renting of premises, **community halls,** kalyan mandapam or open area, and the like where charges are Rs. **10,000 or more per day;**

(iii) renting of **shops** or other spaces for business or commerce where charges are **Rs. 10,000 or more per month.**

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

Notes :

(1) As per clause (zx) under this notification, **'Religious place'** means a place which is primarily meant for conduct of prayers or worship pertaining to a religion, meditation, or spirituality;

(2) As per clause (zc) under this notification, **'General public'** means the body of people at large sufficiently defined by some common quality of public or impersonal nature;

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

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

Illustration 25 :

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

Answer :

Services supplied by Central Government, State Government, Union territory to their undertakings or Public Sector Undertakings (PSUs) by way of guaranteeing the loans taken by such undertakings or PSUs from the banking companies and financial institutions are exempt from GST as per entry no. 34A of NN 12/2017.

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]

All services supplied by Central Government, State Government, Union Territory or local authority to any person other than business entities (barring a few specified services such as services of postal department, transportation of goods and passengers, etc.) are exempt from GST vide Sl. No. 6 of NN. 12/2017 – CT (R). Therefore, 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.~~ **[Entry No. 26 of NN. 12/2017 CT (R), 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.~~ **[Entry No. 42 of NN. 09/2017 IT (R), omitted by NN 04/2022 IT (R), w.e.f. 18.07.2022]**
3.	Services by way of - (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); (b) inter se sale or purchase of **foreign currency amongst banks or authorized dealers** of foreign exchange or amongst banks and such dealers. **[Entry No. 27 of NN. 12/2017 CT (R)]** **Note** : As per clause (zj) under this notification, '**Interest'** means interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) but does not include any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilized. **Analysis** : (1) If any service charges or processing fees or documentation charges or inspection charges, etc. are recovered in addition to interest on loan, advance or a deposit, then, such charges would be taxable under GST. (2) Discounting of Bills of Exchange is covered in this exemption entry only to the extent of its consideration as represented by way of discount, i.e. charges other than discounting charges are taxable.

	(viii)	Merchant Banking Services – Taxable	4
	(ix)	Debit cards and Credit cards issuing charges – Taxable	1
	(x)	Commission charged from merchants for payments made through credit cards and debit cards – Taxable	2
	(xi)	Interest charged from credit card holders @ 3% per month for delay in repayment of amount used by payment through credit cards – Taxable [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.]	3
	(xii)	Interest earned on repos and reverse repos transactions entered into by bank – Exempt [Interest is specifically covered under exemption list Entry No. 27 of NN. 12/2017 CT (R). Therefore, not taxable under GST]	-
		Total Value of Taxable Services	**60.00**

5. 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. **Explanation**: For the purposes of this entry, **"acquiring bank"** means any banking company, financial institution including non-banking financial company or any other person, who makes the payment to any person who accepts such card. **[Entry No. 34 of NN. 12/2017 CT (R)]**

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]:

(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/-.

(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.

(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.

(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.*

6. Services by the following persons in respective capacities –

(a) **business facilitator** or a **business correspondent** to a **banking company** with respect to accounts in its **rural area** branch;

(b) any person as an **intermediary to a business facilitator or a business correspondent** with respect to services mentioned in entry (a); or

(c) business facilitator or a business correspondent to an **insurance company** in a **rural area**.

[Entry No. 39 of NN. 12/2017 CT (R)]

Note :

(1) As per clause (o) under this notification, **'Business facilitator or business correspondent'** means an

10. It is advised that while the taxability in each case shall depend on facts of that case, the above guidelines may be followed in determining whether tax on an activity or transaction needs to be paid treating the same as service by way of agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act.

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.

12. Application for registration by Input Service Distributor (ISD) [Second proviso to Rule 8(1)]:

- Every person being an input Service Distributor shall make a separate application for registration as such Input Service Distributor. There is no threshold limit for registration for an ISD. An ISD is required to obtain a separate registration even though it may be otherwise registered, though the application shall be made in Form GST REG 01 only. Different offices like marketing division, security division etc. may apply for separate ISD registration.

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 registration application form, along with specified documents at the Common Portal.

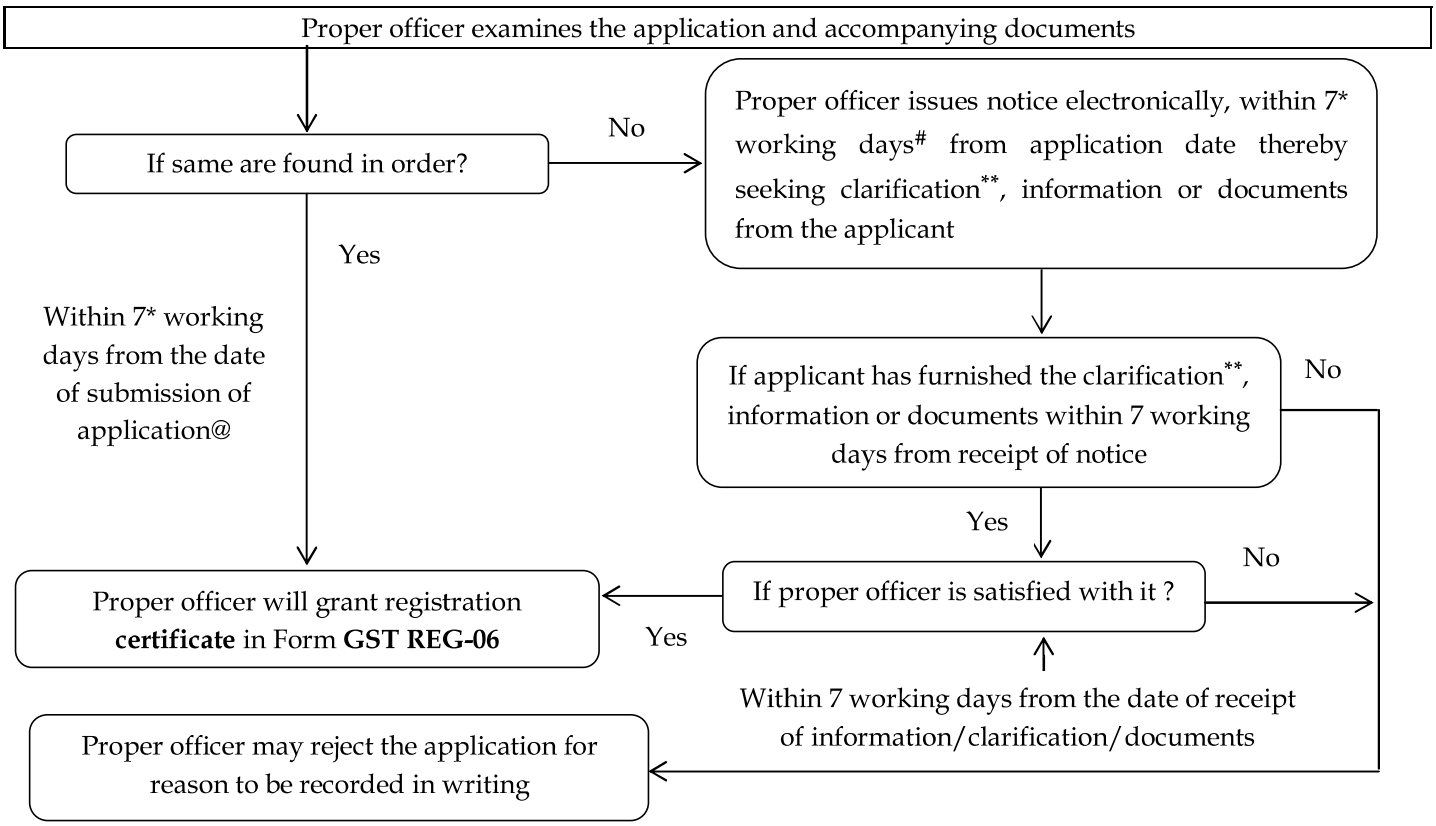
Rule 8(4A): Where an applicant, other than a person notified u/s 25(6D), opts for authentication of Aadhaar number, he shall, while submitting the registration application, undergo authentication of Aadhaar number and the date of submission of the application in such cases shall be the date of authentication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

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 form GST REG-02 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.



*Time limit is increased to 7 working days from of 3 working days by NN 94/2020 – CT, w.e.f. 22.12.2020

**Clarification includes modification / correction of particulars declared in the application for registration, other than PAN, state, mobile no. and e-mail address

@ 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)]

Therefore, in the given case, Bhumika Caretakers should issue quarterly invoices on or before April 1, July 1, October 1, and January 1.

Illustration 2: M/s Mangal Industries supplies goods to M/s Garg Industries. The goods were removed from its factory on 5th August. M/s Mangal Industries needs to issue a tax invoice on or before 5th August.

Illustration 3: M/s Mangal Associates provide Consultancy Services to M/s Garg Industries on 5th August. M/s Mangal Associates needs to issue a tax invoice within 30 days of supply of Consultancy Services, i.e. on or before 4th September.

Illustration 4: M/s Mangal Industries entered into an annual maintenance contract with M/s Garg Services Ltd. for 1 year [Jan.-Dec., 2018] for the water purifiers fitted in their factories. As per the contract, payment for said services had to be made on first 5th of each quarter. For the quarter Jan. - March, 2018, Mangal Industries made the payment on 20th February. Since, services provided by M/s Garg Services Ltd. to M/s Mangal Industries is a continuous supply of services and due date of payment is ascertainable from the contract, therefore, M/s Garg Services Ltd. had to issue a tax invoice on or before such due date, viz. 5th January for quarter Jan. - March, 2018 and so on for every quarter.

2. **Where supply of services ceases before its completion [Section 31(6)] :** In a case where the supply of services ceases under a contract before the completion of the supply, the invoice shall be issued at the time when the supply ceases and such invoice shall be issued to the extent of the supply made before such cessation.

3. **Goods sent on Approval basis [Section 31(7)] :** Where the goods being sent or taken on approval for sale or return are removed before the supply takes place, the invoice shall be issued:

(a) before/at the time of supply or

(b) 6 months from the date of removal

whichever is earlier.

4. **Particulars of a tax invoice [Sections 31(1) & (2) read with rule 46] :** As discussed earlier, there is no format prescribed for an invoice, but rules make it mandatory for an invoice to have the following fields (only applicable fields are to be filled) :

(a)	Name, address and GSTIN of the supplier;	
(b)	A consecutive serial number not exceeding 16 characters, in one or multiple series, containing alphabets numerals/special characters hyphen or dash and slash, and any combination thereof, unique for a F.Y.;	
(c)	Date of its issue;	
(d)	**If recipient is registered -** Name, address and GSTIN or UIN of recipient	
(e)	**If recipient is unregistered and value of supply is**	**Particulars of invoice**
	Rs. 50,000 or more	Name and address of the recipient and the address of delivery, along with the name of State and its code
	less than Rs. 50,000	unregistered recipient may still request the aforesaid details to be recorded in the tax invoice
	However, 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]	
(f)	HSN code for goods or services;	
(g)	Description of goods or services;	
(h)	Quantity in case of goods and unit or Unique Quantity Code thereof;	
(i)	Total value of supply of goods or services or both;	
(j)	Taxable value of supply of goods or services or both taking into account discount or abatement, if any;	
(k)	Rate of tax (central tax, State tax, integrated tax, Union territory tax or cess);	

(h)	Signature/digital signature of supplier/his authorized representative. However, the signature or digital signature of the supplier or his authorized representative shall not be required in the case of issuance of an electronic invoice in accordance with the provisions of the Information Technology Act, 2000.

Note: Any tax invoice or any other similar document issued under any other Act for the time being in force in respect of any non-taxable supply shall be treated as bill of supply for the purposes of the Act.

Illustration 8: AY & Sons, a manufacturer, opted for composition levy under section 10. It will issue a Bill of Supply to the buyers of goods and not the tax invoice as it does not collect any tax from the buyers.

4. **Invoice-cum-bill of supply (Rule 46A) :** Notwithstanding anything contained in rule 46 or rule 49 or rule 54, 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. (i.e. for Tax Invoice)

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

(i.e. for Tax invoice in special cases) (i.e. for Bill of Supply)

5. **Receipt Voucher [Section 31(3)(d) read with rule 50] :** A registered person shall, on receipt of advance payment with respect to any supply of goods or services or both, issue a Receipt Voucher evidencing receipt of such payment.

Particulars of Receipt Voucher

(a)	Name, address and GSTIN of the supplier;
(b)	A consecutive serial number not exceeding 16 characters, in one or multiple series, containing alphabets or numerals or special characters -hyphen or dash and slash and any combination thereof, unique for a F.Y.
(c)	Date of its issue;
(d)	Name, address and GSTIN or UIN, if registered, of the recipient;
(e)	Description of goods or services;
(f)	Amount of advance taken;
(g)	Rate of tax (central tax, State tax, integrated tax, Union territory tax or cess);
(h)	Amount of tax charged in respect of taxable goods or services (central tax, State tax, integrated tax, Union territory tax or cess);
(i)	Place of supply along with the name of State and its code, in case of a supply in the course of inter-state trade or commerce;
(j)	Whether the tax is payable on reverse charge basis; and
(k)	Signature/digital signature of supplier/his authorized representative

Where at the time of receipt of advance, rate of tax/ nature of supply is not determinable

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**

6. **Refund Voucher [Section 31(3)(e) read with rule 51]** : Where, on receipt of advance payment with respect to any supply of goods or services or both the registered person issues a **Receipt Voucher,** but subsequently no supply is made and no tax invoice is issued in pursuance thereof, the said registered person may issue to the person who had made the payment, a **Refund Voucher** against such payment.

Particulars of Refund Voucher

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

www.einvoice1.gst.gov.in ; www.einvoice2.gst.gov.in ; www.einvoice3.gst.gov.in ; www.einvoice4.gst.gov.in ;

www.einvoice5.gst.gov.in ; www.einvoice6.gst.gov.in ; www.einvoice7.gst.gov.in ; www.einvoice8.gst.gov.in ;

www.einvoice9.gst.gov.in ; www.einvoice10.gst.gov.in

Invoice Reference Number

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

Quick Response (QR) code

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

Other points:

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

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

(A) **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.***

Further, such person furnishing quarterly GSTR-1, may furnish the details of such outward supplies of goods or services or both to a registered person, as he may consider necessary, for the 1st & 2nd months of a quarter, up to a cumulative value of Rs. 50,00,000 in each of the months,- using **Invoice Furnishing Facility (IFF)** electronically, from the 1st day of the month succeeding such month till the **13th day** of the said month.

Further, the details of outward supplies furnished using the IFF, for the 1st & 2nd months of a quarter, shall not be furnished in FORM GSTR-1 for the said quarter.

Notes :

(1) A taxpayer cannot file GSTR-1 before the end of the current tax period. However, following are the exceptions to this rule:

(a) Casual taxpayers, after the closure of their business

(b) Cancellation of GSTIN of a normal taxpayer

(2) A taxpayer who has applied for cancellation of registration will be allowed to file GSTR-1 after confirming receipt of the application.

4. Bar on filing of GSTR-1 or using IFF [Rule 59(6) of the CGST Rules, 2017, inserted by NN 01/2021 – CT, w.e.f. 01.01.2021] : 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 preceding 2 months~~ for the preceding month; [Omitted words substituted by NN 35/2021 – CT, w.e.f. 01.01.2022]

(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, who is restricted from using the amount available in electronic credit ledger to discharge his liability towards tax in excess of 99% of such tax liability under rule 86B, 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~~. [clause (c) omitted by NN 35/2021 – CT, w.e.f. 01.01.2022]

(d) ***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]***

5. What kind of details of outward supplies are required to be furnished in GSTR-1 ? [Explanation to section 37 read with Rule 59 of CGST Rules] : The registered person is required to furnish details of invoices and revised invoices issued in relation to supplies made by him to registered and unregistered persons during a month/quarter and debit notes and credit notes in GSTR-1 in the following manner :

S. N.	Invoice-wise Details of ALL	Consolidated Details of ALL	Debit and Credit Notes
(i)	Inter-State and Intra-State supplies made to registered persons.	Intra-State supplies made to unregistered persons for each rate of tax.	Issued during the month for invoices issued previously
(ii)	Inter-State supplies with invoice value exceeding Rs. 2,50,000 made to Unregistered persons	State-wise Inter-State supplies with invoice value upto Rs. 2,50,000 made to unregistered persons for each rate of tax	

It can be seen from the above table that uploading of invoices depends on whether the supply is B2B [Business to Business] or B2C [Business to Consumer] plus whether the supply is intra-State or inter-State.

under the proviso to sub-section (1) of Section 39 of the CGST Act is quarterly. Accordingly, late fee would be the applicable for delay in furnishing of the said quarterly return/details of outward supply. It is clarified that no late fee is applicable for delay in payment of tax in first two months of the quarter.

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

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

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

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

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

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

7. **Nil GSTR-3B:** Filing of GSTR-3B is mandatory for all normal and casual taxpayers, even if there is no business activity in any particular tax period. For such tax period(s), a Nil GSTR-3B is required to be filed. A taxpayer may file Nil Form GSTR-3B, anytime on or after the 1st of the subsequent month for which the return is being filed for.

8. **Rule 67A - Manner of furnishing of return or details of outward supplies by short messaging service facility:** Notwithstanding anything contained in this Chapter, for a registered person who is required to furnish a Nil return under section 39 in FORM GSTR-3B or a Nil details of outward supplies under section 37 in FORM GSTR-1 or a Nil statement in FORM GST CMP–08 for a tax period, any reference to electronic furnishing shall include furnishing of the said return or the details of outward supplies or statement through a short messaging service using the registered mobile number and the said return or the details of outward supplies or statement shall be verified by a registered mobile number based One Time Password (OTP) facility.

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

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

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

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

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

11. **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 Invoice Furnishing Facility 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.

Illustration 2:

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

Answer:

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

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

Illustration 3:

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

Answer:

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

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

13.4 Special Returns

As discussed above, a regular taxpayer has to file GSTR-1 and GSTR-3B. However, there are certain specified category of taxpayers for whom a simplified return is specified owing to the nature of their activities. They are taxpayers under composition scheme, non-resident taxable persons, persons having UIN, Persons required to deduct tax at source [TDS] and e-commerce operators required to collect tax at source [TCS].

2. **Late fees levied for delay in filing return [Sec. 47(1)]**: Any registered person who fails to furnish following by the due date:

   (A) Statement of Outward Supplies [Section 37];

   (B) Returns [Section 39];

   (C) Final Return [Section 45] or

   (D) TCS Statement by ECO [Section 52] [inserted by Finance Act, 2022, w.e.f. 01.10.2022]

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

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

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

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

   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 persons	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.

1. 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)]

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)]

Where the proper officer notices deficiencies in the refund application, the same will be communicated to the applicant requiring the claimant to file a fresh refund application after rectification of such deficiencies.

However, the time period, from the date of filing of the original refund application till the communication of deficiencies by the proper officer, shall be excluded for counting the limitation period of 2 years, in respect of any such fresh refund claim filed by the applicant after rectification of the deficiencies.

Analysis of Amendment: Earlier, Circular No. 125/44/2019 – GST, dated 18.11.2019 had clarified that the filing of the fresh refund application (after curing the deficiencies) must also be done within the limitation period of 2 years from the relevant date. Due to this, in many situations where the department issues deficiency notices, the filing of the fresh refund application after curing the deficiencies use to happen after the limitation period of 2 years which then resulted in the rejection of the refund claim. Now with the present amendment excluding the period from the filing of the original claim till the communication of deficiencies shall result in the grant of additional time to file the fresh refund application to ensure that the said application is also filed within the overall period of 2 years.

14.2.6 Withdrawal of Refund Application [Rule 90(5) & (6)]

Rule 90(5): The applicant may, at any time before issuance of provisional refund sanction order or final refund sanction order or payment order or refund withhold order or notice, in respect of any refund application filed, withdraw the said application for refund, by filing an application.

Rule 90(6): On submission of application for withdrawal of refund, any amount debited by the applicant from electronic credit ledger or electronic cash ledger, while filing application for refund, shall be credited back to the ledger from which such debit was made.

14.3 Order of Refund [Section 54(5), (7) & (8A)]

- Section 54(5) stipulates that if, on receipt of any such application, the proper officer is satisfied that the whole or part of the amount claimed as refund is refundable, he may make an order accordingly and the amount so determined shall be credited to the Consumer Welfare Fund [discussed in detail in subsequent paras].

- Refund order shall be issued by the proper officer within 60 days from the date of receipt of application complete in all respects [Section 54(7)].

  The time limit of 60 days shall be counted from the date of filing claim for refund as mentioned in the acknowledgment received for refund claim [Section 54(7) read with rule 90(1) and 90(2)].

  [Circular No. 125/44/2019 – GST, dated 18.11.2019] Any tax shall be considered to have been refunded only when the amount has been credited to the bank account of the applicant. Accordingly, all tax authorities are advised to issue the final sanction order and the payment order within 45 days of the date of generation of ARN, so that the disbursement is completed within 60 days.

- **Section 54(8A):** The Central Government may disburse the refund of the SGST in such manner as may be prescribed.

- **Disbursal of refunds [Circular No. 125/44/2019 – GST, dated 18.11.2019]**

  Separate disbursement of refund amounts under different tax heads by different tax authorities, i.e. disbursement of CGST, IGST and Compensation Cess by Central tax officers and disbursement of SGST by State tax officers, was causing undue hardship to the refund applicants. In order to facilitate refund applicants on this account, it has now been decided that for a refund application assigned to a Central tax officer, both the sanction order and the corresponding payment order for the sanctioned refund amount, under all tax heads, shall be issued by the Central tax officer only. Similarly, for refund applications assigned to a State/UT tax officer, both the sanction order and

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

Clarification on refund related issues [Circular No. 181/13/2022-GST, dated 10-11-2022]

Issue: ***Whether the formula prescribed under rule 89(5) of the CGST Rules, 2017 for calculation of refund of unutilised input tax credit on account of inverted duty structure, as amended vide NN. 14/2022 – CT, dated 05.07.2022, will apply only to the refund applications filed on or after 05.07.2022, or whether the same will also apply in respect of the refund applications filed before 05.07.2022 and pending with the proper officer as on 05.07.2022?***

Clarification: ***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.***

Clarification on refund related issues [Circular No. 79/53/2018-GST, dated 31-12-2018]

1. **Refund of accumulated ITC of input services and capital goods arising on account of inverted duty structure:**

   Section 54(3) of the CGST Act provides that refund of any unutilized ITC may be claimed where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies). Further, section 2(59) of the CGST Act defines inputs as any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business. Thus, inputs do not include services or capital goods. Therefore, clearly, the intent of the law is not to allow refund of tax paid on input services or capital goods as part of refund of unutilized input tax credit. Accordingly, in order to align the CGST Rules with the CGST Act, NN. 26/2018 – CT, dated 13.06.2018 was issued wherein it was stated that the term Net ITC, as used in the formula for calculating the maximum refund amount under rule 89(5) of the CGST Rules, shall mean input tax credit availed on inputs during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both. In view of the above, it is clarified that both the law and the related rules clearly prevent the refund of tax paid on input services and capital goods as part of refund of input tax credit accumulated on account of inverted duty structure.

2. **Misinterpretation of the meaning of the term "inputs":**

   It has been represented that on certain occasions, departmental officers do not consider ITC on stores and spares, packing materials, materials purchased for machinery repairs, printing and stationery items, as part of Net ITC on the grounds that these are not directly consumed in the manufacturing process and therefore, do not qualify as input. There are also instances where stores and spares charged to revenue are considered as capital goods and therefore the ITC availed on them is not included in Net ITC, even though the value of these goods has not been capitalized in his books of account by the claimant.

   In relation to the above, it is clarified that the input tax credit of the GST paid on inputs shall be available to a registered person as long as he/she uses or intends to use such inputs for the purposes of his/her business and there is no specific restriction on the availment of such ITC anywhere else in the GST Act. The GST paid on inward supplies of stores and spares, packing materials etc. shall be available as ITC as long as these inputs are used for the purpose of the business and/or for effecting taxable supplies, including zero-rated supplies, and the ITC for such inputs is not restricted under section 17(5) of the CGST Act. Further, capital goods have been clearly defined in section 2(19) of the CGST Act as goods whose value has been capitalized in the books of account and which are used or intended to be used in the course or furtherance of business. Stores and spares, the expenditure on which has been charged as a revenue expense in the books of account, cannot be held to be capital goods.

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.*

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(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 NN. 7/2017 – CT (R), 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 NN. 26/2017 – CT (R), 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;

(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; and

(o) where empty cylinders for packing of liquefied petroleum gas (LPG) are being moved for reasons other than supply.

Explanation: The facility of generation, cancellation, updation and assignment of e-way bill shall be made available through SMS to the supplier, recipient and the transporter, as the case may be.

ANNEXURE
[(See rule 138 (14)]

S.N.	Description of Goods
1	Liquefied petroleum gas (LPG) 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—

(a) the **invoice** or bill of supply or delivery challan, as the case may be; and

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**.

3. **An order** required to be issued in pursuance of the **direction** of the **Tribunal or a Court** shall be issued within **two years** from the date of communication of the **said direction**.
4. Opportunity of **personal hearing** has to be granted when requested for in writing by the person chargeable with tax or where any **adverse decision** is proposed to be taken against the person.
5. Personal hearing can be **adjourned** when sufficient cause is shown in writing. However, such adjournment can be granted for a maximum of **3 times**.
6. The relevant facts and basis of the decision shall be set out in the order, which means a **speaking order** needs to be placed.
7. 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**.
8. 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.
9. **Interest** shall be **payable** in **all cases** whether specifically mentioned or not.
10. If the **order is not issued within the time limits** as prescribed in sub-section (10) of section 73 or (10) of section 74, i.e., 5 years in case of fraud, misstatement or suppression and 3 years in any other case, the adjudication proceedings shall be **deemed to be concluded**.
11. An issue on which a first 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**.
12. 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. [Explanation inserted by Finance Act, 2021, w.e.f. 01.01.2022]
13. Where **any penalty is imposed** under section 73 or section 74, **no penalty** for the same act or omission shall be imposed on the same person **under any other provision** of this Act.

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]

1. ***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).***
2. ***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).*

- serve another notice on the taxable person, in respect of the enhanced amount.
- if notice of demand is already served on taxable person before such appeal, revision or any other proceedings, then recovery of enhanced amount would be continued from the stage at which the initial proceedings stood. There is no need to issue a fresh notice of demand to the extent already covered by earlier notice.
- In case the Government dues are reduced in such appeal, revision or in other proceedings – the Commissioner.
  - is not required to serve fresh notice of demand upon the taxable person;
  - shall intimate such reduction to taxable person and also to appropriate authority with whom recovery proceedings are pending;
- Any recovery proceedings which are initiated prior to the disposal of such appeal, revision application or other proceeding may be continued in relation to the amount so reduced 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 Insolvency and Bankruptcy Code, 2016 [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.*

CHAPTER

22

Appeals and Revision

22.1 Sec. 107 : Appeals to Appellate Authority

Introduction :

(a) This section pertains to appeals to appellate authority by any person who is aggrieve against decision or order passed by adjudicating authority.

(b) This section also provides for appeal by revenue against decision or order passed by adjudicating authority.

1. 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.

2. 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]

3. The appellate authority in **either of the above cases** is empowered to **condone the delay upto a period of 1 month**.

4. **Rule 109A** – Appointment of Appellate Authority:

   The appellate authority in both the above cases shall be:

   (a) the **Commissioner (Appeals)** where the decision or order is passed by the Additional or Joint Commissioner;

   (b) **any officer not below the rank of Joint Commissioner (Appeals)** where the decision or order is passed by the Deputy or Assistant Commissioner or Superintendent.

5. Appeal is to be filed along with :

   - Amount of tax, interest, fine, fee and penalty, as is admitted, in full;
   - **pre-deposit** of sum equal to **10%** of remaining amount of **tax in dispute** arising from the said order, **subject to a maximum of Rs. 25 crores** (under CGST); and
   - **pre-deposit** of a sum equal to **25% of the penalty** imposed, in case of appeal to be filed against an order passed **u/s 129(3)**. [Sec. 129 - Detention, seizure and release of goods and conveyances in transit]

6. On payment of above amount, the **recovery** proceedings for balance amount are **stayed.**

7. Maximum **3 adjournments** shall be granted to a party on showing reasonable cause to be recorded in writing.

8. Appellate authority may **allow** any **additional grounds** not specified in the grounds of appeal on being satisfied that the omission was not wilful or unreasonable.

9. Appellate authority to pass the order confirming, modifying or annulling the decision or order appellate against but **shall not remand the case back** to the adjudicating authority. [But in customs, appellate authority can remand the case back].

10. **Opportunity** of being heard to be granted in case of order for enhancing fees or penalty or fine in lieu of confiscation of goods or reducing amount of refund/input tax credit after **issuing show cause notice**. [Sec. 107(11)]

11. The **appellate authority has power to issue show cause notice** in case it is of the **opinion** that any tax has not been paid or **short paid** or erroneously refunded or input tax credit is wrongly availed or utilised. [Sec. 107(11)]

12. Appellate authority to hear and decide the appeal, **wherever possible**, within a **period of 1 year** from the date of filing. [Sec. 107(11)]

13. Appellate authority to communicate the copy of order to the appellant, the respondent, the adjudicating authority, jurisdictional Commissioner of CGST, SGST and UTGST.

14. The Appellate Authority shall, along with its order u/s 107(11) of the Act, issue a **summary** of the order in **FORM GST APL-04** clearly indicating the final amount of demand confirmed.

15. **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.

(ii) The agent duly authorized/an advocate/a tax practitioner (who holds authority to appear in the proceeding on behalf of the taxpayer)

(iii) A person regularly employed by him in connection with the business

(iv) Any adult member of family residing with the taxpayer or

(b) **Mode 2 - Regd. Post /speed post or Courier with acknowledgement due:** It should be sent to intended person or his authorised representative at his last known place of business or residence.

(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).

24.18 Sec. 170 : Rounding Off of Tax, etc.

(i) This provision enables the tax payers and also the departmental authorities to round off the amounts calculated as per the law, if the amounts are in fraction of a rupee.

(ii) **Amounts covered:** Tax, interest, penalty, fine or any other sum payable, and refund or any other sum due, under the Act.

(iii) 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

(iv) In case of the assessee, the rounding off must be done for every part of the tax contained in the invoice.

(v) The above provision is applicable for the assessee, for the department (while issuing show cause notice or passing the order, etc.) and also for the Appellate Authorities.

24.19 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]

However, no penalty shall be leviable if the profiteered amount is deposited within 30 days of the date of passing of the order by the Authority.

Explanation.—For the purposes of this section, the expression "**profiteered**" shall mean the amount determined on account of not passing the benefit of reduction in rate of tax on supply of goods or services or both or the benefit of input tax credit to the recipient by way of commensurate reduction in the price of the goods or services or both.

Illustration: 2 What is Anti-profiteering measure?

Solution: As per section 171 of the CGST Act, any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices. The Competition Commission of India may examine whether input tax credits availed by any registered person or the reduction in the tax rates have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.

24.20 Sec. 173 : Amendment of Act 32 of 1994

Save as otherwise provided in this Act, Chapter V of the Finance Act, 1994 shall be omitted.

24.21 Sec. 174 : Repeal and Saving

Introduction :

These provisions indicate the extent of current indirect tax laws, which would continue upon introduction of CGST Act. It also provides for exceptions as to continuation of certain provisions of the existing laws for the sake of smooth transition. Further certain Acts would be repealed upon introduction of CGST Act.

Analysis :

(a) These provisions have to be read along with the Transition provisions in chapter XX.

(b) It would come into force on the date of enactment of the CGST Act.

(c) Whenever an enactment is repealed or substituted by a new enactment then the new enactment should provide for a clause relating to repeal or saving of certain provisions under the old law.

(d) This would ensure that the rights, powers, liabilities, duties, privileges, obligations etc. created under the old laws are intact and are not affected by the enactment of new law by repealing the old laws.

(e) Entry 84 of the Union List and Entry 54 of the State List, both forming part of the VII Schedule to the Constitution as amended by the Constitutional (101st Amendment) Act 2016 would continue to apply to certain goods.

(f) For the said purpose, the General Sales Tax/VAT / CST laws and Central Excise Act, 1944 and Central Excise Tariff Act, 1985 would continue to apply - e.g. Certain petroleum products, tobacco products.

(g) Thus these laws would operate even after the GST is introduced and are not repealed.

(h) In other words its application is restricted to few products/goods only.

(i) The following laws would be repealed, as the taxes are subsumed by GST law:

- State laws:
  - Entry Tax laws
  - Entertainment Tax laws
  - Luxury Tax laws
- Central laws:
  - Duty of Excise on Medicinal and Toilet Preparation Act
  - Chapter V of the Finance Act, 1994 (Service Tax law).

(j) However such restricted application or repeal of old laws would not affect or revive the following:

being transferred to CHA towards payment of duty. With this ECL, money can be transferred in advance and appropriated in respect of each demand.

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

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

(2) The amount available in the electronic cash ledger may be used for making any payment towards duty, interest, penalty, fees or any other sum payable under the provisions of this Act or under the Customs Tariff Act, 1975 or under any other law for the time being in force or the rules and regulations made thereunder in such manner and subject to such conditions and within such time as may be prescribed.

(3) The balance in the electronic cash ledger, after payment of duty, interest, penalty, fee or any other amount payable, may be refunded in such manner as may be prescribed.

(4) Notwithstanding anything contained in this section, if the Board is satisfied that it is necessary or expedient so to do, it may, by notification, exempt the deposits made by such class of persons or with respect to such categories of goods, as may be specified in the notification, from all or any of the provisions of this section.

Important Note: ***The CBIC has exempted the deposits pertaining to all classes of persons and all categories of goods, from the provisions of section 51A from 01.06.2022 till ~~29.11.2022~~ 31.03.2023. [NN 47/2022 – Cus (N.T.), dated 31.05.2022, as amended by NN 98/2022 – Cus (N.T.), dated 29.11.2022]***

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

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 [inserted by Finance Act, 2020, w.e.f. 27.03.2020]

Duty Credit Ledger is a step in the right direction to streamline the processes of availment of export benefits by removing the physical interface and also usher transparency by avoiding fraudulent claims.

Duty Credit Ledger will enable credit in lieu of duty remission to be given in respect of exports or other such benefit in electronic form for its usage, transfer, etc.