

RECENT AMENDMENTS UNDER GST (Post 47th GST Council Meeting)

BY:

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CHANGES AT A GLANCE

**47TH COUNCIL
MEETING
PROPOSALS**

CENTRAL TAX
NOTIFICATION No.
9/2022 to 14/2022
dated 5th July, 2022

CIRCULARS
No. 170 to 176 dated
6th July, 2022

CENTRAL TAX RATE
NOTIFICATION No. 
3/2022 to 11/2022
dated 13th July, 2022

CENTRAL TAX
NOTIFICATION No.
15/2022 & 16/2022
dated 13th July, 2022

CENTRAL TAX
NOTIFICATION No.
17/2022 dated 1th
August, 2022

GST CHANGES PROPOSED BY 47TH GST COUNCIL MEETING

Changes applicable w.e.f. 18th July, 2022



DECREASE IN
RATE



RATE
RATIONALIZATION



WITHDRAWAL OF
EXEMPTION



CLARIFICATIONS ON
GST RATES



TRADE
FACILITATION
MEASURES



STREAMLINING
COMPLIANCES



MISCELLANIOUS
CHANGES

NOTIFICATIONS

[N 9/2022-CT :](#)

SECTION 110 & 111 – CLAUSE (C) of FINANCE ACT, 2022

[N 10/2022-CT:](#)

EXEMPTION FROM FILING OF ANNUAL RETURN

[N 11/2022-CT:](#)

EXTENSION OF DUE DATE FOR GST CMP-08 FOR 1ST QUARTER of FY 2022-23

[N 12/2022-CT:](#)

WAIVER OF LATE FEES FOR DELAY IN FILING OF GSTR-4 of FY 2021-22

[N 13/2022-CT:](#)

- EXTENSION OF TIME LIMIT FOR ISSUANCE OF ORDER U/S 73(9) for FY 2017-18
- EXCLUSION OF TIME PERIOD (1.03.2020 TO 28.02.2022) for REFUND FILING AND ISSUANCE OF DEMAND ORDER

[N 14/2022-CT:](#)

CGST (AMENDMENTS) RULES, 2022

CIRCULARS

[CIRCULAR 170/02/2022-GST](#)

MANDATORY INFORMATION DISCLOSURE IN GSTR-3B

[CIRCULAR 171/02/2022-GST](#)

CLARIFICATION ON DEMAND AND PENALTY PROVISIONS IN CASE OF FAKE INVOICING

[CIRCULAR 172/02/2022-GST](#)

CLARIFICATION ON VARIOUS ISSUES PERTAINING TO GST

[CIRCULAR 173/02/2022-GST](#)

CLARIFICATION ON ISSUE OF CLAIMING REFUND UNDER INVERTED DUTY STRUCTURE

[CIRCULAR 174/02/2022-GST](#)

PRESCRIBING MANNER OF RE-CREDIT IN ELECTRONIC CREDIT LEDGER USING GST PMT-03A

[CIRCULAR 175/02/2022-GST](#)

MANNER OF REFUND OF UNUTILISED ITC ON ACCOUNT OF EXPORT OF ELECTRICITY

[CIRCULAR 176/02/2022-GST](#)

WITHDRAWAL OF CIRCULAR NO. 106/25/2015-GST



Notification No. 9/2022-CT

The provisions of Sec 110 (c) & 111 of the Finance Act, 2022 are applicable w.e.f. 5th July,2022

Section 50(3) of CGST ACT,2017
Amendment w.e.f .1.07.2017 (Section 111)

RETROSPECTIVELY

To provide that interest will be payable on **wrongly availed ITC only when same is UTILISED.**

RULE 88B
inserted

N 14/2022

MANNER OF
CALCULATING
INTEREST ON DELAYED
PAYMENT OF TAX

Section 49(10) of CGST ACT,2017 Amendment
w.e.f. 5.07.2022 (Sec 110 (c))

- To provide for **transfer of balance in E-cash ledger** of a registered person to E-cash ledger of CGST and IGST of **distinct person** (i.e. another registration of same entity having same PAN).
- CONDITION :- if the transferor unit is not having any outstanding liability.

RULE 87(14)
inserted

N 14/2022

Above transfer of Tax, Interest, Penalty, Fee or any other amount e.g Pre Deposit is allowed in FORM GST PMT-09



Notification No. 14/2022-CT

RULE 88B

MANNER OF CALCULATING INTEREST ON DELAYED PAYMENT OF TAX

RETROSPECTIVE
AMENDMENT
w.e.f.
01.07.2017

(1) In case, where the **supplies made during a tax period** are declared by the registered person in the return for the said period and the said return is furnished after the due date in accordance with provisions of section 39, EXCEPT where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period,

• Interest on tax payable in respect of such supplies shall be calculated on the portion of tax which is paid by debiting the electronic cash ledger,

Net

• for the period of delay in filing the said return beyond the due date,

• at such rate as may be notified under sub-section (1) of section 50.

18%



Notification No. 14/2022-CT

RULE 88B

MANNER OF CALCULATING INTEREST ON DELAYED PAYMENT OF TAX

(2) In all other cases, where interest is payable in accordance with sub section (1) of section 50, such as short payment of tax, non payment of tax etc.

Gross

- Interest calculated on amount of tax which remains unpaid

- For the period starting from the date on which such tax was due to be paid till the date such tax is paid

- at such rate as may be notified under sub-section (1) of section 50.

18%

Amendment in section 50

6 Interest on delayed payment of tax.

Budgetary Amendment (Notified on 1st June, 21 vide Not. 16/2021-CT Effective date 01.7.2017)

(1) Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council.

~~4[Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger.]~~

w.e.f. 01.07.2017

“Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be payable on that portion of the tax which is paid by debiting the electronic cash ledger.”

Impact

- **Retrospective amendment** made that interest to be paid on Net liability and not on gross liability in case of short payment of Tax with effect from 01.07.2017.
- **Right to claim refund arises, wherever the interest has been paid on gross GST liability.**

Analysis with Examples

This provision **does not give relief** on the following amounts:-

- On **Any unpaid tax amount, even if the balance is lying in electronic cash / credit ledger**. E.g Jan (Output Rs. 100000- 80000 credit) Rs. 15000 deposited in Cash Ledger on 24th Feb , return filed on 26th March , Interest will be on 20000 from 21st Feb to 26th March.
- **Tax payable in one tax period but paid later with subsequent return, would not enjoy such relief even when paid through ITC** . As the words in proviso says, Payable and declared in the return for the said period.

eg. Jan return filed NIL. Jan (Output Rs. 100000- 80000 credit) added in Feb ,2021 return. The same was paid using the carried forward ITC in the month of Feb, 2021. But the interest on tax of Rs. 1,00,000/- for the period of delay is to be paid, even if the same is paid by ITC.

(Rule 88B(2))

However, if Jan return is delayed and filed in March, interest will be charged on Rs. 20000/- for the period of delay. **(Rule 88B(1))**

- **Return not filed and tax not paid upto initiation of any proceedings under Section 73/74** in respect of such tax period would not get this benefit even when amount is lying in Cash / Credit ledger of the taxpayer.



Notification No. 14/2022-CT

RULE 88B

MANNER OF CALCULATING INTEREST ON DELAYED PAYMENT OF TAX

(3) In case, where interest is payable on the amount of input tax credit wrongly availed and utilized in accordance with sub-section (3) of section 50,

• Interest calculated on amount of input tax credit wrongly availed and utilised,

• For the period starting from the date of utilization of such wrongly availed input tax credit till the date of reversal of such credit or payment of tax in respect of such amount

• at such rate as may be notified under sub-section (1) of section 50.

18%
(Budget 2022
change applicable
from date of
enactment)

EXPLANATION TO SUB-SECTION (3) OF RULE 88B

(1) input tax credit wrongly availed shall be construed to have been utilized,

- when the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed,
- and the extent of such utilization of input tax credit shall be the amount by which the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed.

For example, if ITC of Rs. 60,000 is availed wrongly in January 2022 and the closing balance of ITC after March 2022 GSTR-3B return is Rs.40,000. Rs.20,000 of wrongly availed ITC is deemed to have been utilized in the month of March 2022.

(2) the date of utilization of such input tax credit shall be taken to be, —

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

e.g DRC-03

- (b) the date of debit in the electronic credit ledger when the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, in all other cases.

Continuing with the example, the date of utilization of wrong ITC of Rs.20,000 would be:

- I. The date of filing of GSTR-3B return (or)
- II. Due date for filing the said return, whichever is earlier.

Hence, the taxpayer cannot reduce the interest liability on utilization of wrong credit, by delaying the filing of GSTR-3B.

Mr. Ram claimed ineligible ITC of Rs 60000 in the month of January, 2022. February return was NIL. The ITC amount of Rs 60000 was c/f in E-Credit Ledger in March, 2022. In March, 2022 an outward supply involving tax of Rs 40000.00 wherein the said amount was used by him. The balance in ECrL was Rs. 20000/- He reversed the entire Incorrect ITC in June,2022. June, 2022 return filed on 22nd July,2022.

Case 1-Return for the Month of March,22 is filed on 15th April,2022

Amount= 40000 (60000-20000) (Balance fall below-Exp(1))

Period= Date of utilization	till	Date of Reversal
<small>(Return Furnished or Due to be furnished whichever is earlier-Exp (2))</small>		<small>22nd July,2022</small>

15th April, 2022

till

22nd July, 2022

Rate= 18%

Case-2-Return for the Month of March,22 is filed on 25th April,2022

Amount= 40000 (60000-20000) (Balance fall below-Exp(1))

Period= Date of utilization	till	Date of Reversal
<small>(Return Furnished or Due to be furnished whichever is earlier-Exp (2))</small>		<small>22nd July,2022</small>

20th April, 2022

till

22nd July, 2022

Rate= 18%



**Notification
No. 14/2022-CT**

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**Circular No.
170/02/2022**

AMENDMENTS IN INFORMATION DISCLOSURE IN GSTR-3B

A. Details of Amendment and Clarifications made in Tables relating to Outward Supplies in GSTR-3B

TABLE 3.1

3.1: Details of outward supplies and inward supplies liable to reverse charge *other than those covered in 3.1.1*

Nature of Supplies	Total taxable value	Integrated Tax	Central Tax	Cess
(a) Outward taxable supplies (other than zero rated, nil rated and exempted)				
(b) Outward taxable Supplies (zero rated)				
(c) Other outward supplies (Nil rated, exempted)				
(d) Inward Supplies (liable to reverse charge <i>other than those covered in 3.1.1</i>)				
(e) Non-GST Outward Supplies				

There is no change in the above Table 3.1 except for the heading of this table



Notification
No. 14/2022-CT

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Circular No.
170/02/2022

TABLE 3.1.1 –Newly Inserted

3.1.1 Details of supplies notified under sub-section (5) of section 9 of the Central Goods and Services Tax Act, 2017 and corresponding provisions in Integrated Goods and Services Tax/Union Territory Goods and Services Tax/State Goods and Services Tax Acts.

Nature of Supplies	Total Taxable value	Integrated Tax	Central Tax	State/UT Tax	Cess
1	2	3	4	5	6
(i) Taxable supplies on which electronic commerce operator pays tax under sub-section (5) of section 9 <u>[to be furnished by the electronic commerce operator]</u>					
(ii) Taxable supplies made by the registered person through electronic commerce operator, on which electronic commerce operator is required to pay tax under sub-section (5) of section 9 <u>[to be furnished by the registered person making supplies through electronic commerce operator].”;</u>					

- **An ecommerce operator shall furnish the details of such taxable supplies on which it has paid the tax under Section 9(5) of CGST Act, 2017 in GSTR-3B.**
- **The registered person making supplies through e-commerce operator on which e-commerce operator is required to pay tax under Section 9(5) of CGST Act, 2017 shall furnish the details of taxable supplies and taxes thereon made by such registered person.**



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TABLE 3.2

3.2 Out of supplies shown in 3.1(a) and 3.1.1(i) above, details of inter-state supplies made to unregistered persons, composition taxable persons and UIN holders

	PLACE OF SUPPLY	TAXABLE VALUE	AMOUNT OF IGST
Supplies made to Unregistered Persons			
Supplies made to Composition Taxable Persons			
Supplies made to UIN holders			

- The registered persons making inter-State supplies – shall **update their customer database properly with correct State name and ensure that correct PoS is declared** in the tax invoice and in Table 3.2 of FORM GSTR-3B while filing their return,
- **So that tax reaches the Consumption State as per the principles of destination-based taxation system.**

- The information sought in Table 3.2 of **FORM GSTR-3B** is required to be furnished, **place of supply-wise**, even though the details of said supplies are already part of the supplies declared in Table 3.1 of the said **FORM**.
- For assisting the registered persons, **Table 3.2** of **FORM GSTR-3B** is being **auto-populated** on the portal based on the details furnished by them in their **FORM GSTR-1**.



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Circular No.
170/02/2022

B. Details of Amendment and Clarifications made in Tables relating to Input Tax Credit in GSTR-3B

TABLE 4 4. Eligible ITC

Details before Amendment	Details after Amendment
(A) ITC Available (whether in full or part)	(A) ITC Available (whether in full or part)
(1) Import of Goods	(1) Import of Goods
(2) Import of Services	(2) Import of Services
(3) Inward supplies liable to reverse charge (other than 1 & 2 above)	(3) Inward supplies liable to reverse charge (other than 1 & 2 above)
(4) Inward supplies from ISD	(4) Inward supplies from ISD
(5) All other ITC	(5) All other ITC
(B) ITC Reversed	(B) ITC Reversed
(1) As per Rule 42 & 42 of CGST Rules	(1) As per <u>Rule 38, 42 & 43 of CGST Rules and sub-section (5) of section 17</u>
(2) Others	(2) Others
(C) Net ITC Available (A) – (B)	(C) Net ITC Available (A) – (B)
(D) Ineligible ITC	(D) Other Details
(1) As per Section 17(5)	(1) ITC reclaimed which was reversed under Table 4(B)(2) in earlier tax period
(2) Others	(2) Ineligible ITC under section 16(4) and ITC restricted due to PoS provisions

ALL ITC
whether eligible or ineligible auto populated from GSTR 2B

(EXCEPT for the ineligible ITC on account of 16(4) of the CGST Act or where the recipient of an intra-State supply is located in a different State / UT than that of place of supply)

Reclaimed ITC also be shown in 4A(5)

ABSOLUTE AND NOT RECLAIMABLE

TEMPORARY AND RECLAIMABLE
subject to fulfillment of conditions on account of Rule 37, Sec 16(2)(b) and 16(2)(c)

All Reclaimed ITC

Which credits are Ineligible

Whether shown in 2B

State of recipient and place of supply are different



Credit not allowed as per sec. 16(4)



Credit not allowed as per sec. 17(5)



Credit reversals as per Rule 42/43



VARIOUS SECTIONS AND RULES REFERRED IN GSTR 3B

Section 16 (2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,—

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37;

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

Explanation.—For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services—

(i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person

(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) subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilization of input tax credit admissible in respect of the said supply; and

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

Section 16 (4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the *thirtieth day of November* following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier:

[**Provided** that the registered person shall be entitled to take input tax credit after the due date of furnishing of the return under [section 39](#) for the month of September, 2018 till the due date of furnishing of the return under the said section for the month of March, 2019 in respect of any invoice or invoice relating to such debit note for supply of goods or services or both made during the financial year 2017-18, the details of which have been uploaded by the supplier under sub-section (1) of [section 37](#) till the due date for furnishing the details under sub-section (1) of said section for the month of March, 2019.]

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, but fails to pay to the supplier thereof, the value of such supply along with the tax payable thereon, within the time limit specified in the second proviso to sub-section (2) of section 16, shall furnish the details of such supply, the amount of value not paid and the amount of input tax credit availed of proportionate to such amount not paid to the supplier in FORM GSTR-2 for the month 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.]

(2) The amount of input tax credit referred to in sub-rule (1) shall be added to the output tax liability of the registered person for the month in which the details are furnished.

(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.

(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.



Notification
No. 14/2022-CT

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Circular No.
170/02/2022

CHECKPOINTS TO BE ENSURED BY TAXPAYERS (as per amended GSTR-3B)

- **All ITC, whether eligible or ineligible**, which is being reflected in current month's GSTR-2B would be shown in Table 4.A in the respective tables.
- **Table 4A would additionally include re-claimed ITC which should match to disclosure in Table 4D(1)**, balance value would be the auto-populated value. Non-disclosure in table 4D(1) could lead to inquiries from the department as the value disclosed in 4A(5) would be higher than value reflecting in GSTR 2B.
- It is clarified that the **reversal of ITC of ineligible credit under section 17(5)** or any other provisions of the CGST Act and rules thereunder is required to be **made under Table 4(B)** and not under Table 4(D) of FORM GSTR-3B.
- The rationale of having disclosures **bifurcated under "permanent reversals" and "temporary reversals"** is to enable **accurate settlement of funds between the Centre and the State** is done in a proper manner, based on the disclosures made in Table 4B(1).
- The taxpayer need to make **more reconciliation** for the purpose of reporting in GSTR-3B, which is **against ease of compliance** under GST and the ease of doing business for the taxpayers.

**Circular No.
170/02/2022**

Illustration:

1. A Registered person M/s ABC is a manufacturer (supplier) of goods. He supplies both taxable as well as exempted goods. In a specific month, say April, 2022, he has received input and input services as detailed in Table 1 below. The details of auto-population of Input Tax Credit on all Inward Supplies in various rows of Table 4 (A) of FORM GSTR-3B.

Table 1

S. No.	Details	IGST	CGST	SGST	Total	Remarks
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	ITC on Import of goods	1,00,000	-	-	1,00,000	Auto-populated in Table 4(A)(1)
2	ITC on Import of Services	50,000	-	-	50,000	
3	ITC on Inward Supplies under RCM	-	25,000	25,000	50,000	Auto-populated in Table 4(A)(3)
4	ITC on Inward Supplies from ISD	50,000	-	-	50,000	Auto-populated in Table 4(A)(4)
5	ITC on other inward supplies	2,00,000	1,50,000	1,50,000	5,00,000	Auto-populated in Table 4(A)(5)
6	Total	4,00,000	1,75,000	1,75,000	7,50,000	

Other relevant facts:

Note 1: Of the other inward supplies mentioned in row (5), M/s ABC has received goods on which ITC is barred under section 17(5) of the CGST Act having integrated tax of Rs. 50,000/-

Note 2: In terms of rule 42 and 43 of the CGST Rules, M/s ABC is required to reverse ITC of Rs. 75,500/- integrated tax, Rs. 52,000/- central tax and Rs. 52,000/- state tax.

Note 3: M/s ABC had not received the supply during April, 2022 in respect of an invoice for an inwards supply auto-populated in row (5) having integrated tax of Rs. 10,000/-.

Note 4: M/s ABC has reversed ITC of Rs. 500/- central tax and Rs. 500/- state tax on account of Rule 37 i.e. where consideration was not paid to the supplier within 180 days.

Note 5: An amount of ITC of Rs 10,000/ central Tax and Rs 10,000/- state tax, ineligible on account of limitation of time period as delineated in sub-section (4) of section 16 of the CGST Act, has not been auto-populated in Table 4(A) of FORM GSTR-3B from GSTR-2B.

2. Based on the facts mentioned in Table 1 above, M/s ABC is required to avail ITC after making necessary reversals in Table 4 of FORM GSTR-3B as detailed in Table below:

TABLE 4 A of GSTR 3B

4. Eligible ITC

Details	IGST	CGST	SGST/UTGST	
1	2	3	4	
(A) ITC Available (whether in full or part)	-	-	-	
(1) Import of Goods	100000	-	-	
(2) Import of Services	50000	-	-	
(3) Inward Supplies liable to Reverse Charge (other than 1 & 2 above)	-	25000	25000	
(4) Inward Supplies from ISD	50000	-	-	
(5) All other ITC	200000	150000	150000	

TABLE 4B, 4C AND 4D of GSTR 3B

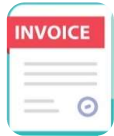
Details	IGST	CGST	SGST/UTGST	EXPLANATION
1	2	3	4	
(B) ITC Reversed	-	-	-	
(1) As per 38, 42 and 43 of CGST Rules and Section 17(5)	125500	52000	52000	
(2) Others	10000	500	500	
(C) Net ITC Available (A)-(B)	264500	122500	122500	
(D) Other Details	-	-	-	
(1) ITC Reclaimed which was reversed under Table 4(B)(2) in earlier tax period.	-	-	-	Now, Reversal under sec 17(5) will shown under 4(B)(1)
(2) Ineligible ITC under 16(4) and ITC restricted due to POS provisions	-	10000	10000	

DIFFERENT TYPES OF FAKE INVOICES

1.

Issuing Bill without Supply

Mr. A Files GSTR-1 but do not file GSTR-3B and vanish without paying taxes



Issues invoice without any supply

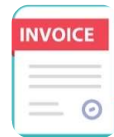


Mr.A

2.

Took invoices from Mr. A without any receipt of goods from a different source.

Procures goods without payment of taxes from small vendors.



ITC on Bills without Receiving goods

Makes supply of such goods and Issue invoices
Genuine Transaction



Mr. B avails the ITC (reflected in GSTR 2A/2B) without receipt of goods and utilizes such ITC for further payment of tax.

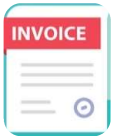
Mr. C gets the goods and invoices as well.

Mr.B

3.

CIRCULAR TRADING

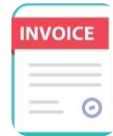
Mr. A Files GSTR-1 but do not pay any taxes



Issues invoice without any supply



Mr. B avails ITC.



Issues invoice without any supply



Mr. C avails ITC

Mr. C again issues invoice without underlying supply



Circular No.171/02/2022

Clarifications in case of Fake Invoicing

Sno	CASE	ISSUE	CLARIFICATION
1.	<ul style="list-style-type: none"> Mr. A issued tax invoice to Mr. B without any underlying supply of goods or services or both. 	(a) Whether it is a supply u/s 7? (b) Whether any demand and recovery can be made from Mr. A u/s 73 or 74? (c) Whether any penal action can be taken against Mr. A ?	(a) Not a supply u/s 7. (b) As no tax liability arises from Mr. A, hence No Demand and Recovery u/s 73 or 74 can be made from Mr. A. (c) Penal action under section 122(1)(ii) would be taken against Mr. A for issuance of fake invoice
2.	<ul style="list-style-type: none"> Mr. A issued tax invoice to Mr. B without any underlying supply of goods or services or both Mr. B utilizes the ITC availed based on the fake invoice. Further, Mr. B issues tax invoice against an underlying supply to its customer 	(a) Whether Mr. B liable for demand and recovery of said ITC u/s 73 or 74? (b) Whether any penal action can be taken against Mr.B?	(a) Mr. B <u>has utilized fraudulent ITC without receiving the goods</u> and services, in contravention of sec 16(2)(b), so he shall be liable for demand and recovery of said ITC, along with penal action, under u/s 74 for wrongful availment of ITC and Interest u/s 50. (b) No separate penalty for the same act u/s 122.



Circular No.171/02/2022

Clarifications in case of Fake Invoicing

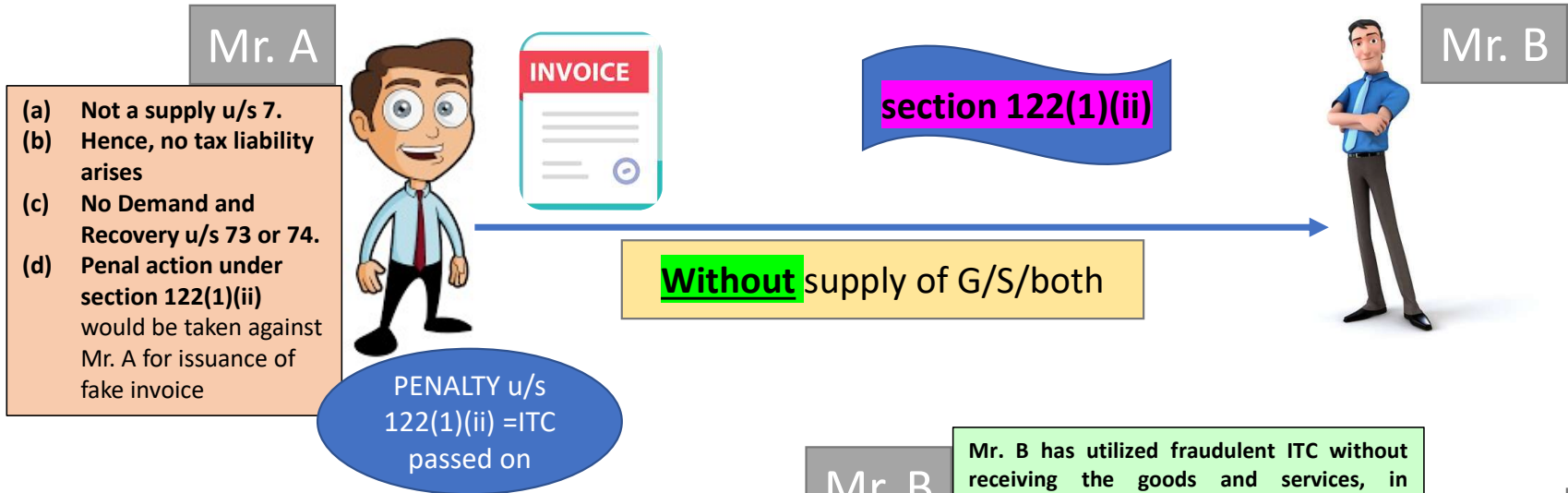
Sno.	CASE	ISSUE	CLARIFICATION
3.	<ul style="list-style-type: none"> Mr. A issued tax invoice to Mr. B without any underlying supply of goods or services or both. Mr. B utilizes the ITC availed based on the fake invoice. Further, Mr. B issues tax invoice without an underlying supply to Mr. C. 	<p>(a) Whether Mr. B liable for demand and recovery of said ITC u/s 73 or 74?</p> <p>(b) Whether any penal action can be taken against Mr.B?</p>	<p>(a) As no tax liability arises from Mr. A, hence No Demand and Recovery u/s 73 or 74. Penal action u/s 122(1)(ii). (Case 1)</p> <p>(b) Mr. B has utilized fraudulent ITC without receiving the goods and services, in contravention of sec 16(2)(b). No Recovery u/s 74 as ITC utilized against Supply.</p> <p>(c) There was no supply u/s by Mr. B to Mr. C, Penal action under section 122(1)(ii) and 122(1)(vii) would be taken against Mr. B for issuance of fake invoice and utilizing ITC without actual receipt of Goods and/or services.</p>

- IN ABOVE CASES-** Actual action to be taken against a person shall depend upon specific circumstances of the case which may involve complex mixture of above scenarios.
- The proceedings initiated under sec 73 & 74 were struck down due to lack of underlying supplies.**
- Section 132 may also be invocable.**

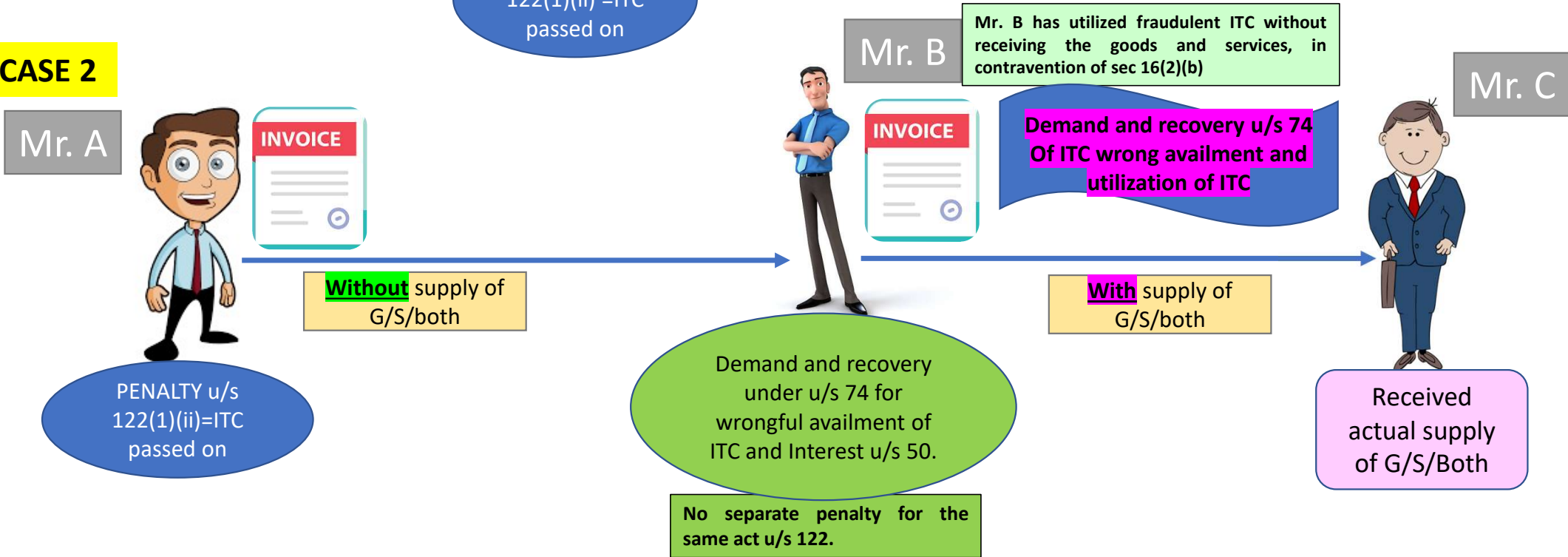
- Issuing fake invoice and availing ITC on basis of such fake invoice is an offence punishable with penalty
- If ITC availed on the basis of fake invoice is once again passed on by issuing fake invoice, then only penal action can be taken.
- Sec. 73/74 invoked when Tax demand are underlying while Sec 122 is when No Tax demand pending but only penalty for offences.

- **SECTION 73- for non fraud cases**
 - i) Penalty under sec 73 = 10% of tax or ITC
 - ii) If ITC or tax with interest paid before issue of notice or within 30 days of notice, No penalty
- **SECTION 74- for fraud cases**
 - i) Penalty under sec 74 = Equal to tax
 - ii) If tax with interest paid before issue of notice, penalty 15%
 - iii) If tax with interest paid within 30 days of notice, penalty 25%
- **SECTION 75(13)** –If penalty imposed under sec 73/74, no further penalty under any other provision.

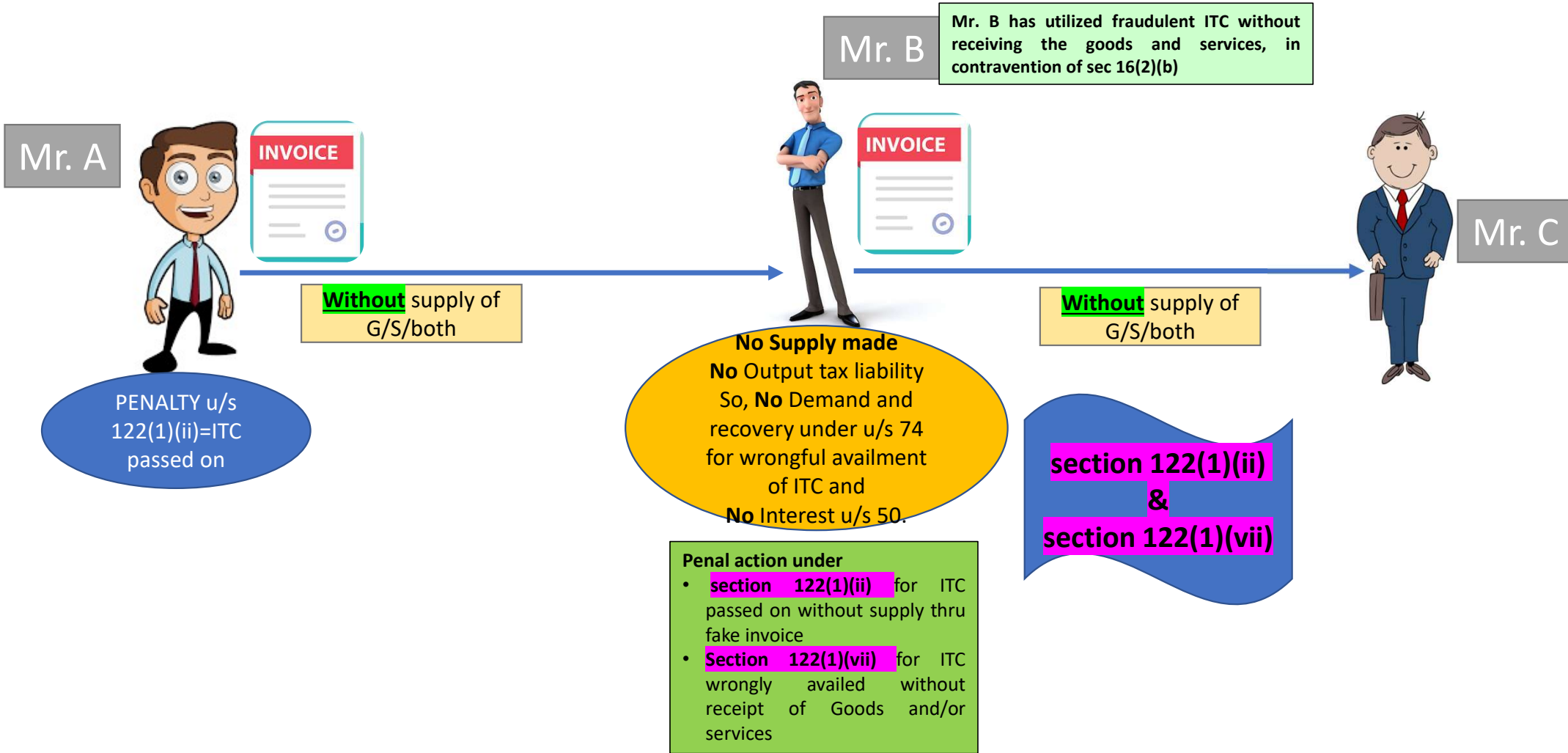
CASE 1



CASE 2



CASE 3



Section 122:- Penalty for certain offences



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If a taxable person

Involved in

21 offences as specified in section 122(1)

Sec 2(107) person~~2~~(84) liable to be registered u/s 22/24, whether or not actually registered

shall be liable to pay a penalty of

A. RS. 10000 or

10000*2

B. an amount equivalent to the

100%

Tax, TDS, TCS, ITC, Refund

i. tax evaded or

ii. TDS (the tax not deducted under section 51 or short deducted or deducted but not paid to the Government) or

iii. TCS (tax not collected under section 52 or short collected or collected but not paid to the Government) or

iv. input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently,

whichever is higher

List of 21 offences as mentioned in sec. 122(1)

(i) supplies any goods or services or both **without issue of any invoice** or **issues an incorrect or false invoice** with regard to any such supply;

Invoice  Supply 

Invoice incorrect  Supply

e.g Mr. A sells cement (@28%) whereas he raises an invoice titled sand (@5%) and pays concessional rate of tax @5%. This is an offence of classification and evades tax of @23%

(ii) issues any invoice or bill **without supply of goods or services or both** in violation of the provisions of this Act or the rules made thereunder; e.g Bill Selling



Invoice but No G/S  BOGUS BILL

(iii) collects any **amount** as tax but **fails to pay the same** to the Government beyond a period of **three months** from the date on which such payment becomes due; e,g persons selling goods on MRP

(iv) collects **any tax** in **contravention of the provisions of this Act** but **fails to pay** the same to the Government beyond a period of three months from the date on which such payment becomes due; e.G Hotel charge tax on supply of services where the tariff of rooms is below INR 1,000/-. At a later stage, they claim the supply being exempt and does not deposit.

(v) fails to deduct the tax in accordance with the provisions of sub-section (1) of section 51, or deducts an amount which is less than the amount required to be deducted under the said sub-section, or where he fails to pay to the Government under sub-section (2) thereof, the amount deducted as tax;

Fails to collect TDS or collects Lesser Amount or Fails to pay TDS

List of 21 offences as mentioned in sec. 122(1)

(vi) fails to collect tax in accordance with the provisions of sub-section (1) of section 52, or collects an amount which is less than the amount required to be collected under the said sub-section or where he fails to pay to the Government the amount collected as tax under sub-section (3) of section 52;

Fails to collect TCS or collects Lesser Amount or Fails to pay TCS

(vii) **takes** or utilizes input tax credit **without actual receipt of goods or services** or both either fully or partially, in contravention of the provisions of this Act or the rules made thereunder;

ITC-without Receipt of G/S

(viii) **fraudulently obtains refund** of tax under this Act;

Fradulent Refund

(ix) takes or **distributes input tax credit in contravention of section 20**, or the rules made thereunder; . . .

ISD

(x) **falsifies** or **substitutes financial records** or produces fake accounts or documents or furnishes any false information or return with an intention to evade payment of tax due under this Act;

False Records

(xi) is liable to be registered under this Act but **fails to obtain registration**;

No Registration

e.g. Mr. Rohit is engaged in inter-state supply of various taxable goods. As per sec 24(i) of the CGST Act, he is mandatorily required to take registration in GST but fails to take registration.

(xii) furnishes any **false information** with regard to registration particulars, either at the time of applying for registration, or subsequently;

False Particulars for Registration

e.G Additional Place of Business not disclosed



**Circular
No.172/02/2022**

**Clarifications on Various Issues
pertaining to GST**

- Refund claimed by the recipients of supplies regarded as deemed export;
- Interpretation of section 17(5) of the CGST Act;
- Perquisites provided by employer to the employees as per contractual agreement; and
- Utilization of the amounts available in the electronic credit ledger and the electronic cash ledger for payment of tax and other liabilities.

I. Refund claimed by the recipients of supplies regarded as deemed export

Q1. Whether the Input Tax Credit (ITC) availed by the recipient of deemed export supply for claiming refund of tax paid on supplies regarded as deemed exports would be subjected to provisions of Section 17 of the CGST Act, 2017.

- **The refund in respect of deemed export supplies is the refund of tax paid on such supplies.**
- **The tax paid on such supplies, has been made available as ITC to the recipients vide Circular No. 147/03/2021-GST dated 12.03.2021 only for enabling them to claim such refunds on the portal.**
- **The ITC of tax paid on deemed export supplies, allowed to the recipients for claiming refund of such tax paid, is not ITC in terms of the provisions of Chapter V of the CGST Act, 2017.**
- **Therefore, the ITC so availed by the recipient of deemed export supplies would not be subjected to provisions of Section 17 of the CGST Act, 2017**

Refund in case of Deemed Exports

Circular 14/14/2017
(Procedure (Form A
& Form B))

Deemed exports?

Extracts of Notification 48/2017 CT NR

- Supply of goods by a registered person against Advance Authorisation.
- Supply of capital goods by a registered person against Export Promotion Capital Goods Authorisation.
- Supply of goods by a registered person to Export Oriented Unit

Refund of Deemed exports can be claimed either

By the recipient or

- An undertaking shall have to be furnished by him stating that refund has been claimed only for those invoices which have been detailed in statement 5B for the tax period for which refund is being claimed and that he has not availed input tax credit on such invoices.
- Procedure as laid down by circular is followed

By the supplier

Only if recipient-

- does not avail input tax credit; and
- Furnishes an undertaking to the effect that the supplier may claim the refund.

Benefit of EPCG and similar schemes

Rule 89(4A), 89(4B)
and 96(10)

If the exporter has availed benefit of

In output Has

OR

Notification No	Notification Particulars	Exports without Payment	Exports with Payment of taxes
48/2017	Deemed Exports	Then Refund of ITC available [Rule 89(4A)]	Then IGST paid is not available as refund except if the benefit of notification was availed for acquisition of capital goods. Rule 96(10).
40/2017 CGST or 41/2017 IGST	0.1% Tax	Then Refund of ITC available [Rule 89(4B)]	
78/2017 Customs	EOUs		
79/2017 Customs	EPCG etc		

Q2. Whether the ITC availed by the recipient of deemed export supply for claiming refund of tax paid on supplies regarded as deemed exports is to be included in the “Net ITC” for computation of refund of unutilized ITC under rule 89(4) & rule 89 (5) of the CGST Rules, 2017

- **The ITC of tax paid on deemed export supplies, allowed to the recipients for claiming refund of such tax paid, is not ITC in terms of the provisions of Chapter V of the CGST Act, 2017.**
- **Therefore, such ITC availed by the recipient of deemed export supply for claiming refund of tax paid on supplies regarded as deemed exports is not to be included in the “Net ITC” for computation of refund of unutilised ITC on account of zero-rated supplies under rule 89(4) or on account of inverted rated structure under rule 89(5) of the CGST Rules, 2017.**

II. Clarification on various issues of section 17(5) of the CGST Act

Q3. Whether **the proviso** at the end of clause (b) of sub-section (5) of section 17 of the CGST Act is applicable to the entire clause (b) or the said proviso is applicable only to sub-clause (iii) of clause (b)?

It is clarified that **the proviso after sub-clause (iii) of section 17(5)(b) of the CGST Act is applicable to the whole of clause (b) of section 17 (5) of the CGST Act.**

SECTION 17(5)(b)

ITC shall not be available i.r.o. following supply of goods or services or both-

(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) except when used for the purposes specified therein, life insurance and health insurance:

Provided that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;

(ii) membership of a club, health and fitness centre; and

(iii) travel benefits extended to employees on vacation such as leave or home travel concession:

Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.

Q4. Whether the provisions of section 17 (5)(b)(i) of the CGST Act **bar the availment of ITC on input services by way of “leasing of motor vehicles, vessels or aircraft”** or ITC on input services by way of any type of leasing is barred under the said provisions?

• It is clarified that “leasing” referred in section 17 (5)(b)(i) **refers to leasing of motor vehicles, vessels and aircrafts only and not to leasing of any other items.**

• Accordingly, availment of **ITC is not barred under section 17 (5)(b)(i) in case of any type of leasing**, other than leasing of motor vehicles, vessels and aircrafts.

SECTION 17(5)(b)(i)

ITC shall not be available in respect of following supply of goods or services or both—

(i) *food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, **leasing, renting or hiring of motor vehicles, vessels or aircraft** referred to in clause (a) or clause (aa) except when used for the purposes specified therein, life insurance and health insurance:*

Provided that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply.

III. Perquisites provided by employer to the employees as per contractual agreement

Q5. Whether various perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are liable for GST?

• **Schedule III to the CGST Act** provides that “services by employee to the employer in the course of or in relation to his employment” will **not be considered as supply** of goods or services and **hence GST is not applicable on services rendered by employee to employer provided they are in the course of or in relation to employment.**

• **Any perquisites provided by the employer to its employees in terms of contractual agreement** entered into between the employer and the employee **will not be subjected to GST** because they are in lieu of the services provided by employee to the employer in relation to his employment.

IV. Utilization of the amounts available in the electronic credit ledger and the electronic cash ledger for payment of tax and other liabilities

Q6. Whether the amount available in the electronic credit ledger can be used for making payment of any tax under the GST Laws?

- It is clarified that any payment towards output tax,
--whether self-assessed in the return, OR
--payable as a consequence of any proceeding instituted under the provisions of GST can be made by utilization of the amount available in the electronic credit ledger of a registered person.
- Also, the electronic credit ledger cannot be used for making payment of any tax which is payable under reverse charge mechanism.

SECTION 49(4)

The amount available in **the electronic credit ledger** may be used for making **any payment towards “output tax”** under the CGST Act or IGST Act, **subject to** the provisions relating to the **order of utilization** of input tax credit as laid down in **section 49B** of the CGST Act read with **rule 88A** of the CGST Rules.

Section 2(82) - output tax in relation to a taxable person (i.e. a person who is registered or liable to be registered under section 22 or section 24 of the CGST Act) defined as the tax chargeable on taxable supply of goods or services or both but excludes tax payable on reverse charge mechanism.

The Circular no. 172/04/2022 has not specifically clarified on the issue of whether payment of pre-deposit can be made through the electronic credit ledger

CONTRARY JUDGEMENT UNDER FOLLOWING CASE LAW:

Orrisa High Court in case of M/S. Jyoti Construction [2021 (10) TMI 524 - ORISSA HIGH COURT]

---where it was held that the **electronic credit ledger cannot be debited** for making **payment of pre-deposit at the time of filing of the appeal** in terms of Section 107 (6) of the OGST Act.

Q7. Whether the amount available in the **electronic credit ledger can be used for making payment of any liability** other than tax under the GST Laws?

- As per **Section 49(4)** **electronic credit ledger can be used for making payment of output tax only** under the CGST Act or the IGST Act.

- It **cannot** be used for making payment of :-

 - any interest, penalty, fees or any other amount payable under the said acts.

- Similarly, electronic credit ledger cannot be used for payment of erroneous refund sanctioned to the taxpayer, where such refund was sanctioned in cash.

Q8. Whether the amount available in the **electronic cash ledger** can be used for making payment of any liability under the GST Laws?

- As per **Section 49(3)** **electronic cash ledger** can be used for making any payment towards :-
 - tax, interest, penalty, fees or any other amount payable under the provisions of the GST.



**Notification
No. 14/2022-CT**

&

**Circular No.
173/02/2022**

Clarification on issue of claiming refund under inverted duty structure where the supplier is supplying goods under some concessional notification

Vide circular, para 3.2 of Circular No. 135/05/2020-GST dated 31.03.2020 stands SUBSTITUTED as under:

“3.2 It may be noted that refund of accumulated ITC in terms of clause (ii) of the first proviso to sub-section (3) of section 54 of the CGST Act is available where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies.

It is noteworthy that, the input and output being the same in such cases, though attracting different tax rates at different points in time, do not get covered under the provisions of clause (ii) of the first proviso to sub-section (3) of section 54 of the CGST Act.”



**Notification
No. 14/2022-CT**

&

**Circular No.
173/02/2022**

**Vide circular, para 3.3 of Circular No. 135/05/2020-GST
dated 31.03.2020 stands SUBSTITUTED as under:**

“3.3 *There may, however, be cases where although inputs and output goods are the same, the output supplies are made under a concessional notification due to which the rate of tax on output supplies is less than the rate of tax on inputs.*

In such cases, as the rate of tax of output supply is less than the rate of tax on inputs at the same point of time due to the supply of goods by the supplier under such concessional notification, the credit accumulated on account of the same is admissible for refund under the provisions of clause (ii) of the first proviso to sub-section (3) of section 54 of the CGST Act, other than the cases where output supply is either Nil rated or fully exempted, and also provided that supply of such goods or services are not notified by the Government for their exclusion from the refund of accumulated ITC under the said clause.”



**Notification
No. 14/2022-CT**

&

**Circular No.
173/02/2022**

Clarification on issue of claiming refund under inverted duty structure where the supplier is supplying goods under some concessional notification

INTERPRETATION

The refund is admissible in cases where inputs and output goods are same but the output supplies are made under a concessional notification due to which the rate of tax on output supplies is less than the rate of tax on inputs.

EXAMPLES:

- a) Where the inputs are taxable at 18% and outward supply also taxable at 18%, however under a concessional notification provides for reduced rate in special circumstances. Example could be the supply made to Public funded research institution under NN 47/2017-ITR at concession rate of 5% – **IDS refund is admissible.**
- b) An applicant trading in goods has purchased, say goods “X” attracting 18% GST. However, subsequently, the rate of GST on “X” has been reduced to, say 12%. -**IDS refund is not admissible** as per para 3.2 of circular No. 135/05/2020-GST dated 31.03.2020.

[2021] 130 taxmann.com 182 (Gauhati)
HIGH COURT OF GAUHATI
BMG Informatics (P.) Ltd.
v.
Union of India

GST : Provisions of paragraph 3.2 of Circular No. 135/05/2020-GST dated 31-3-2020 providing that even though different tax rate may be attracted at different point of time, but refund of accumulated unutilized tax credit will not be available under section 54(3)(ii) in cases where input and output supplies are same, would have to be ignored

[2022] 140 taxmann.com 326 (Rajasthan)
HIGH COURT OF RAJASTHAN
Baker Hughes Asia Pacific Ltd.
v.
Union of India

GST : Circular No.135/05/2020-GST, dated 31-3-2020 which stipulates that refund under inverted duty structure in terms of section 54(3)(ii) would not be available where input and output supplies are same is repugnant and conflicting to parent legislation i.e. section 54(3)(ii)

[2022] 137 taxmann.com 213 (Calcutta)

HIGH COURT OF CALCUTTA

Shivaco Associates

v.

Joint Commissioner of State Tax, Directorate of Commercial Taxes

AMRITA SINHA, J.

WPA NO. 54 OF 2022

MARCH 11, 2022

Refund - Unutilized ITC - Petitioners were engaged in business of purchasing Liquefied Petroleum Gas (LPG) in bulk quantity and thereafter same was refilled in small bottles/cylinders and then sold to commercial and domestic consumers - Rate of tax on input supply (LPG in bulk) is 18 per cent and rate of on output supply (LPG in small containers for domestic consumers) is 5 per cent - Adjudicating authority by an order rejected petitioner's claim of refund by relying on [Circular No. 135/05/2020-GST, dated 31-3-2020](#) wherein it has been mentioned that taxpayers cannot claim refund in terms of clause (ii) of section 54(3) in cases where input and output supplies remain same - HELD : Refund of unutilized input tax credit was to be allowed under section 54 where credit accumulated on account of rate on inputs was higher than rate of tax on output supplies - Act does not restrict refund only in respect of supplies which are different at input and output stage - However, by way of above circular, Board was curtailing said benefit and making refund only if input and output supplies are different, which amounted to overreaching provisions as laid down in Act - Thus, refund of accumulated input tax credit was admissible [Section [54](#) of the Central Goods and Services Tax Act, 2017/ West Bengal Goods and Services Tax Act, 2017] [Paras 26 to 29] [In favour of assessee]



**Notification
No. 14/2022-CT**

&

**Circular No.
174/02/2022**

Prescribing manner of re-credit in electronic credit ledger using FORM GST PMT-03A

**RULE 86(4B)
inserted**

N 14/2022

Where a registered person **deposits the amount of erroneous refund sanctioned to him**, –

(a) under sub-section (3) of section 54 of the Act, or

(b) under sub-rule (3) of rule 96, in contravention of sub-rule (10) of rule 96,

along with interest and penalty, wherever applicable, through **FORM GST DRC-03**, by debiting the electronic cash ledger, on his own or on being pointed out, an amount equivalent to the amount of erroneous refund deposited by the registered person shall be **re-credited to the electronic credit ledger** by the proper officer by an order made in **FORM GST PMT-03A**.

CATEGORIES OF REFUND sanctioned erroneously, where re-credit of amount in the electronic credit ledger can be done through **FORM GST PMT-03A**

- (a) Refund of IGST obtained in contravention of sub-rule (10) of rule 96.
- (b) Refund of unutilized ITC on account of export of goods/services without payment of tax.
- (c) Refund of unutilized ITC on account of zero-rated supply of goods/services to SEZ developer/Unit without payment of tax.
- (d) Refund of unutilized ITC due to inverted tax structure.



**Notification
No. 14/2022-CT**

&

**Circular No.
174/02/2022**

Procedure for re-credit of amount in electronic credit ledger:

- The taxpayer shall deposit the amount of erroneous refund along with applicable interest and penalty, wherever applicable, through **FORM GST DRC-03** by debit of amount from electronic cash ledger
- Till the time an automated functionality for handling such cases is developed on the portal, the taxpayer shall make a **written request, in format** enclosed as **Annexure-A**, to jurisdictional proper officer to re-credit the amount equivalent to the amount of refund thus paid back through **FORM GST DRC-03**, to electronic credit ledger.
- The **proper officer**, on being satisfied **shall re-credit an amount in electronic credit ledger, equivalent to the amount of erroneous refund** so deposited by the registered person, by passing an order in **FORM GST PMT-03A, preferably within a period of 30 days** from the date of receipt of request for re-credit of erroneous refund amount so deposited or from the date of payment of full amount of erroneous refund along with applicable interest, and penalty.

e.g Balance in ECRL was Rs. 1000 out of which Rs. 100 was ineligible. When refund applied amount deducted from ECRL was 1000. Rs. 900 was given as refund. Rs. 100 being ineligible deducted but not provided as refund. But person is made to pay Rs. 100 in Cash thru DRC-03. Now he is at loss as amount is deducted from ECRL also and paid in Cash also. So, now the amount deducted from ECRL will be recredited through PMT-03A.

SPECIMEN OF FORM GST PMT-03A

"FORM GST PMT -03A <i>[See rule 86(4B)]</i> Order for re-credit of the amount to electronic credit ledger	
Reference No:	Date:
1. GSTIN – _____	
2. Name (Legal) – _____	
3. Trade name, if any _____	
4. Address – _____	
5. Ledger from which debit entry was made- _____ Cash / credit ledger	
6. Debit entry no. and date – _____	
7. Payment Reference Number (DRC 03): _____ dated _____	
8. Details of Payment: -	
Cause of Payment	(Deposit of erroneous refund of unutilised ITC or Deposit of erroneous refund of IGST)
Details of Refund Sanction order	1. Shipping
	2. Bill/ Bill of Export No. and Date _____
	3. Amount of IGST paid on export of goods _____
	4. Details of Exemption/Concessional Rate Notification used for procuring inputs _____
	5. Amount of refund sanctioned _____
	6. Date of credit of refund in Bank Account _____
	(or)
	1. Category of refund and relevant period of refund _____
	2. GST RFD-01/01A ARN and Date _____
	3. GST RFD-06 Order No. and Date _____
	4. Amount of refund claimed _____
5. Amount of refund sanctioned _____	

Procedure for filing and processing of refund of unutilised ITC on account of export of electricity.

FILING OF REFUND CLAIM

The applicant would be required to file the application for refund under “Any Other” in FORM RFD-01. In remark column of the application, the taxpayer would enter “Export of electricity- without payment of tax (accumulated ITC)”.

DOCUMENTS TO BE UPLOADED

- a) Statement 3B of FORM GST RFD-01 (in pdf format), containing the number and date of the export invoices, details of energy exported, tariff per unit for export of electricity as per agreement.
- b) The copy of statement of scheduled energy for electricity exported by the Generation Plants (in format attached as provided in notification).
- c) The copy of the relevant agreement(s) detailing the tariff per unit for the electricity exported.
- d) Details of calculation of the refund amount in Statement -3A of FORM GST RFD-01 by uploading the same in PDF FORMAT.

RELEVANT DATE FOR FILING THE REFUND

The relevant date shall be the last date of the month, in which the electricity has been exported as per monthly Regional Energy Account (REA) issued by the Regional Power Committee Secretariat under regulation 2(1)(nnn) of the CERC (Indian Electricity Grid Code) Regulations, 2010.

PROCESSING OF REFUND CLAIM

FORMULA SAME AS IN RULE 89(4)- For calculation of refund of unutilized ITC on account of zero rate supplies :

Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero rated supply of services) x Net ITC ÷ Adjusted Total Turnover

The turnover of export of electricity would be calculated by multiplying the energy exported during the period of refund with the tariff per unit of electricity, specified in the agreement.

The quantum of Scheduled Energy exported, as reflected in the Regional Energy Account (REA) issued by Regional Power Committee (RPC) Secretariat for a particular month, will be deemed to be the quantity of electricity exported during the said month

The quantum of electricity exported as specified in the **statement of scheduled energy exported** and on **invoice** should **be SAME**.

In case it is **DIFFERENT** , turnover of export of electricity shall be calculated using **the lower of**

- quantum of electricity exported mentioned on the **statement** of scheduled energy exported and
- that mentioned on the **invoice** issued on account of export of electricity.

Adjusted Total Turnover shall be calculated as per Rule 89E(4).

The turnover of electricity supplied domestically would be excluded while calculating the adjusted total turnover.

ISSUE OF REFUND ORDER

- The proper officer shall calculate the admissible refund amount as per the formula provided under rule 89(4) and the circular clarification.
- Further, upon scrutiny of the application for completeness and eligibility, if the proper officer is satisfied, he shall request the applicant, in writing, if required, to debit the said amount from the electronic credit ledger through **FORM GST DRC-03**.
- Once the proof of such debit is received by the proper officer, he shall proceed to issue the refund order in **FORM GST RFD-06** and the payment order in **FORM GST RFD-05**.



**Notification
No. 14/2022-CT**

&

**Circular No.
176/02/2022**

Supply by Duty Free Shops (DFS) to outgoing international passenger to be treated as exports and consequential refund benefit made available.

N 14/2022

**RULE 95A
OMITTED w.e.f. 1/7/2019**

Rule 95A was limiting the refund option only on goods and with the omission of this rule, the intention appears to allow refund on input services as well.

**CIRCULAR
176/02/2022**

**CIRCULAR 106/25/2019
WITHDRAWN**

This circular was allowing refund GST paid on inward supply of indigenous goods **ONLY** by retail outlets established at departure area of the international airport beyond immigration counters when supplied to outgoing international tourist against foreign exchange.

INTERPRETATION

Hence, supplies made by retail outlets situated in departure area of international airport treated to be 'zero rate supplies' and thereby allowing refund of input services as well.



Notification No. 10/2022-CT

**Turnover limit for Annual
Return (FY 2021-22)**

This notification provides:

Exemption from filing of annual return in form GSTR-9 and GSTR-9A (for the financial year 2021-22), if the aggregate turnover of the registered person in the said year is not exceeding Rs.2 Crores.



Notification No. 11/2022-CT

**Due date for filing quarterly return
CMP-08 for composition taxpayer**

The composition taxpayer shall now furnish a statement containing the details of payment of tax in **FORM GST CMP-08 for the 1st quarter ending 30th June, 2022 – due date of filing extended till 31st day of July, 2022.**

Earlier, Composition taxpayers were required to file a Quarterly return in form CMP-08, before 18th of the succeeding month.

GSTR 9 MANDATORY V/S OPTIONAL TABLES FOR FY 2021-22

TABLE NO	NATURE OF REPORTING	STATUS	NOTE
4A TO 4G	Taxable Outward Supply, Tax on advances & RCM	Mandatory	-
4I to 4L	CN, DN, Amendments with respect to 4B to 4E Supplies	Mandatory [From21-22]	-
5A to 5C	Zero rated Supply without payment of Tax, supplies on which tax to be discharged by recipient	Mandatory	-
5D to 5F	Exempted, Nil Rated & Non GST Supply	“Exempted” and “Nil Rate can be Clubbed Non-GST Supply to be shown separately [from 21-22]	
5H To 5k	CN, DN, Amendments with respect to 5A to 5F Supplies	Mandatory [From21-22]	
6A	Auto Populated ITC based on 3B	-	-
6B to 6d	ITC on Inward supplies for Forward Charges & Reverse Charge	“Input” and “Input Services” Can be Clubbed , “Capital Goods” to be shown Separately.* (Till 2018-19, All 3 could have been clubbed) -6C & 6D Can be also be Clubbed.	

6E	Imports of Goods	Mandatory * (Till FY 2018-19, Input & Input Capital Separately not mandated)	-
6F to 6M	Other ITC	Mandatory	-
7A to 7E	ITC Reversal due to Rule 37,39,42,43,Sec.17(5)	Can be clubbed with 7H-(with Other reversals)	-
7F to 7G	ITC Reversal due to TRAN1&TRAN2	Mandatory	-
8A TO 8K	ITC Related Information	Mandatory* (Till FY 2018-19, 8A to 8D was optional)	-
9	Details of Tax Payable & Tax paid	Mandatory	-
10,11	Outward Liability Pertaining to FY 2021-22 shown/reduced in FY 2022-23 Till Sept-21	Mandatory	-
12,13	ITC Pertaining to FY 2021-23 reversed /shown in FY 2022-23 Till Sept-21	Optional(Not advisable)	-
15 & 16	Info of Demands 7 Refunds, Inward supplies	Optional	-
17	HSN for Outward Supply	Mandatory [from21-22] [To>5Cr. At 6 Digit level for all supplies] To<5 Cr, 4 Digit level for B2b Supplies Only]	-
18	HSN for Inward Supply	Optional	-

GSTR-9C MANDATORY V/S OPTINAL TABLES FOR FY 2021-22

TABLES NO	NATURE OF REPORTING	STATUS	NOTE
5A	Turnover as per Audited Books	Mandatory	-
5B to 5O	Adjustments related to Turnover	Can be clubbed in 5O	-
7A to 7F	Reco from total Turnover to Taxable Turnover	Mandatory	-
9A to 9Q	Reco of Tax Paid	Mandatory	-
12A to 12D	Reco of ITC between Books v/s GSTR9	Mandatory [From 21-22] [12B & 12c were optional till 20-21]	-
Table 14	Expense head with ITC Reconciliation	Optional	-

CHANGES IN GSTR-9 FOR FY 2021-22 COMPARED TO GSTR-9 FOR LAST FY 2020-21

TABLE NO.	DESCRIPTION	RULE FOR FY 2020-21	CHANGES FOR FY 2021-22
4H & 4I	Credit Notes issued in respect of transactions specified in (B) to (E) above (-) Debit Notes issued in respect of transactions specified in (B) to (E) above (+)	In FY 2020-21, the registered person shall have an OPTION to fill table 4B to table 4E net of credit notes/debit notes in case there is any difficulty in this table	Table 4H & 4I made Mandatory . Option withdrawn.
4J & 4K	Supplies declared through Amendments (+) Supplies declared through Amendments (-)	In FY 2020-21, the registered person shall have an option to fill table 4E net of Amendments in case there is any difficulty in reporting such details separately in this table.	Table 4J & 4K made Mandatory . Option withdrawn

<p>5D, 5E and 5F</p>	<p>5D – Exempted 5E – Nil Rated 5F – Non-GST supply (inculdes ‘ no supply ‘)</p>	<p>For FY 2020-21, the registered person shall be have an option to either separately report his suppliers as exempted, nil rated and Non-GST supply or report consolidated information for all these three heads in the – exempted row only.</p>	<p>Non – GST Supply SHALL BE REPORTED SEPETRATELY</p> <p>Option to either separately report exempted and nil rated supply or report the consolidated information in “ Exempted “ Row only</p>
<p>17 & 18</p>	<p>17 – HSN Wise Summary of outward suppliers</p> <p>18 – HSN Wise Summary of inward suppliers</p>	<p>In FY 20-21, these table are OPTOINAL.</p>	<p>Table 17 made Mandatory HSN Code 6 Digits for Taxpayer having ATTO in Preceding Year > 5 CR HSN Code 4 Digits for Taxpayer having ATTO in Preceding Year > 5 CR Table 18 still Optional</p>



Notification No. 12/2022-CT

**Waiver of late fees for filing Annual return
by Composition taxpayer for FY 21-22**

- The due date for filing GSTR-4 by the composition taxpayer for every financial year is 30th April of the succeeding year. If not filed within the due date, late fee as applicable under Section 47 of the CGST Act is payable.
- **The late fee for the FY 2021-22 was waived**, if the return is filed upto 30th June 2022 (6th proviso to Notification no 73/2017 (CT) as amended). Now **this waiver is extended upto 28th July 2022.**



Notification

No. 13/2022-CT
w.e.f 01.03.2020

- EXTENSION OF TIME LIMIT FOR ISSUANCE OF ORDER U/S 73(9) for FY 2017-18
- EXCLUSION OF TIME PERIOD (1.03.2020 TO 28.02.2022) for REFUND FILING AND ISSUANCE OF DEMAND ORDER

- Section 73(10) of the CGST Act, 2017 prescribes that any order for determination of tax liability under the said section has to be passed within 3 years from the due date for filing annual return for a year.
- The show cause notice has to be issued at least three months before the last date for passing the order. As the due date for filing annual return for 2017-18 was extended upto 05/07-02-2020, any order for the year 2017-18, **under section 73 has to be passed on or before 04/06-02-2023 and show cause notice should be issued on or before 04/06.11.2022.**
- **Now, the time limit for passing order under Section 73 (10) for the year 2017-18 has been extended upto 30th September 2023.**
- It has been provided that while computing the period of limitation for recovery of erroneous refund & filing refund application, the period between 01.03.2020 to 28.02.2022 shall be excluded. The reason behind not considering the said period could be the adverse impacts COVID-19 pandemic caused across the country which had hindered the smooth functioning of the business as well as the law-and-order system.

Time limit u/s 73 and 74

Sr. No.	Relevant F.Y. to which the demand relates	Due date for furnishing the AR in FORM GSTR-9	Last date for issuance of the show cause notice as per S.73(2) r/w. S.73(10)	Extended Notice Date as per Notification 13/2022-Central Tax	Last date for issuance of order u/s 73(10)	Extended date for issuance of order u/s 73(10)
1	2017-18	05.02.2020 07.02.2020	04.11.2022 06.11.2022	30.06.2023	04.02.2023 06.02.2023	30.09.2023
2	2018-19	31.12.2020	30.09.2023	-	30.12.2023	-
3	2019-20	31.03.2021	31.12.2023	-	30.03.2024	-

For example, if an erroneous refund was sanctioned on 01.08.2018, the order for recovery of the same has to be passed on or before 31.07.2021. It may be noted that as on 01.03.2020, 19 months are over and further 17 months are available.

If we exclude the period from 01.03.2020 to 28.02.2022, a further period of 17 months would be available from 01.03.2022, i.e., the order can be passed upto 31.07.2023.



Notification No. 14/2022-CT

Suspension of registration shall be deemed to be revoked upon furnishing of all pending returns

2nd Proviso to RULE 21A(4) inserted

- **Where the registration has been suspended for contravention of Section 29(2), clause (b) and (c) for not furnishing returns for 3 or 6 consecutive tax periods in case of a composition taxpayer or normal taxpayer respectively**
- **and the registration has not been already cancelled by the proper officer under Rule 22,**
- **the suspension of registration shall be deemed to be revoked upon furnishing of all pending returns.**



Notification No. 14/2022-CT

Value of supply of Duty Credit Scrips shall not be included for the purpose of common credit reversal .

Clause(d) inserted in Explanation 1 to Rule 43

For the purpose of reversal of common credit under rule 42 & 43, the value of exempt supplies shall not include the value of supply of duty credit scrips.

- This implies that common credit need not be reversed to the extent of sale value of duty credit scrips.
- However, it is not clear whether the explanation added will have prospective or retrospective effect. Being a beneficial provision, this should be applicable retrospectively.
- Assesses who have **already reversed the ITC can re-claim the said ITC with the intimation to department or file a refund application for wrong reversal of ITC under 'Any Other Refund' category for the past period.**



Notification No. 14/2022-CT

Declaration to be provided on tax invoice by the taxpayers exempt from issuing e-invoice

Clause(s) to Rule 46 inserted

The category of taxpayers who are exempt from E-invoicing are required to **provide a declaration** in this regard in the tax invoice issued by them.



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

The certain categories of **taxpayers who are excluded from complying with the provisions of e-invoicing** as follows :

- An insurer or a banking company or a financial institution, including an NBFC
- A Goods Transport Agency (GTA)
- A registered person supplying passenger transportation services
- A registered person supplying services by way of admission to the exhibition of cinematographic films in multiplex services
- An SEZ unit (excluded via CBIC Notification No. 61/2020 – Central Tax)
- A government department and local authority (excluded via CBIC Notification No. 23/2021 – Central Tax)

E-invoicing under GST

Legal Provisions

The invoice shall be prepared by such class of registered persons as may be notified by the Government, on the recommendations of the Council, by including such particulars contained in FORM GST INV-01 after obtaining an Invoice Reference Number by uploading information contained therein on the Common Goods and Services Tax Electronic Portal in such manner and subject to such conditions and restrictions as may be specified in the notification.
(5) Every invoice issued by a person to whom sub-rule (4) applies in any manner other than the manner specified in the said sub-rule shall not be treated as an invoice.

N. N. 68/2019-CT

Rule
48(4)

N. N. 13/2020-CT
dated 21-03-20

Registered person, whose aggregate turnover in a financial year exceeds 100 Crore w.e.f 01.10.2020

N. N. 61/2020-CT
dated 30-07-20

Registered person, whose aggregate turnover in a financial year exceeds 500 Crore w.e.f 01.10.2020

N. N. 70/2020-CT Any preceding financial year from 2017-18 onwards.

N. N. 88/2020-CT

Registered person, whose aggregate turnover in any preceding financial year from 2017-18 onwards exceeds 100 Crore w.e.f 01.01.2021

N. N. 5/2021-CT

Registered person, whose aggregate turnover in any preceding FY from 2017-18 onwards exceeds 50 Crore w.e.f 01.04.2021

N. N. 1/2022-CT

dated 24-02-2022

Registered person, whose aggregate turnover in any preceding FY from 2017-18 onwards exceeds 20 Crore w.e.f 01.04.2022

N. N. 17/2022-CT

dated 01-08-2022

Registered person, whose aggregate turnover in any preceding FY from 2017-18 onwards exceeds 10 Crore w.e.f 01.10.2022



Notification No. 14/2022-CT

UPI and IMPS have been added as options for making deposits into Electronic Cash Ledger

**Rule 87
Amended**

To include the options of Unified Payment Interface (UPI) and Immediate Payment Services (IMPS) as an accepted mode of payment of GST.

✓ **UPI**

✓ **IMPS**



Notification No. 14/2022-CT

Retrospective Amendment w.e.f.
1/7/2017 to Rule 96 in cases of
taxpayers in default

Clause(b) of Rule 96(1) substituted

(b) the applicant has furnished a valid return in **FORM GSTR-3B**

Provided that if there is **any mismatch** between the data furnished by the exporter of goods in **Shipping Bill** and those furnished in statement of outward supplies in **FORM GSTR-1**,

Then **such application** for refund of **integrated tax paid** on the goods exported out of India shall be **deemed to have been filed** on such date when such **mismatch** in respect of the said shipping bill is **rectified** by the exporter

Clauses 5A and 5B of Rule 96 inserted

- Where refund is withheld in case of exporter identified as a Risky exporter, then such refund claims shall be transmitted to the proper officer electronically in **FORM GST RFD-01**
- The said system generated form shall be deemed to be the application for refund in such cases and shall be deemed to have been filed on the date of such transmission.

Rule 96

Notification No. 14/2022-CT

(5A) Where refund is withheld in accordance with the provisions of clause (a) or clause (c) of sub-rule (4) of Rule 96, **such claim shall be transmitted to the proper officer** of Central tax, State tax or Union territory tax, as the case may be, **electronically through the common portal in a system generated FORM GST RFD-01** and the intimation of such transmission shall also be sent to the exporter electronically through the common portal, and notwithstanding anything to the contrary contained in any other rule, the said system generated form shall be deemed to be the application for refund in such cases and shall be deemed to have been filed on the date of such transmission

(5B) Where refund is withheld in accordance with the provisions of clause (b) of sub-rule (4) of Rule 96 and the proper officer of the Customs passes an order that the goods have been exported in violation of the provisions of the Customs Act, 1962 (52 of 1962), then, **such claim shall be transmitted to the proper officer** of Central tax, State tax or Union territory tax, as the case may be, **electronically through the common portal in a system generated FORM GST RFD-01** and the intimation of such transmission shall also be sent to the exporter electronically through the common portal, and notwithstanding anything to the contrary contained in any other rule, the said system generated form shall be deemed to be the application for refund in such cases and shall be deemed to have been filed on the date of such transmission.

Rule 96 (4)

- (a)** a request has been received from the jurisdictional Commissioner of central tax, State tax or Union territory tax to withhold the payment of refund due to the person claiming refund in accordance with the provisions of sub-section (10) or sub-section (11) of section 54;
- (c)** the Commissioner in the Board or an officer authorised by the Board, on the basis of data analysis and risk parameters, is of the opinion that verification of credentials of the exporter, including the availment of ITC by the exporter, is considered essential before grant of refund, in order to safeguard the interest of revenue.

Rule 96 (4)

- (b)** the proper officer of Customs determines that the goods were exported in violation of the provisions of the Customs Act,



Notification No. 14/2022-CT

**Form GSTR- 9 notified for the F.Y 2021-22
with few changes**

1. The registered person shall report non-GST supply (5F) separately and shall have an option to either separately report his supplies as exempted and nil rated supply or report consolidated information for these two heads in the “exempted” row only.
2. It shall be **mandatory to report in Table 17, HSN code at six digits level for taxpayers having annual turnover in the preceding year above 5 Cr** and at **four digits level for all B2B supplies for taxpayers having annual turnover in the preceding year up to 5 Cr.**
3. Few other instructions for Part-IV (Table-10,11,12,13) & Part-V inserted to make the FORM relevant for the FY 2021-22.

Rule 89(4)

In the case of zero-rated supply of goods or services or both without payment of tax under bond or letter of undertaking in accordance with the provisions of sub-section (3) of section 16 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), refund of input tax credit shall be granted as per the following formula—

Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) × Net ITC ÷ Adjusted Total Turnover

Explanation inserted – For REFUND the value of goods exported out of India shall be taken as –

- (i) the Free on Board (FOB) value declared in the Shipping Bill or Bill of Export form, as the case may be, as per the Shipping Bill and Bill of Export (Forms) Regulations, 2017; or
- (ii) the value declared in tax invoice or bill of supply,

Whichever is less

The GST invoice is based on Transaction value and it is CIF including goods and freight. So invoice will include both value of goods and freight. But shipping bill is based upon FOB value. And as per circular 125 para 47 in case of unutilised ITC , **refund is processed on basis of lower of two values of Gst Invoice and SB.** Moreover, even in case of non payment of tax , shipping bill is the deemed application. So refund restricted to shipping bill value in both cases.

Moreover supply of services associated with transit cargo to Nepal is exempt by 9B of 12/2017

Export freight is also exempt.

SPECIMEN OF THE INVOICE (without freight)
Containing FOB + Insurance Charges= CIF

SPECIMEN OF THE SHIPPING BILL

INVOICE					
Country of Origin of Goods. INDIA		Country of Final Destination. NORWAY		No. of Containers. of 20 FT 1 * 20 FT	
Marks & Container No	Nos. & Kind of Pkgs	Description	Quantity	Rate Per M.T USD	Amount
(1) Golden Tiger. Brand	Old crop	Indian Basmati Rice	22.000 M.Tons.	781.64 FOB	17196.08 USD FOB
2.000 M.T 5 KG *4 = 20KG = 1100 Bags packed in Printed New Non Woven Bags, Inside transparent Polythene Bag faster bagged in Plain Transparent PP bags Insurance Charges					30,000 USD OSLO
Total Qty 22.000 M.T.S Total Bags 1100		22.000 M.T.S	C&I		17226.08 USD
Amount Chargeable in Words		USD : Seventeen Thousand Two Hundred Twenty Six and Eight Cents Only			
No. of Bags : 1100		NETT.WT : 22.000 M.T.S	GRS WT : 22.176 M.T.S		
Consignment Details :-		SUPPLY MEANT FOR EXPORT UNDER BOND/UNDERTAKING WITHOUT PAYMENT OF IGST			
Sl No	DT	Cont. No	Seal No	Remarks	
E.No 1204002401					
Declaration :- I/We Declare that this invoice shows the Actual Price of the goods described and at all particulars are true, correct & goods are of Indian origin. subject to Amritsar Jurisdiction.				Signature: [Redacted] Auth. Sign	

VALUE OF REFUND = LOWER 17196/-

PART - I - SHIPPING BILL SUMMARY											
A STATUS											
B DECLARATION DETAILS											
C VALUE ADDED											
D EXPR.											
E MANIFEST DETAILS											
F INVOICE SUMMARY											
G EQUIPMENT DETAILS											
H CHALLAN DETAILS											
I ANNEX DETAILS											
J PROCESS DETAILS											
K VALUE ADDED											
L ITEM DETAILS											

1.FOB VALUE	2.FREIGHT	3.INSURANCE	4.DISCOUNT	5.COMMISSION	6.DEDUCT	7.P/C	8.EXCHANGE RATE	
1245856	0	2174	0	0	0	0	1 USD INR 72.45	
8.DEDUCTIONS	9.DUTY	10.CESS	11.FSC NO.	12.IGST AMT	13.CESS AMT	14.IGST VALUE	15.RODTEP AMT	
0	0	0		0	0	0	6229	
1.MAWB NO.	2.MAWB DT	3.HAWB NO.	4.HAWB DT	5.N.O.C.	6.SNO	7.INV NO.	8.INV AMT.	9.CURRENCY
					1	RSRM/4146	17226.08	USD
1.CONTAINER	2.SEAL	3.DATE	4.S No	5.SR.NO	6.CHALLAN NO	7.PAYMT DT	8.AMOUNT	
TGBU3160230	019731	08-APR-21	1					
1.SEAL TYPE	2.NATURE OF CARGO	3.NO. OF PACKETS	4.NO. OF CONTAINERS	5.LOOSE PACKETS				
SELF SEALED	CONTAINERISED	1100	1	0				
6.MARKS & NUMBERS	GOLDEN TIGER BRAND							
1.EVENT	2.DATE	3.TIME	4.LEO NO.	5.SUBMISSION	6.LEO DATE	7.BRC REALISATION DATE	8.	
Submission	07-APR-21	19:35			08-APR-21	31-JAN-22	1/2	
Assessment	08-APR-21	00:00						
Examination	08-APR-21	00:00						
LEO	08-APR-21	17:42						

1.INVOICE VALUE	2.FOB VALUE	3.FREIGHT	4.INSURANCE	5.DISCOUNT	6.COMMISSION	7.DEDUCT	8.P/C	9.EXCHANGE RATE
17226.08 USD	17196.08 USD	0 USD	30 USD	0	0	0	0	1 USD INR 72.45
1.Item No.	2.HS No	3.DESCRPTION	4.QUANTITY	5.UQC	6.RATE	7.VALUE(FC)		
1	10063020	INDIAN BASMATI RICE APEDA RCAC NO.311812	22	MTS	781.64	17196.08		

Amendment in formula prescribed in Rule 89(5) of CGST Rules, 2017 for calculation of refund of unutilized Input Tax Credit on account of inverted rated structure

EARLIER

Maximum Refund Amount

$\{(\text{Turnover of inverted rated supply of goods and services}) \times \text{Net ITC} \div \text{Adjusted Total Turnover}\} - \text{tax payable on such inverted rated supply of goods and services}$

PROPOSED

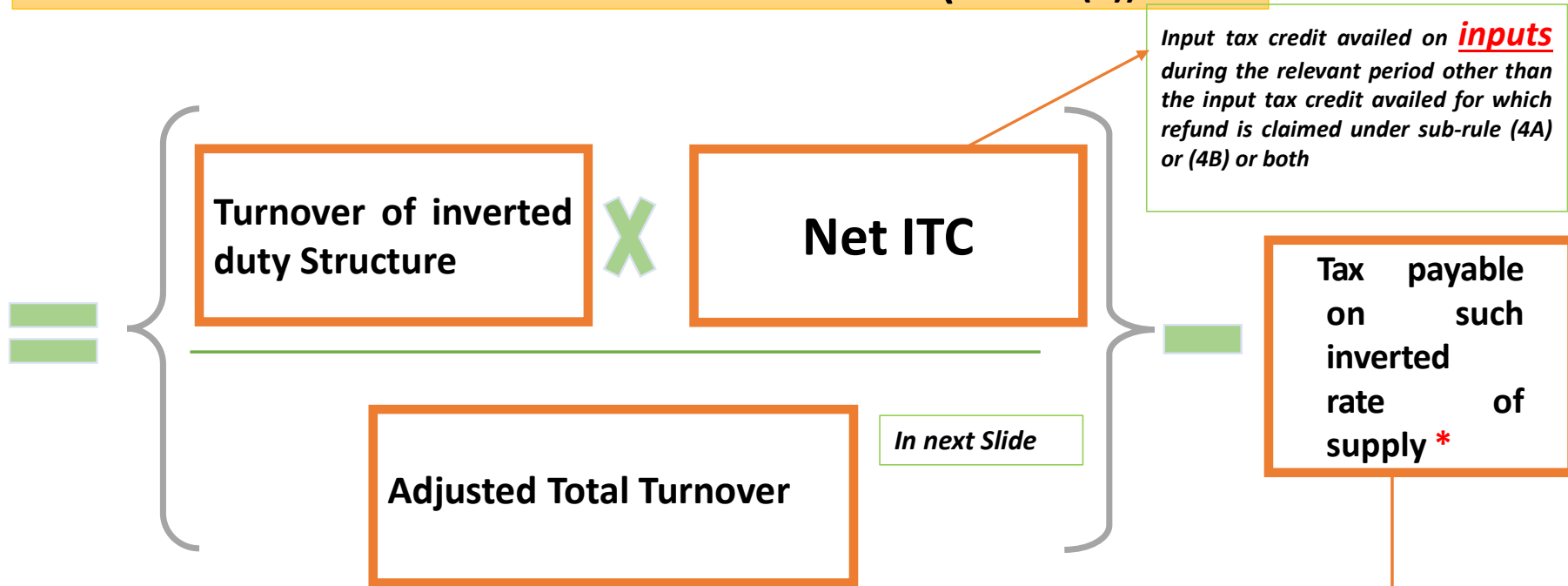
Maximum Refund Amount

$\{(\text{Turnover of inverted rated supply of goods and services}) \times \text{Net ITC} \div \text{Adjusted Total Turnover}\} - \{ \text{tax payable on such inverted rated supply of goods and services} \times (\text{Net ITC} \div \text{ITC availed on inputs and input services}) \}$

Net ITC shall mean input tax credit availed on inputs during the relevant period other than the input tax credit availed for which refund is claimed under sub-rule (4A) or (4B) or both;

MAXIMUM Refund amount calculation (Rule 89(5))

Maximum Refund Amount



EXAMPLE

- Total Turnover = Rs 1 Crore --Inverted Duty (taxable @ 5%) = Rs 50 lakhs
--Other (taxable @ 18%) = Rs 50 Lakhs
- Total ITC availed = Rs 8 Lakhs --on goods = Rs 6 lakhs
--on services = Rs 2 lakhs
- Total Tax paid = Rs 11.5 Lakhs -- Inverted Duty = Rs 2.5 Lakhs
-- Other = Rs 9 lakhs

EARLIER

Maximum Refund Amount

$$\{(50 \text{ l}) \times 6 \text{ l} \div 1 \text{ crore}\} - 2.5 \text{ L} \\ = 0.5 \text{ lakhs}$$

PROPOSED

Maximum Refund Amount

$$\{(50 \text{ l}) \times 6 \text{ l} \div 1 \text{ crore}\} - \{2.5 \text{ l} \times (6 \text{ l} \div 8 \text{ l})\} \\ = 1.125 \text{ lakhs}$$



It reduces the tax paid in proportionate to ITC of goods only.
Hence, the refund amount is higher

Change in formula owing
to SC judgement in case of
VKC Footsteps

CENTRAL TAX RATE NOTIFICATIONS applicable w.e.f . 18th July,2022

Earlier Notification	Amended Notification	PURPOSE
11/2017-CT (R)	3/2022-CT (R)	To remove the inverted duty tax structure , and Notify applicable GST rates on supply of Services
12/2017-CT (R)	4/2022-CT (R)	Amendment in the Services Exemption Notification
13/2017-CT (R)	5/2022-CT (R)	Amendments in Services RCM Notification
1/2017-CT (R)	6/2022-CT (R)	Amendments in the Goods Rate Notification
2/2017-CT (R)	7/2022-CT (R)	Amendments in the Goods Exemption Notification so as to withdraw exemption on certain specified food items, grains etc. which are not branded or right on the brand has been foregone
3/2017-CT (R)	8/2022-CT (R)	Rate rationalisation from 5% to 12% for goods supplied for Petroleum/ Coal bed methane operations
5/2017-CT (R)	9/2022-CT (R)	To insert the following goods on which no refund of accumulated unutilised ITC shall be allowed under Section 54(3) of the CGST Act
2/2022-CT (R)	10/2022-CT (R)	To simplify the measure and removed the condition of 90% fly ash content w.r.t. fly ash bricks, hence to apply same concessional rate on fly ash bricks irrespective of its content
45/2017-CT (R)	11/2022-CT (R)	Rescinded NN. 45/CT(R) to change the concessional GST rate of 5% (2.5% each CGST and SGST or 5% IGST) on scientific and technical equipments to rate applicable

Notification No. 3/2022-CT RATE

To remove the inverted duty tax structure, and Notify applicable GST rates on supply of Services

WORKS CONTRACT/
CONSTRUCTION
SERVICES

HOTEL
ACCOMODATION

PASSENGER
TRANSPORT SERVICES

GOODS TRANSPORT
SERVICES

RENTING OF GOODS
CARRIAGE

SUPPORTING
SERVICES IN
TRANSPORT

FINANCIAL AND
RELATED SERVICES –
CHIT FUND BUSINESS

JOB WORK

HOSPITALS

WASTE TREATMENT
UNITS

**Sl. No. 3
HEADING 9954**

WORKS CONTRACT/ CONSTRUCTION SERVICES



-The items (iii), (iv), (v), (va), (vi) and (ix) of **Sl. No 3 under NN 11/2017 are OMITTED**

- This means the services mentioned under these heads will be covered under the residual entry (xii) and thereby become liable to tax at the total rate of 18% instead of present concessional rate of 12%**

-For the items (vii) and (x) of Sl. No 3 , the GST rate INCREASED from the present rate of 5% to 12%

-The item (xii) of Sl. No 3 i.e. residual entry taxable @ rate of 18% has been amended in order to fit with the present amendments to other items as follows:-

“(xii) Construction services other than (i), (ia), (ib), (ic), (id), (ie), (if), (vii), (viii),(x) and (xi) above.”

NN 22/2021- CT (R) DATED 31-12-2021 amended NN 11/2017 CT(R)

In items (iii), (vi), (vii), (ix) and (x) **Sl. No 3 under NN 11/2017** –with regard to **Composite supply of works Contract** supplied to Union territory, a local authority, a Governmental Authority or a Government Entity.

-- for the words "Union territory, a local authority, a Governmental Authority or a Government Entity" **the words "Union territory or a local authority" shall be substituted;**

Therefore, the words a Governmental Authority or a Government Entity were omitted.

Sl. No. of NN 11/2017 CT(R)	Description	GST Rate upto 17.07.22	GST Rate from 18.07.22
3 (iii)	<p>Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied to the Central Government, State Government, Union territory, or a local authority, by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of, -</p> <p>(a) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);</p> <p>(b) canal, dam or other irrigation works;</p> <p>(c) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal.</p>	6%	9 %
3 (iv)	<p>Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, other than that covered by items (i), (ia), (ib), (ic), (id), (ie) and (if) above supplied by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,-</p> <p>(a) a road, bridge, tunnel, or terminal for road transportation for use by general public;</p> <p>(b) a civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana; (c) a civil structure or any other original works pertaining to the —In-situ redevelopment of existing slums using land as a resource, under the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana (Urban)</p> <p>(d) a civil structure or any other original works pertaining to the —Beneficiary led individual house construction / enhancement under the Housing for All (Urban) Mission/Pradhan MantriAwasYojana;</p> <p>(da) a civil structure or any other original works pertaining to the —Economically Weaker Section (EWS) houses constructed under the Affordable Housing in partnership by State or Union territory or local authority or urban development authority under the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana (Urban);</p> <p>(db) a civil structure or any other original works pertaining to the —houses constructed or acquired under the Credit Linked Subsidy Scheme for Economically Weaker Section (EWS)/ Lower Income Group (LIG)/ Middle Income Group-1 (MIG-1)/ Middle Income Group-2 (MIG-2) under the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana (Urban);</p> <p>(e) a pollution control or effluent treatment plant, except located as a part of a factory; or</p> <p>(f) a structure meant for funeral, burial or cremation of deceased;</p> <p>Provided that during the period beginning from the 14th June, 2021 and ending with the 30th September, 2021, the central tax on service of description as specified in clause (f), shall, irrespective of rate specified in column (4), be levied at the rate of 2.5 per cent.</p> <p>(g) a building owned by an entity registered under section 12AA of the Income Tax Act, 1961 (43 of 1961), which is used for carrying out the activities of providing, centralised cooking or distribution, for mid-day meals under the mid-day meal scheme sponsored by the Central Government, State Government, Union territory or local authorities.</p>	6 %	9 %

Sl. No. of NN 11/2017 CT(R)	Description	GST Rate upto 17.07.22	GST Rate from 18.07.22
3 (v)	<p>Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, other than that covered by items (i), (ia), (ib), (ic), (id), (ie) and (if) above supplied by way of construction, erection, commissioning, or installation of original works pertaining to,-</p> <p>(a) railways, including monorail and metro;</p> <p>(b) a single residential unit otherwise than as a part of a residential complex;</p> <p>(c) low-cost houses up to a carpet area of 60 square metres per house in a housing project approved by competent authority empowered under the 'Scheme of Affordable Housing in Partnership' framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India;</p> <p>(d) low cost houses up to a carpet area of 60 square metres per house in a housing project approved by the competent authority under- (1) the —Affordable Housing in Partnership component of the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana; (2) any housing scheme of a State Government;</p> <p>(da) low-cost houses up to a carpet area of 60 square metres per house in an affordable housing project which has been given infrastructure status vide notification of Government of India, in Ministry of Finance, Department of Economic Affairs vide F. No. 13/6/2009-INF, dated the 30th March, 2017;</p> <p>(e) post-harvest storage infrastructure for agricultural produce including a cold storage for such purposes; or (f) mechanised food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages.</p>	6%	9 %
3 (va)	<p>Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, other than that covered by items (i), (ia), (ib), (ic), (id), (ie) and (if) above, supplied by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of affordable residential apartments covered by sub- clause (a) of clause (xvi) of paragraph 4 below, in a project which commences on or after 1st April, 2019, or in an ongoing project in respect of which the promoter has not exercised option to pay central tax on construction of apartments at the rates as specified for item (ie) or (if), as the case may be, in the manner prescribed therein</p>	6 %	9 %

Sl. No. of NN 11/2017 CT(R)	Description	GST Rate upto 17.07.22	GST Rate from 18.07.22
3 (vi)	<p>Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, {other than that covered by items (i), (ia), (ib), (ic), (id), (ie) and (if) above provided to the Central Government, State Government, Union Territory, or a local authority, by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of –</p> <p>(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;</p> <p>(b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or</p> <p>(c) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in paragraph 3 of the Schedule III of the Central Goods and Services Tax Act, 2017.</p> <p>Explanation.- For the purposes of this item, the term ‘business’ shall not include any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities.</p>	6%	9%
3 (vii)	Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, involving predominantly earth work (that is, constituting more than 75per cent. of the value of the works contract) provided to the Central Government, State Government, Union territory or a local authority	2.5 %	6%
3 (ix)	Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017 provided by a sub-contractor to the main contractor providing services specified in item (iii) or item (vi) above to the Central Government, State Government, Union territory or a local authority.	6%	9%
3 (x)	Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017 provided by a sub-contractor to the main contractor providing services specified in item (vii) above to the Central Government, State Government, Union territory or a local authority.	2.5 %	6%
3 (xii)	Construction services other than (i), (ia), (ib), (ic), (id), (ie), (if), (vii), (viii) , (x) and (xi) above.	9%	9%

Sl. No. 14
HEADING 9963

HOTEL ACCOMODATION

Not. 4/2022 CT(R)

Sl. No. of NN 12/2017 CT(R)	Description	Old Rate	New Rate
14	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 one thousand rupees per day or equivalent.	EXEMPT	6%



Entry no. 13 of Notification No. 12/2017- Ct Rate

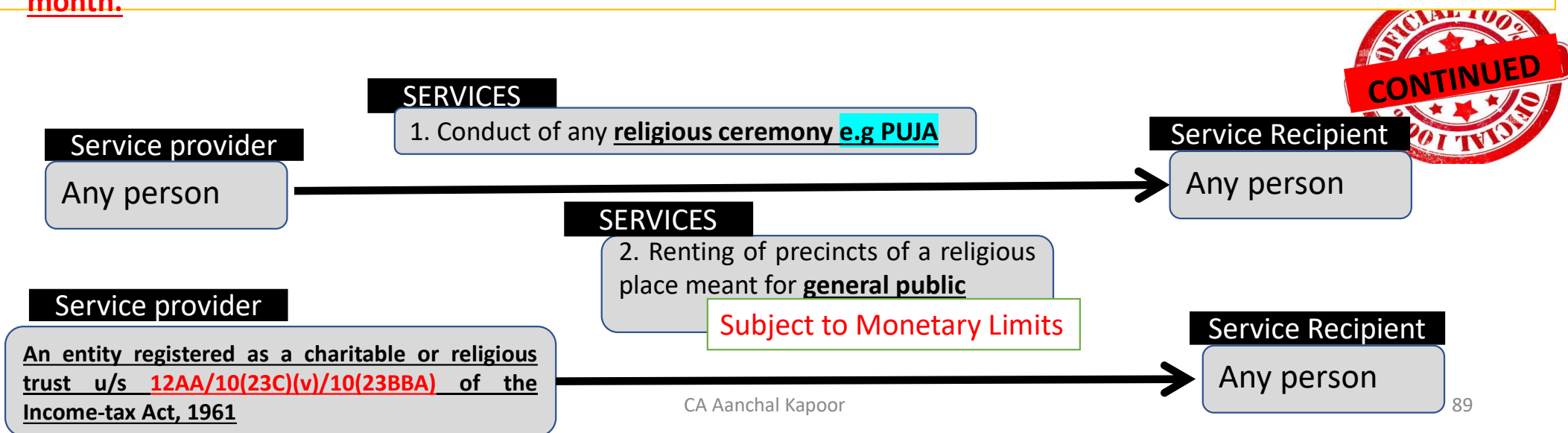
Services by a person by way of—

- 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 of the Income-tax Act, 1961** (hereinafter referred to as the Income-tax Act) or a trust or an institution registered under sub-clause (v) of clause (23C) of section 10 of the Income-tax Act or a body or an authority covered under clause (23BBA) of section 10 of the said Income-tax Act:

Defined in (zc) point of N.N. 12/2017 means, "the body of people at large sufficiently defined by some common quality of public or impersonal nature."

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

- i. **renting of rooms** where **charges are one thousand rupees or more per day**; Per Room, Per Shop, Per Hall limits
- ii. **renting of premises, community halls, kalyanmandapam or open area, and the like** where charges are **ten thousand rupees or more per day**;
- iii. **renting of shops or other spaces for business or commerce where charges are ten thousand rupees or more per month.**



SI. No. 12
HEADING 9963 or
9972

RENTING OF RESIDENTIAL DWELLING

Not. 4/2022 CT(R)

SI. No. of NN 12/2017 CT(R)	Old Description	New Description
EXEMPTION 12	Services by way of renting of residential dwelling for use as residence.	Services by way of renting of residential dwelling for use as residence <u>except where the residential dwelling is rented to a registered person</u>

Exempt: 1) Residential Dwelling
2) Use as Residence
3) Recipient Unregistered (For personal Use)
4) Supplier Registration Status is irrelevant

SI. No. of NN 5/2022 CT(R)	COVERED UNDER REVERSE CHARGE MECHANISM	BY	TO
RCM 5AA (INSERTED)	Service by way of renting of residential dwelling to a registered person.	ANY PERSON	ANY REGISTERED PERSON

RCM: 1) Residential Dwelling
2) Use as Residence
3) Recipient Registered
4) Supplier Registration Status is irrelevant

e.g Residential Premises taken on rent by a CA-Taxable. If CA registered– RCM @18%, If CA unregistered-No RCM, Forward Charge.

Meaning OF RESIDENTIAL DWELLING :-

The term 'residential dwelling' is not defined in Central Goods and Services Tax Act, 2017 (hereinafter referred to as Act). So, the dictionary meaning of the same is referred to, which is as follows:

As per Black's Law Dictionary:

'Residential dwelling means living in a certain place permanently or for a considerable length of time'

As per the Oxford dictionary: 'A house or apartment or other places of residence or a place to live in or building or other places to live in'.

Thus, residence means a place which is taken for staying regularly by the people but would not include any temporary accommodation.

On analysing the exemption entry in line with the above dictionary meanings, it appears that residential dwelling could be said to be used as a residence if the accommodation is rented for use as a living space and for a considerable period of time. 'Certain/considerable period of stay' is neither defined under GST nor in the Finance Act, 1994. However, section 65(105) (zzzzw) of the Finance Act 1994 (prior to 2012), provides the definition of taxable service for services provided by hotels, inns, etc, which generally involves stay for shorter period as compared to permanent or considerable time of stay, provided that the said service is providing accommodation for a continuous period of less than 3 months. Therefore, it can be fairly concluded that if the residential property is used as a residence for a minimum period of 3 months then the aforesaid exemption could be applicable.

In the case of **Taghar Vasudeva Ambrish (135 taxmann.com 287)(Karnataka)**, Where the applicant has let out a Residential complex to M/s. D. Twelve Spaces Pvt. Ltd which is engaged in the business of providing affordable residential accommodation to students on a long term basis. M/s. D Twelve Spaces Pvt. Ltd. Has entered into sublease agreement students for providing residential accommodations with living amenities, security, entertainment facilities for a long stay for a period varying from 3 months to 11 months. Held they are like hotel rooms and the entire leased premises have 42 rooms, which can by no imagination be termed as a residential dwelling. Even if the same is given for residential purposes, the services provided are not for use as a residence by the lessee.

Hence it is not the nature of the property which determine taxability only but the purpose of letting out the property which determine taxability.

SI. No. 9
HEADING 9965

GOODS TRANSPORT SERVICES



Item (iii) Prior to Amendment

Services of goods transport agency (GTA) in relation to transportation of goods (including used household goods for personal use)

Explanation.—"Goods transport agency" means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called.

2.5%
(RCM)

Provided that credit of **input tax** charged on goods and services used in supplying the service has **not been taken**.

6%
(FCM)

Provided that the goods transport agency opting to pay central tax @ 6% under this entry shall, **thenceforth**, be liable to pay central tax @ 6% on all the services of GTA supplied by it

Item (iii) Post Amendment

<p>Services of Goods Transport Agency (GTA) in relation to transportation of goods (including used house hold goods for personal use) supplied by a GTA where,-</p>		
<p>(a) GTA does not exercise the option to itself pay GST on the services supplied by it;</p>	<p>2.5%</p>	<p>Provided that credit of input tax charged on goods and services used in supplying the service has not been taken.</p>
<p>(b) GTA exercises the option to itself pay GST on services supplied by it.</p>	<p>2.5% or 6%</p>	<p>(1) In respect of supplies on which GTA pays tax at the rate of 5%, GTA shall not take credit of input tax charged on goods and services used in supplying the service.</p> <p>(2) The option by GTA to itself pay GST on the services supplied by it during a Financial Year shall be exercised by making a declaration in Annexure V on or before the 15th March of the preceding Financial Year:</p> <p>Provided that the option for the Financial Year 2022-2023 shall be exercised on or before the 16th August, 2022:</p> <p>Provided further that invoice for supply of the service charging Central tax at the rates as applicable to clause (b) may be issued during the period from the 18th July, 2022 to 16th August, 2022 before exercising the option for the financial year 2022-2023 but in such a case the supplier shall exercise the option to pay GST on its supplies on or before the 16th August, 2022.</p>

INTERPRETATION OF GTA SERVICES AMENDMENT

NO DECLARATION

DECLARATION

On
INVOICE

IN ANNEXURE V
To
JURISDICTIONAL
OFFICER

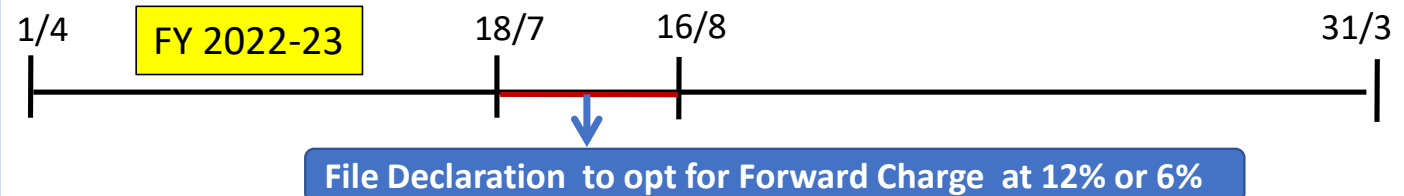
Issued during the period from the 18th July, 2022 to 16th August, 2022

AND supplier shall exercise the option to pay GST on its supplies on or before the 16th August, 2022.

- For the FY 2022-2023, shall be exercised on or before the 16th August, 2022

- For any FY, shall be exercised on or before the 15th March of the preceding FY.

PARTICULARS	PRE AMENDMENT	POST AMENDMENT
Reverse charge mechanism	5% without ITC	5% without ITC
Forward charge mechanism	12% with ITC	5% without ITC OR 12% with ITC
Thenceforth Vs Year wise Option	Provided that the goods transport agency opting to pay central tax @ 6% under this entry shall, thenceforth , be liable to pay central tax @ 6% on all the services of GTA supplied by it.	The option by GTA to itself pay GST on the services supplied by it during a Financial Year shall be exercised by making a declaration in Annexure V on or before the 15th March of the preceding Financial Year
As per Form , option once exercised cannot be changed during the F.Y , but no such condition in law.		



ANNEXURE V

FORM

Form for exercising the option by a Goods Transport Agency (GTA) for payment of GST on the GTA services supplied by him under forward charge before the commencement of any financial year to be submitted before the jurisdictional GST Authority.

Reference No.-

Date: -

1. I/We _____ (name of Person), authorised representative of M/s..... have taken registration/have applied for registration and do hereby undertake to pay GST on the GTA services in relation to transportation of goods supplied by us during the financial year.....under forward charge in accordance with section 9(1) of the CGST Act, 2017 and to comply with all the provisions of the CGST Act, 2017 as they apply to a person liable for paying the tax in relation to supply of any goods or services or both;
2. I understand that this option once exercised shall not be allowed to be changed within a period of one year from the date of exercising the option and will remain valid till the end of the financial year for which it is exercised.

Legal Name: -

GSTIN: -

PAN No.

Signature of Authorised representative:

Name of Authorised Signatory:

Full Address of GTA:

GTA CASE SCENARIOS

PRE	POST	REMARKS
5% under RCM	5% under RCM	No DECLARATION required No ITC
5% under RCM	5% under FCM	File DECLARATION post amendment No ITC
5% under RCM	12% under FCM	File DECLARATION post amendment Avail ITC
12% under FCM	5% under RCM	No DECLARATION No ITC
12% under FCM	12% under FCM	File DECLARATION post amendment Avail ITC

NOTE: 1)The receiver of GTA Services is eligible for ITC irrespective of rate or RCM or FCM, provided for business use and output is taxable.
2)GTA service exemption is separately contained in Not. 12/2017 and is not dependent upon whether the goods transported are Exempt or taxable.

Sl. No. 20 & 21
HEADING 9965

GOODS TRANSPORTATION BY GTA

Not. 4/2022 CT(R)

Sl. No. of NN 12/2017 CT(R)	Description
21	<p>Services provided by a goods transport agency, by way of transport in a goods carriage of</p> <p>(b) goods, where consideration charged for the transportation of goods on a consignment transported in a single carriage does not exceed one thousand five hundred rupees;</p> <p>(c) goods, where consideration charged for transportation of all such goods for a single consignee does not exceed rupees seven hundred and fifty.</p>

Rs. 750/- and Rs 1500/- exemptions done away with

Sl. No. 11
HEADING 9967

SUPPORTING SERVICES IN TRANSPORT



-The item (ia) shall be INSERTED, namely: -

Sl. No. of NN 11/2017 CT(R)	Description	Rate
11	"Supporting services in transport. Explanation: This entry does not include goods transport service involving Goods Transport Agency (GTA) service, which falls under Heading 9965.	9%
e.G Loading unloading. If composite supply then will be covered under GTA. However, if entity providing only Support Services, then will get covered here.		

Sl. No. 10
HEADING 9966

RENTING OF GOODS CARRIAGE



Due to Fuel Cost Involvement

-The item (ia) shall be INSERTED, namely: -

Sl. No. of NN 11/2017 CT(R)	Description	Old Rate	New Rate
10	(ia) Renting of goods carriage where the cost of fuel is included in the consideration charged from the service recipient	9%	6%

The item (iii) of Sl. No 10 i.e. residual entry taxable @ rate of 9% has been amended in order to fit with the present amendments to other items as follows:-

“(iii) Rental services of transport vehicles with operators, other than (i), (ia) and (ii) above.”

Sl. No. 9
HEADING 9965

GOODS TRANSPORT SERVICES



-The item (via) shall be INSERTED, namely: -

Sl. No. of NN 11/2017 CT(R)	Description	Condition	Old Rate	New Rate
9	(via) Transport of goods, <u>by ropeways</u>	The input tax credit charged on goods used in supplying the service has not been taken.	-	2.5%

-The item (vii) of Sl. No 9 i.e. residual entry taxable @ rate of 9% has been amended in order to fit with the present amendments to other items as follows:-

- “(vii) Goods transport services other than (i), (ii), (iii), (iv), (v), (vi) and (via) above”

**Sl. No. 8
HEADING 9964**

PASSENGER TRANSPORT SERVICES



-The item (via) shall be INSERTED, namely: -

Sl. No. of NN 11/2017 CT(R)	Description	Condition	Old Rate	New Rate
8	(via) Transport of passengers, with or without accompanied belongings, by ropeways	The input tax credit charged on goods used in supplying the service has not been taken.	-	2.5%

-The item (vii) of Sl. No 8 i.e. residual entry taxable @ rate of 18% has been amended in order to fit with the present amendments to other items as follows:-

- “(vii) Passenger transport services other than (i), (ii), (iii), (iv), (iva), (v), (vi) and (via) above”

**Sl. No. 26
HEADING 9988**

**Manufacturing services on physical
inputs (goods) owned by others**

JOB WORK



To overcome Inverted
duty structure

-The sub items (e), (ea), and (h) of Sl. No 26 are OMITTED

Sl. No. of NN 11/2017 CT(R)	Description	Old Rate	New Rate
26	(e) Processing of hides, skins and leather falling under Chapter 41 in the First Schedule to the Customs Tariff Act, 1975 (51of 1975).	2.5%	6%
	(ea) manufacture of leather goods or foot wear falling under Chapter 42 or 64 in the First Schedule to the Customs Tariff Act, 1975.	2.5%	6%
	(h) manufacture of clay bricks falling under tariff item 69010010 in the First Schedule to the Customs Tariff Act, 1975	2.5%	6%

**Sl. No. 31A
HEADING 9993**

HOSPITALS



Composite Supply concept
foregone through this
amendment

-The Sl. No. 31A shall be **INSERTED**, namely: -



Sl. No. of NN 3/2022 CT(R)	Description	Condition	Old Rate	New Rate
31A	Services provided <u>by a clinical establishment by way of providing room other than Intensive Care Unit (ICU)/Critical Care Unit (CCU)/Intensive Cardiac Care Unit (ICCU)/Neo natal Intensive Care Unit (NICU) having room charges exceeding Rs. 5000 per day to a person</u> receiving health care services.	The credit of input tax charged on goods and services used in supplying the service has not been taken	Exempt	2.5%

'(xxxviii) 'clinical establishment' means, -

a hospital, nursing home, clinic, sanatorium or any other institution by, whatever name called, that offers services or facilities requiring diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognized system of medicines in India, or a place established as an independent entity or a part of an establishment to carry out diagnostic or investigative services of diseases;

(xxxix) 'health care services' means, -

any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India and includes services by way of transportation of the patient to and from a clinical establishment, but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma;'

Sl. No. 32
HEADING 9994

WASTE TREATMENT UNITS



-The item (ia) of Sl. No. 32 shall be **INSERTED**, namely: -

Sl. No. of NN 11/2017 CT(R)	Description	Old Rate	New Rate
32	(ia) Services by way of treatment or disposal of biomedical waste or the processes incidental thereto by a common bio-medical waste treatment facility to a clinical establishment.	Exempt	6%

Sl. No. 15
HEADING 9971

FINANCIAL AND RELATED SERVICES – CHIT FUND BUSINESS



-The item (i) Sl. No 15 are OMITTED, namely: -

Sl. No. of NN 11/2017 CT(R)	Description	Old Rate	New Rate
15	(i) Services provided by a foreman of a chit fund in relation to chit	6%	9%

Government has increased total GST rate on services of a foreman of a chit fund in relation to chit from 12% to 18%.

Hence, against item (i), rate of 6% is omitted and in the residual item (vii), item (i) is omitted.

Notification No. 4 /2022-CT RATE

Amendment in the Services Exemption Notification

**GOVERNMENT
SERVICES**

**RENTING OF
RESIDENTIAL
DWELLING**

**HOTEL
ACCOMODATION**

**PASSENGER
TRANSPORT SERVICES
BY AIR**

**GOODS
TRANSPORTATION
BY RAIL/ VESSEL/ GTA**

**STORAGE
SERVICES**

**POSTAL
SERVICES**

**TRAINING &
COACHING ACTIVITIES**

**OTHER EXEMPTIONS
REMOVED**

**Sl. No. 24C
CHAPTER 9968
INSERTED**

POSTAL SERVICES

Inserted in Not. 12/2017

Sl. No. of NN 4/2022 CT(R)	New Description	RATE
24C	Services by the Department of Posts by way of post card, inland letter, book post and ordinary post (envelopes weighing less than 10 grams)	NIL

Other than these all Department of post services made taxable to place them at par with other service providers under Forward Charge (No RCM)



NN 4/2022-CT (R)
Sl. No. 6 ,7, 8, 9
CHAPTER 99

GOVERNMENT SERVICES

Government has made taxable all services by Department of Posts. Earlier taxability was only in relation to speed post, express parcel post, life insurance, and agency services.

6. Services by the Central Government, State Government, Union territory or local authority excluding the following services—

(a) ~~services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union territory;~~

7. Services provided by the Central Government, State Government, Union territory or local authority to a business entity with an aggregate turnover of up to 5[such amount in the preceding financial year as makes it eligible for exemption from registration under the Central Goods and Services Tax Act, 2017 (12 of 2017)].

Explanation.—For the purposes of this entry, it is hereby clarified that the provisions of this entry shall not be applicable to—

(a) Services

(i) ~~by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union territory;~~

8. Services provided by the Central Government, State Government, Union territory or local authority to another Central Government, State Government, Union territory or local authority:

Provided that nothing contained in this entry shall apply to services—

(i) ~~by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union territory;~~

9. Services provided by Central Government, State Government, Union territory or a local authority where the consideration for such services does not exceed five thousand rupees:

Provided that nothing contained in this entry shall apply to—

(i) ~~services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union territory;~~

**Sl. No. 15
HEADING 9964**

**PASSENGER TRANSPORT SERVICES
BY AIR**

Sl. No. of NN 12/2017 CT(R)	Old Description	New Description
15	Transport of passengers, with or without Accompanied belongings, by – (a) air , embarking from or terminating in an airport located in the state of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, or Tripura or at Bagdogra located in West Bengal;	Transport of passengers, with or without accompanied belongings, by – (a) air in <u>economy class</u>, embarking from or terminating in an airport located in the state of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, or Tripura or at Bagdogra located in West Bengal;

After the above amendment, transportation of passengers by air in case of economy class only is exempt from GST in respect of specified airports.

Sl. No. 20 & 21
HEADING 9965

GOODS TRANSPORTATION BY RAIL/ VESSEL/ GTA

Sl. No. of NN 12/2017 CT(R)	Description
20	Services by way of transportation by rail or a vessel from one place in India to another of the following goods – (d) railway equipments or materials;

Sl. No. 24B
HEADING 9967
or 9985

STORAGE SERVICES



Sl. No. of NN 12/2017 CT(R)	Old Description	New Description
24B	Services by way of storage or warehousing of cereals, pulses, fruits, nuts and vegetables, spices, copra, sugarcane, jaggery, raw vegetable fibres such as cotton, flax, jute etc., indigo, unmanufactured tobacco, betel leaves, tendu leaves, coffee and tea.	Services by way of storage or warehousing of cereals, pulses, fruits and vegetables.

**Sl. No. 80
CHAPTER 9996
INSERTED**

TRAINING & COACHING ACTIVITIES

Sl. No. of NN 12/2017 CT(R)	Old Description	New Description
80	Services by way of training or coaching in recreational activities relating to- (a) arts or culture, or (b) sports by charitable entities registered under section 12AA of the Income-tax Act.	"Services by way of training or coaching in- (a) recreational activities relating to arts or culture, by an individual , or (b) sports by charitable entities registered under Section 12AA or 12AB of the Income Tax Act.";



NN 4/2022- CT (R) OTHER EXEMPTIONS REMOVED

Following are the other exemptions which are removed from the list:

(i) serial number 26 and the entries relating thereto shall be omitted;
'26 Heading 9971 Services by the Reserve Bank of India.'

(j) serial number 32 and the entries relating thereto shall be omitted;
'32 Heading 9971 Services provided by the Insurance Regulatory and Development Authority of India to insurers under the Insurance Regulatory and Development Authority of India Act, 1999 (41 of 1999).

(k) serial number 33 and the entries relating thereto shall be omitted;
33 Heading 9971 Services provided by the Securities and Exchange Board of India set up under the Securities and Exchange Board of India Act, 1992 (15 of 1992) by way of protecting the interests of investors in securities and to promote the development of, and to regulate, the securities market.

(l) serial number 47A and the entries relating thereto shall be omitted;
'47A Heading 9983 or Heading 9991 Services by way of licensing, registration and analysis or testing of food samples supplied by the Food Safety and Standards Authority of India (FSSAI) to Food Business Operators.'

(m) serial number 51 and the entries relating thereto shall be omitted;
'51 Heading 9984 Services provided by the Goods and Services Tax Network to the Central Government or State Governments or Union territories for implementation of Goods and Services Tax.'

NOTE:- These are now taxed at the residual entry @ 18% total GST rate.

SI. No. 52A
CHAPTER 9985
INSERTED

TOUR OPERATOR SERVICE

Tour operator service, which is performed partly in India and partly outside India, supplied by a tour operator to a foreign tourist, to the extent of the value of the tour operator service which is performed outside India:

Provided that value of the tour operator service performed outside India shall be such proportion of the total consideration charged for the entire tour which is equal to the proportion which the number of days for which the tour is performed outside India has to the total number of days comprising the tour, or 50% of the total consideration charged for the entire tour, whichever is less:

Provided further that in making the above calculations, any duration of time equal to or exceeding 12 hours shall be considered as one full day and any duration of time less than 12 hours shall be taken as half a day.

Explanation. - "foreign tourist" means a person not normally resident in India, who enters India for a stay of not more than six months for legitimate non immigrant purposes.

Illustrations: A tour operator provides a tour operator service to a foreign tourist as follows: -

(a) 3 days in India, 2 days in Nepal; Consideration Charged for the entire tour: Rs.1, 00, 000/-

Exemption: Rs.40, 000/- (=Rs.1, 00, 000/- x 2/5) or, Rs.50, 000/- (= 50% of Rs.1, 00, 000/-) whichever is less, i.e., Rs.40, 000/-(i.e., Taxable value: Rs.60, 000/-);

(b) 2 days in India, 3 nights in Nepal; Consideration Charged for the entire tour: Rs.1, 00, 000/-

Exemption: Rs.60, 000(=Rs.1, 00, 000/- x 3/5) or, Rs.50, 000/- (= 50% of Rs.1, 00, 000/-) whichever is less, i.e., Rs.50, 000/-(i.e., Taxable value: Rs.50, 000/-);


(c) 2 days 4 hours days in India, 3 days in Nepal; Consideration charged for the entire tour: Rs.1, 00, 000/-

Exemption: Rs.54,545 (=Rs.1, 00, 000/- x 3/5.5) or, Rs.50, 000/- (= 50% of Rs.1, 00, 000/-) whichever is less, i.e., Rs.50, 000/-(i.e., Taxable value:Rs.50, 000/-).

(d) 2 days 14 hours days in India, 3 days in Nepal; Consideration charged for the entire tour: Rs.1, 00, 000/-

Exemption: Rs.50,000 (=Rs.1, 00, 000/- x 3/6) or, Rs.50, 000/- (= 50% of Rs.1, 00, 000/-) whichever is less, i.e., Rs.50, 000/-(i.e., Taxable value:Rs.50, 000/-).

Notification 12/2017 amended

SI NO.	HEADING	DESCRIPTION	RATE
53A	9985	Services by way of fumigation in a warehouse of agricultural produce.	NIL
54	9986	Services relating to cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products or agricultural produce by way of- (h) services by way of fumigation in a warehouse of agricultural produce.	NIL
56	9988	Services by way of slaughtering of animals.	NIL
73	9992	Services provided by the cord blood banks by way of preservation of stem cells or any other service in relation to such preservation.	NIL
74	9993	Services by way of- (a) health care services by a clinical establishment, an authorised medical practitioner or para-medics; Provided that nothing in this entry shall apply to the services provided by a clinical establishment by way of providing room [other than Intensive Care Unit (ICU)/Critical Care Unit (CCU)/Intensive Cardiac Care Unit (ICCU)/Neonatal Intensive Care Unit (NICU)] having room charges exceeding Rs. 5000 per day to a person receiving health care services.;	NIL 
75	9994	Services provided by operators of the common bio-medical waste treatment facility to a clinical establishment by way of treatment or disposal of bio-medical waste or the processes incidental thereto.	NIL

Notification No. 5/2022-CT RATE

Amendments in the Services RCM Notification

Sl. No 1 of NN 13/2017 CT RATE

Omitted the words “*who has not paid central tax at the rate of 6%,”* so as to provide an option to GTA to pay GST @ 5% (without ITC) or 12% under Forward charge

New proviso in Sl. No. 1 of NN 13/2017 CT RATE inserted

For GTA services- **Sl. No 1 will not apply** where the supplier has taken GST registration & has exercised the option to pay tax under forward charge mechanism and the supplier has issued a tax invoice to the recipient charging applicable tax and has made a declaration on such invoice issued.

Sl. No 5 of NN 13/2017 CT RATE

Omitted the words “*by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Central Government, State Government or Union territory or local authority*”, so as to bring such services under the forward charge mechanism.



No RCM applicable on
Any Postal Services

Services supplied by the Central Government, State Government, Union territory or local authority to a business entity **excluding,—**

- (1) renting of immovable property, and
- (2) services specified below—
 - (i) ~~services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Central Government, State Government or Union territory or local authority;~~
 - (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
 - (iii) transport of goods or passengers.

BY Central Government, State Government, Union territory or local authority

TO Any business entity located in the taxable territory.

New Annexure III has been inserted in the Services RCM Notification **w.r.t. declaration by the GTA**, opting to pay tax on services in relation to transport of goods under forward charge mechanism for an entire Financial Year.

New Sl. No. 5AA has been inserted in the Services RCM Notification **w.r.t. service by way of renting of residential dwelling to a registered person.**

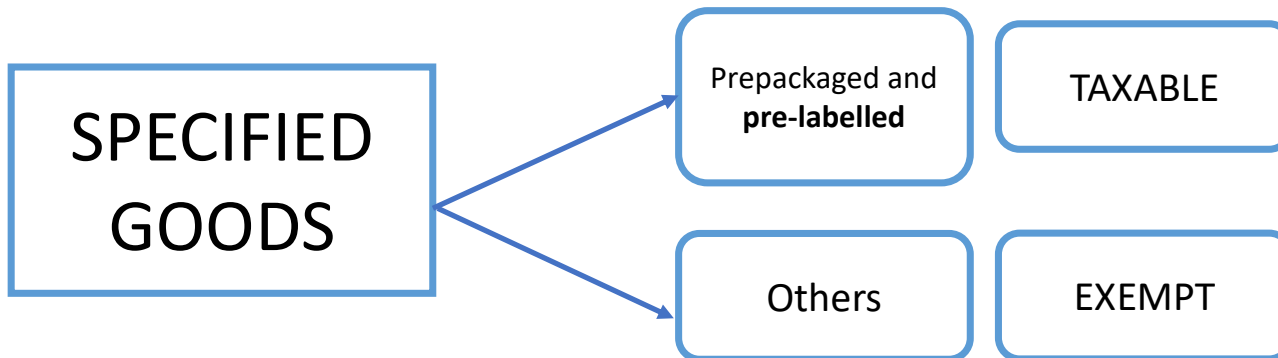
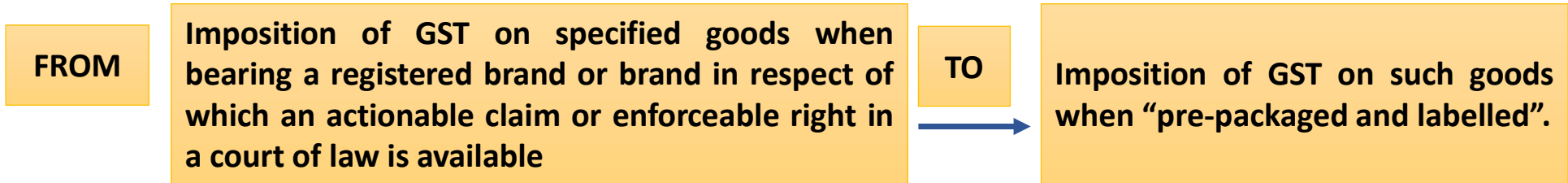
Annexure III
Declaration

“I/we have taken registration under the CGST Act, 2017 and have exercised the option to pay tax on services of GTA in relation to transport of goods supplied by us during the Financial Year _____ under forward charge.”.

Sl. No. of NN 5/2022 CT(R)	COVERED UNDER REVERSE CHARGE MECHANISM	BY	TO
5AA (INSERTED)	Service by way of renting of residential dwelling to a registered person.	ANY PERSON	ANY REGISTERED PERSON

Notification No. 7/2022-CT RATE

Amendments in the **Goods Exemption Notification** so as to **withdraw exemption on certain specified food items, grains etc. which are not branded or right on the brand has been foregone** .



FOLLOWING SPECIFIED GOODS EXEMPTION ENTRIES AMENDED AS FOLLOWS:-

SI NO.	CHAPTER / HEADING	PARTCULARS
9.	0202, 0203, 0204, 0205, 0206, 0207, 0208, 0209, 0210	All goods, other than fresh or chilled, other than pre-packaged and labelled. (Meat)
22.	0303, 0304, 0305, 0306, 0307, 0308, 0309	All goods, other than fresh or chilled and, other than pre-packaged and labelled. (Fish)
26.	0403	Curd, Lassi, Butter milk, other than pre-packaged and labelled.
27.	0406	Chena or paneer, other than pre-packaged and labelled.
29.	0409	Natural honey, other than pre-packaged and labelled.
30B	0504	All goods, other than fresh or chilled, other than pre-packaged and labelled.
45.	0713	Dried leguminous vegetables, shelled, whether or not skinned or split, other than pre-packaged and labelled.
46A	0714	Manioc, arrowroot, salep, Jerusalem artichokes, sweet potatoes and similar roots and tubers with high starch or inulin content, frozen, whether or not sliced or in the form of pellets, other than pre-packaged and labelled.
46B	08	Dried makhana, whether or not shelled or peeled, other than pre-packaged and labelled.

SI NO.	CHAPTER / HEADING	PARTICULARS
65.	1001	Wheat and meslin, other than pre-packaged and labelled.
66.	1002	Rye, other than pre-packaged and labelled.
67.	1003	Barley, other than pre-packaged and labelled.
68.	1004	Oats, other than those, other than pre-packaged and labelled.
69.	1005	Maize (corn), other than pre-packaged and labelled.
70.	1006	Rice, other than pre-packaged and labelled.
71.	1007	Grain sorghum, other than pre-packaged and labelled.
72.	1008	Buckwheat, millet and canary seed; other cereals such as Jawar, Bajra, Ragi, other than pre-packaged and labelled.
73.	1101	Wheat or meslin flour, other than pre-packaged and labelled
74.	1102	Cereal flours other than of wheat or meslin, maize (corn) flour, Rye flour, etc., other than pre-packaged and labelled.
75.	1103	Cereal groats, meal and pellets, other than pre-packaged and labelled.
77.	1105	Flour, powder, flakes, granules or pellets of potatoes, other than pre-packaged and labelled.
78.	1106	Flour, of the dried leguminous vegetables of heading 0713 (pulses) , other than guar meal 1106 10 10 and guar gum refined split 1106 10 90, of sago or of roots or tubers of heading 0714 or of the products of Chapter 8 i.e. of tamarind, of singoda, mango flour, etc., other than pre-packaged and labelled.

SI NO.	CHAPTER / HEADING	PARTICULARS
94.	1701 or 1702	Jaggery of all types including Cane Jaggery (gur), Palmyra Jaggery; Khandsari Sugar, other than pre-packaged and labelled.
95.	1904	Puffed rice, commonly known as Muri, flattened or beaten rice, commonly known as Chira, parched rice, commonly known as khoi, parched paddy or rice coated with sugar or gur, commonly known as Murki, other than pre-packaged and labelled
97A	2202 90 90	Tender coconut water, other than pre-packaged and labelled.
99.	2201	Water, other than aerated, mineral, purified, distilled, medicinal, ionic, battery, de-mineralized and water sold in sealed container
108.	3101	All goods and organic manure, other than pre-packaged and labelled.
118.	4907	Cheques, loose or in book form
122.	4905	Maps and hydrographic or similar charts of all kinds, including atlases, wall maps, topographical plans and globes, printed.
132A	53	Coir pith compost, other than pre-packaged and labelled
141.	8807	Parts of goods of heading 8801

EARLIER

other than those put up in unit container and, -
(a) bearing a registered brand name; or
(b) bearing a brand name on which an actionable claim or enforceable right in a court of law is available

AMENDED

Other than pre-packaged and labelled

The expression 'pre-packaged and labelled' means

a 'pre-packaged commodity' as defined in clause (l) of section 2 of the Legal Metrology Act, 2009 (1 of 2010) where, the package in which the commodity is pre-packed or
a label securely affixed thereto is required to bear the declarations under the provisions of the Legal Metrology Act, 2009 (1 of 2010) and the rules made thereunder.'

Hence, now GST will be applicable on supply of pre-packaged & labelled goods.

Decoding the term “ Pre-packaged and Labelled”

SECTION 2(1) of the Legal Metrology Act, 2009

“pre-packaged commodity” means a commodity which **without the purchaser being present is placed in a package** of whatever nature,

whether sealed or not,

so that the product contained therein has a pre-determined quantity;”



REQUIRED TO BEAR DECLARATIONS

As per Section 18 and Rule 4 of The Legal Metrology (Packaged Commodities) Rules, 2011

Rule 4 –No person shall pre-pack or cause or permit to be pre-packed any commodity for sale, distribution or delivery unless the package in which the commodity is pre-packed bears thereon, or a label is securely affixed thereto, such **declarations as are required** to be made under these rules.

Rule 6- Declaration on every package

1. Name and address of manufacturer/packer
2. Country of origin
3. Generic name
4. Net quantity
5. Month and year of Manufacture
6. Best before
7. Retail Sale price

Decoding the The Legal Metrology (Packaged Commodities) Rules, 2011

RULE 2(k) – Retail package

“Retail Package” means the packages which are **intended for retail sale to the ultimate consumer** for the purpose of consumption of the commodity contained therein and includes the imported packages:

Provided that for the purpose of this clause, the expression **‘ultimate consumer’ shall not include industrial or institutional consumers;**

RULE 2(l) – Retail sale

“Retail sale”, in relation to a commodity, means the sale, distribution or delivery of such commodity through retail sales shops, agencies or other instrumentalities for consumption by an individual or a group of individuals or any other consumer.

RULE 2(k) –Wholesale package

“Wholesale Package” means a package containing-

i)A number of retail packages, where such first mentioned package is intended for sale, distribution or delivery **to an intermediary** and is **not intended for sale direct to a single consumer**; or

ii)a commodity sold to an intermediary in bulk to enable such intermediary to sell, distribute or deliver such commodity to the consumer in similar quantities; or

iii)Packages containing ten or more than ten retail packages provided that the retail packages are labeled as required under the rules.

Chapters in "The Legal Metrology (Packaged Commodities) Rules, 2011"

Sr no	Description	New GST Rate
1.	Chapter - I	Definitions
2.	Chapter - II	Provisions applicable to packages intended for retail sale
3.	Chapter - III	Provisions applicable to wholesale packages
4.	Chapter - IV	Export of packaged commodities
5.	Chapter - V	Exemptions
6.	Chapter - VI	Registration of manufacturers, packagers and importers
7.	Chapter - VII	General

Provisions Applicable To Packages Intended For Retail Sale

Rule 3-Applicability of the Chapter

The provisions of this chapter shall ***not apply to***

(a) Packages of commodities containing quantity of more than 25 kg or 25 litres

(b) excluding cement and fertilizer sold in bags up to 50 kg : and

(c) Packaged commodities meant for industrial consumers or institutional consumers.

Rule 2(bb) –“Industrial Consumer”

means the consumer who buys packaged commodities directly from the manufacturer or from an importer or from wholesale dealer for use by that industry and the package shall have declaration ‘not for retail sale’.

Rule 2(bc) –“Institutional consumer”

means the institution which buys packaged commodities bearing a declaration ‘not for retail sale’, directly from the manufacturer or from an importer or from wholesale dealer for use by that institution and not for commercial or trade purposes

CHAPTER III

Provisions Applicable To Wholesale Packages

- **24. Declarations applicable to be made on every wholesale package.** - Every wholesale package shall bear thereon a legible, definite, plain and conspicuous declaration as to -
 - (a) The name and address of the manufacturer or importer or where the manufacturer or importer is not the packer, of the packer;
 - (b) the identity of the commodity contained in the package; and
 - (c) the total number of retail package contained in such wholesale package or the net quantity in terms of standard units of weights, measures or number of the commodity contained in wholesale package;
- Provided that nothing in this rule shall apply in relation to a wholesale package if a declaration similar to the declarations specified in this rule, is required to be made on such wholesale packages by or under any other law for the time being in force.

Rule 26-Exemption in respect of certain packages

Nothing Contained in these rules Shall apply to any package containing a commodity if-

- (a) The net weight or measure of the commodity is **ten gram or ten milliliter or less**, if sold by weight or measure; Provided that the declaration in respect of maximum retail price and net quantity shall be declared on packages containing 10g to 20g or 10ml to 20ml;
- (b) any package **containing fast food items packed by restaurant or hotel** and the like;
- (c) it contains **scheduled formulations and non-scheduled formulations**, covered under the Drugs (Price Control) Order, 1995 made under section 3 of Essential Commodities Act, 1955 (10 of 1955)
- (d) **agricultural form produces in packages of above 50 kg.**

FAQ issued by CBIC vide F. No. 190354/172/2022-TRU dated 17.07.2022)

to clarify certain doubts/queries that has been raised regarding the GST levy on 'pre-packaged and labelled' goods

SI NO.	QUESTION	CLARIFICATION
1.	What change has been made with respect to packaged and labelled commodity with effect from the 18th July, 2022?	<p>Prior to 18th of July, 2022, GST applied on specified goods when they were put up in a unit container and were bearing a registered brand name or were bearing brand name in respect of which an actionable claim or enforceable right in a court of law is available. With effect from the 18th July 2022, this provision undergoes a change and GST has been made applicable on supply of such "pre-packaged and labelled" commodities attracting the provisions of Legal Metrology Act, as detailed in subsequent questions.</p> <p>For example, items like pulses, cereals like rice, wheat, and flour (aata), etc., earlier attracted GST at the rate of 5% when branded and packed in unit container (as mentioned above). With effect from 18.7.2022, these items would attract GST when "prepackaged and labelled".</p> <p>Additionally, certain other items such as Curd, Lassi, puffed rice etc. when "prepackaged and labelled" would attract GST at the rate of 5% with effect from the 18th July, 2022.</p> <p>Essentially, this is a change in modalities of imposition of GST on branded specified goods to "pre-packaged and labelled" specified goods.</p>

2. What is the scope of 'pre-packaged and labelled' for the purpose of GST levy on food items like pulses, cereals, and flours?

For the purposes of GST, the expression 'prepackaged and labelled' means a 'pre-packaged commodity' as defined in clause (l) of section 2 of the Legal Metrology Act, 2009, where the package in which the commodity is prepacked, or a label securely affixed thereto is required to bear the declarations under the provisions of the Legal Metrology Act and the rules made thereunder.

Clause (l) of section 2 of the Legal Metrology Act reads as below:

(l) "pre-packaged commodity" means a commodity which without the purchaser being present is placed in a package of whatever nature, whether sealed or not, so that the product contained therein has a predetermined quantity.

Thus, supply of such specified commodity having the following two attributes would attract GST:

(i) It is pre-packaged; and

(ii) It is required to bear the declarations under the provisions of the Legal Metrology Act, 2009 (1 of 2010) and the rules made thereunder.

However, if such specified commodities are supplied in a package **that do not require declaration(s)/compliance(s)** under the Legal Metrology Act, 2009 (1 of 2010), and the rules made thereunder, the same **would not be treated as pre-packaged and labelled for the purposes of GST levy.**

In the context of food items (such as pulses, cereals like rice, wheat, flour etc), the supply of specified pre-packaged food articles would fall within the purview of the definition of 'pre-packaged commodity' under the Legal Metrology Act, 2009, and the rules made thereunder, if such pre-packaged and labelled packages contained a quantity upto 25 kilogram [or 25 litre] in terms of rule 3(a) of Legal Metrology (Packaged Commodities) Rules, 2011, subject to other exclusions provided in the Act and the Rules made thereunder.

3.	<p>What is the scope of this coverage taking into account various exclusion(s) provided under the Legal Metrology Act and the rules made thereunder?</p>	<p>For such commodities (food items- pulses, cereals, flour, etc.), rule 3 (a) of Chapter-II of Legal Metrology (Packaged Commodities) Rules, 2011, prescribes that package of commodities containing quantity of more than 25 kg or 25 litre do not require a declaration to be made under rule 6 thereof. Accordingly, GST would apply on such specified goods where the pre-packaged commodity is supplied in packages containing quantity of less than or equal to 25 kilogram.</p> <p>Illustration: Supply of pre-packed atta meant for retail sale to ultimate consumer of 25 Kg shall be liable to GST.</p> <p>However, supply of such a 30 Kg pack thereof shall be exempt from levy of GST. Thus, it is clarified that a single package of these items [cereals, pulses, flour etc.] containing a quantity of more than 25 Kg/25 litre would not fall in the category of pre-packaged and labelled commodity for the purposes of GST and would therefore not attract GST</p>
4.	<p>Whether GST would apply to a package that contains multiple retail packages. For example, a package containing 10 retail packs of flour of 10 Kg each?</p>	<p>Yes, if several packages intended for retail sale to ultimate consumer, say 10 packages of 10 Kg each, are sold in a larger pack, then GST would apply to such supply. Such package may be sold by a manufacturer through distributor. These individual packs of 10 Kg each are meant for eventual sale to retail consumer.</p> <p>However, a package of say rice containing 50 Kg (in one individual package) would not be considered a pre-packaged and labelled commodity for the purposes of GST levy, even if rule 24 of Legal Metrology (Packaged Commodities) Rules, 2011, mandates certain declarations to be made on such wholesale package.</p>

5.	At what stage would GST apply on such supplies, i.e., whether GST would apply on specified goods sold by manufacturer/producer to wholesale dealer who subsequently sells it to a retailer?	<p>GST would apply whenever a supply of such goods is made by any person, i.e. manufacturer supplying to distributor, or distributor/dealer supplying to retailer, or retailer supplying to individual consumer. Further, the manufacturer/wholesaler/retailer would be entitled to input tax credit on GST charged by his supplier in accordance with the Input Tax Credit provisions in GST.</p> <p>A supplier availing threshold exemption or composition scheme would be entitled to exemption or composition rate, as the case may be, in usual manner.</p>
6.	Whether tax is payable if such goods are purchased in packages of up to 25 kg/25liters by a retailer, but the retailer sells it in loose quantities in his shop for any reason?	<p>GST applies when such goods are sold in pre-packaged and labelled packs. Therefore, GST would apply when pre-packaged and labelled package is sold by a distributor/ manufacturer to such retailer. However, if for any reason, retailer supplies the item in loose quantity from such package, such supply by retailer is not a supply of packaged commodity for the purpose of GST levy.</p>
7.	Whether tax is payable if such packaged commodities are supplied for consumption by industrial consumers or institutional consumers?	<p>Supply of packaged commodity for consumption by industrial consumer or institutional consumer is excluded from the purview of the Legal Metrology Act by virtue of rule 3 (c) of Chapter-II of Legal Metrology (Packaged Commodities) Rules, 2011. Therefore, if supplied in such manner as to attract exclusion provided under the said rule 3(c),it will not be considered as pre-packaged and labelled for the purposes of GST levy</p>

<p>8. 'X' is a rice miller who sells packages containing 20 kg rice but <u>not making the required declaration under legal metrology Act and the Rules made thereunder</u>(although the said Act and the rules requires him/her to make a declaration), would it still be considered as pre-packaged and labelled and therefore be liable to GST?</p>	<p>Yes, such packages would be considered as pre-packaged and labelled commodity for the purposes of GST as it requires making a declaration under the Legal Metrology (Packaged Commodities) Rules, 2011 (rule 6 thereof). Hence, miller 'X' would be required to pay GST on supply of such package(s).</p>
<p>9. Any other relevant issue?</p>	<p>The Legal Metrology Act and the rules made thereunder prescribe criterion(s) for exclusion (as stated above) and provides certain exemptions under rule 26 of Legal Metrology (Packaged Commodities) Rules, 2011. It is reiterated therefore that, if supplied in such manner as to attract exclusion, or such exemption, the item shall not be treated as pre-packaged commodities for the purposes of GST levy.</p>

Various Scenarios have been reproduced as per FAQ

CASE- 1

CHAKKI
ATTA
25KG

Pre-Packaged &
Labeled Packages for
Ultimate Consumer



Retail Consumer who
purchase 25kg or less
of Atta



Taxability:

Supply of pre-packed Atta meant for retail sale to ultimate consumer of 25 Kg shall be liable to GST.

CASE- 2

CHAKKI
ATTA
30 KG

Quantity of More than
25kg

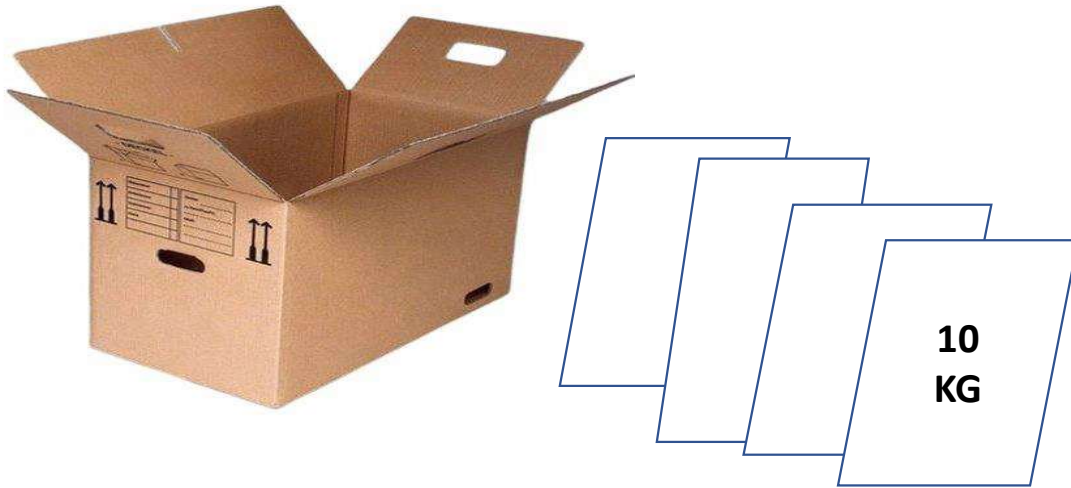
Retail Consumer who
purchase more than 25 kg
of Atta



Taxability:

Single package of these items [cereals, pulses, flour etc.] containing a quantity of more than 25 Kg/25 litre **would not fall in the category of pre-packaged and labelled commodity for the purposes of GST and would therefore not attract GST.**

CASE- 3

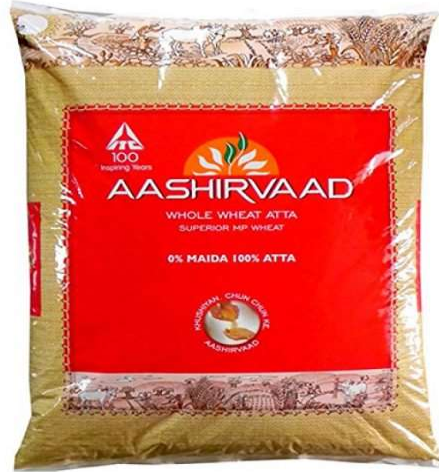


Small packages of 10 Kg in
large box containing in
Total 100 Kg i.e. 10 x 10

Taxability:

Yes, if several packages intended for retail sale to ultimate consumer, say 10 packages of 10 Kg each, **are sold in a larger pack, then GST would apply to such supply.**

CASE- 3A



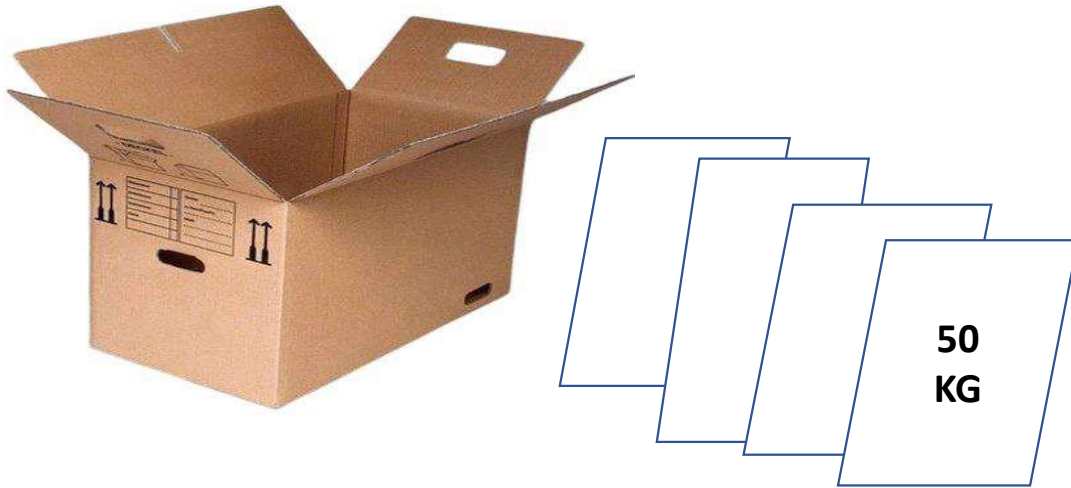
50
KG

**Wholesale Package as per
Rule 2(k)(ii)**

Sale from Miller to Distributor
Not a Retail Sale

As this is a wholesale pack, Rule 24 does not provide any exemption . GST will be applicable. However, through FAQ 4 excluded from GST levy . FAQ either superseding another law or the words Individual Pack for Retail sale is missing. >25 Kgs exemption provided even on WholeSale Package.

CASE- 4



**Retail Packages of 50 Kg in
large box containing in
Total 500 Kg i.e. 50 x 10**

As this is a wholesale pack, Rule 24 does not provide any exemption . GST will be applicable. However, through FAQ 4 excluded from GST levy . FAQ either superseding another law or the words Individual Pack for Retail sale is missing.

CASE- 5

Now, Retailer Supplies in Loose Quantity from 25KG Package then,



Selling Loose Quantity to so many consumers as per their demand

Such Supply by retailer **is not a supply** of packaged commodity for the purpose of GST levy.

CASE- 6

CHAKKI
ATTA
20 KG

Packaged commodities are supplied for consumption by **industrial consumers or institutional consumers**



GST Exempt irrespective of Quantity

Taxability:

Supply of packaged commodity for consumption by industrial consumer or institutional consumer is excluded from the purview of the Legal Metrology Act by virtue of rule 3 (c) of Chapter-II of Legal Metrology. Therefore, if supplied in such manner as to attract exclusion provided under the said rule 3(c) **it will not be considered as pre-packaged and labelled for the purposes of GST levy.**

CASE- 7

Rice Sheller
selling Rice
20 kgs



DEEMED pre-packaged and labelled
commodity
GST applicable

Not making the required declaration under legal metrology
Act and the Rules made thereunder

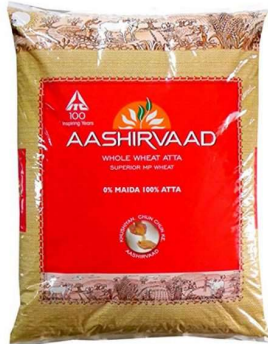
CASE- 8

Branded Rice of 50 kg sold in Retail Sale



Exempt as >25 Kgs , Brand does not matter

CASE- 9



20 Kg



8kgs Loose Rice –
Not Prepacked

Tax on 20 Kgs Pack. Loose
Exempt. Total Qty not to
be considered

CASE- 10



Meat

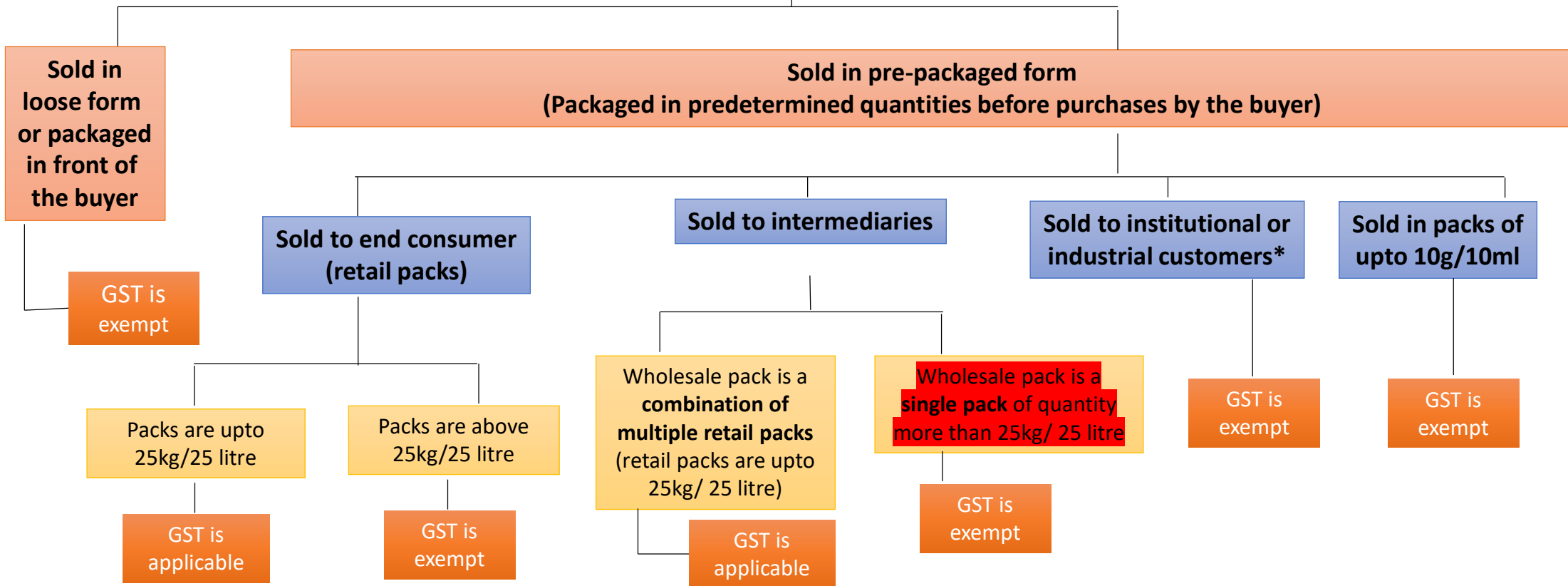
Unsealed Pack of 10 Kgs ===== Pre packaged

GST Applicable. Sealing
does not matter

SI NO.	QUESTION	CLARIFICATION
8.	<p>'X' is a rice miller who sells packages containing 20 kg rice but <u>not making the required declaration under legal metrology Act and the Rules</u> made thereunder(although the said Act and the rules requires him/her to make a declaration), would it still be considered as pre-packaged and labelled and therefore be liable to GST?</p>	<p>Yes, such packages would be considered as pre-packaged and labelled commodity for the purposes of GST as it requires making a declaration under the Legal Metrology (Packaged Commodities) Rules, 2011 (rule 6 thereof). Hence, miller 'X' would be required to pay GST on supply of such package(s).</p>
9.	<p>Any other relevant issue?</p>	<p>The Legal Metrology Act and the rules made thereunder prescribe criterion(s) for exclusion (as stated above) and provides certain exemptions under rule 26 of Legal Metrology (Packaged Commodities) Rules, 2011. It is reiterated therefore that, if supplied in such manner as to attract exclusion, or such exemption, the item shall not be treated as pre-packaged commodities for the purposes of GST levy.</p>

**GST provisions on pre-packaged and labelled goods as applicable w.e.f. 18.07.2022
(Based on the FAQ issued by CBIC vide F. No. 190354/172/2022-TRU dated 17.07.2022)**

**Sale of goods (such as cereals, pulses, flour, curd, etc.) by
Manufacturer/wholesalers/distributor/retailer**



***Institutional or industrial customers are consumers like transportation. Airways, Railways, Hotels or any other institutions or industries who buy packaged commodities directly from the manufacturer for use by that institution or industry.**

Notification No. 8/2022-CT RATE

Rate rationalisation from 5% to 12% for goods supplied for Petroleum/ Coal bed methane operations

SI NO.	CHAPTER / HEADING	RATE
1.	<p>Goods specified in the List annexed to this Table required in connection with:</p> <p>(1) Petroleum operations undertaken under petroleum exploration licenses or mining leases, granted by the Government of India or any State Government to the Oil and Natural Gas Corporation or Oil India Limited on nomination basis, or</p> <p>(2) Petroleum operations undertaken under specified contracts, or</p> <p>(3) Petroleum operations undertaken under specified contracts under the New Exploration Licensing Policy, or</p> <p>(4) Petroleum operations undertaken under specified contracts under the Marginal Field Policy (MFP), or</p> <p>(5) Coal bed methane operations undertaken under specified contracts under the Coal Bed Methane Policy.</p> <p>(6) Petroleum operations or coal bed methane operations undertaken under specified contracts under the Hydrocarbon Exploration Licensing Policy (HELP) or Open Acreage Licensing Policy (OALP)</p>	6%

Notification No. 9/2022-CT RATE

Amended 5/2017-CT

To insert the following goods on which **No refund of accumulated unutilised ITC** shall be allowed under Section 54(3) of the CGST Act

S. No.	Heading	Description of Goods
1A	1507	<i>Soya-bean oil and its fractions, whether or not refined, but not chemically modified</i>
1B	1508	<i>Ground-nut oil and its fractions, whether or not refined, but not chemically modified.</i>
1C	1509	<i>Olive oil and its fractions, whether or not refined, but not chemically modified.</i>
1D	1510	<i>Other oils and their fractions, obtained solely from olives, whether or not refined, but not chemically modified, including blends of these oils or fractions with oils or fractions of heading 1509</i>
1E	1511	<i>Palm oil and its fractions, whether or not refined, but not chemically modified.</i>
1F	1512	<i>Sunflower-seed, safflower or cotton-seed oil and fractions thereof, whether or not refined, but not chemically modified.</i>

S. No.	Heading	Description of Goods
1G	1513	<i>Coconut (copra), palm kernel or babassu oil and fractions thereof, whether or not refined, but not chemically modified.</i>
1H	1514	<i>Rape, colza or mustard oil and fractions thereof, whether or not refined, but not chemically modified.</i>
1I	1515	<i>Other fixed vegetable or microbial fats and oils (including jojoba oil) and their fractions, whether or not refined, but not chemically modified.</i>
1J	1516	<i>Vegetable fats and oils and their fractions, partly or wholly hydrogenated, inter- esterified, re-esterified or elaidinised, whether or not refined, but not further prepared</i>
1K	1517	<i>Edible mixtures or preparations of vegetable fats or vegetable oils or of fractions of different vegetable fats or vegetable oils of this Chapter, other than edible fats or oils or their fractions of heading 1516</i>
1L	1518	<i>Vegetable fats and oils and their fractions, boiled, oxidised, dehydrated, sulphurised, blown, polymerised by heat in vacuum or in inert gas or otherwise chemically modified, excluding those of heading 1516</i>
1M	2701	Coal ; briquettes, ovoids and similar solid fuels manufactured from coal
1N	2702	<i>Lignite, whether or not agglomerated, excluding jet</i>
1O	2703	<i>Peat (including peat litter), whether or not agglomerated”</i>

Background:

- Earlier, the CBIC issued **Notification No. 10/2019-Central Tax** dated March 7, 2019 (i.e., compulsory registration a person engaged in supply of fly ash bricks etc. irrespective of the threshold limit),
- **Notification No. 14/2019 – Central Tax** dated March 7, 2019 (i.e. manufacturer of fly ash bricks etc. not eligible for composition scheme) and
- **Notification No. 02/2022-Central Tax (Rate)**, dated the March 31, 2022 (i.e. concessional rate on supply of fly ash bricks etc.)

Notification No. 10/2022-CT RATE & Notification No. 15/2022 & 16/2022-CT

To issue amendments in its above Earlier Notifications, so as to simplify the measure and done away with the condition of 90% fly ash content w.r.t. fly ash bricks

- Substituted the words *“Fly ash bricks or fly ash aggregate with 90 per cent. or more fly ash content; Fly ash blocks”* with ***“Fly ash bricks; Fly ash aggregates; Fly ash blocks”*** so as to apply same concessional rate on fly ash bricks irrespective of its content.

Notification No. 11/2022-CT RATE

Rescinded NN. 45/CT(R) to change the concessional GST rate of 5% (2.5% each CGST and SGST or 5% IGST) on scientific and technical equipments to rate applicable

Notification No. 6/2022-CT RATE

To insert amendments in the Goods Rate Notification 1/2017 CT(R)

The CBIC vide ***Notification No. 06/2022-Central Tax (Rate) dated July 13, 2022*** has issued amendments in the Goods Rate Notification in the following manner: –

- (i) 2.5 per cent. in respect of goods specified in Schedule I,
- (ii) 6 per cent. in respect of goods specified in Schedule II,
- (iii) 9 per cent. in respect of goods specified in Schedule III,
- (iv) 14 per cent. in respect of goods specified in Schedule IV,
- (v) 1.5 per cent. in respect of goods specified in Schedule V, **and**
- (vi) 0.125 per cent. in respect of goods specified in Schedule VI, **and**
- (vii) **0.75 per cent. in respect of goods specified in Schedule VII**

SCHEDULE I – 2.5%

S.NO.	Chapter / Heading	Description of Goods	Old rate	New rate
9A	0403	Curd, Lassi, Butter milk, pre-packaged and labelled	-	2.5%
91A	1701 or 1702	Other than prepackaged is exempt under NN 7/2022 Jaggery of all types including Cane Jaggery (gur), Palmyra Jaggery, pre-packaged and labelled; Khandsari Sugar, pre-packaged and labelled.	-	2.5%
98A	1904	Puffed rice, commonly known as Muri, flattened or beaten rice, commonly known as Chira, parched rice, commonly known as khoi, parched paddy or rice coated with sugar or gur, commonly known as Murki, pre-packaged and labelled	-	2.5%
163	2706	Tar distilled from coal, from lignite or from peat Now -TAXABLE AT 9% ENTRY 30A UNDER SCH III	2.5%	9%
181B	3006	Ostomy appliances including pouch or flange, stoma adhesive paste, barrier cream, irrigator kit, sleeves, belt, micro-pore tapes.	-	2.5%

ENTRY 197 A,B,C,D,E - Now TAXABLE AT 6% ENTRY 85 B,C,D,E,F UNDER SCH II

S.NO.	Chapter / Heading	Description of Goods	Old rate	New rate
197A	4107	Leather further prepared after tanning or crusting, including parchment-dressed leather, of bovine (including buffalo) or equine animals, without hair on, whether or not split, other than leather of heading 4114	2.5%	6%
197B	4112	Leather further prepared after tanning or crusting, including parchment-dressed leather, of sheep or lamb, without wool on, whether or not split, other than leather of heading 4114	2.5%	6%
197C	4113	Leather further prepared after tanning or crusting, including parchment-dressed leather, of other animals, without wool or hair on, whether or not split, other than leather of heading 4114	2.5%	6%
197D	4114	Chamois (including combination chamois) leather; patent leather and patent laminated leather; metallised leather.	2.5%	6%
197E	4115	Composition leather with a basis of leather or leather fibre, in slabs, sheets or strip, whether or not in rolls; parings and other waste of leather or of composition leather, not suitable for the manufacture of leather articles; leather dust, powder and flour	2.5%	6%

S.NO.	Chapter / Heading	Description of Goods	Old rate	New rate
230	84	Pawan Chakki that is Air Based Atta Chakki	2.5%	-
232	8419 12	Solar water heater and system Now -TAXABLE AT 6% ENTRY 194A UNDER SCH II	2.5%	6%
233	8437	Machines for cleaning, sorting or grading, seed, grain or dried leguminous vegetables; machinery used in milling industry or for the working of cereals or dried leguminous vegetables other than farm type machinery and parts thereof Now -TAXABLE AT 9% ENTRY 329A UNDER SCH III	2.5%	9%
234A	84 or 85	E-waste Explanation: For the purpose of this entry, e-waste means electrical and electronic equipment listed in Schedule I of the E-Waste (Management) Rules, 2016 (published in the Gazette of India vide G.S.R. 338 (E) dated the 23rd March, 2016), whole or in part if discarded as waste by the consumer or bulk consumer Now -TAXABLE AT 9% ENTRY 371A UNDER SCH III	2.5%	9%

S.NO.	Chapter / Heading	Description of Goods	Old rate	New rate
234G	8509	Wet grinder consisting of stone as grinder	2.5%	9%
255A	9021	<u>Orthopaedic appliances, such as crutches, surgical belts, and trusses; Splints and other fracture appliances; artificial parts of the body; other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability; intraocular lens other than hearing aids</u>	-	2.5%
264	Any chapter	Biomass briquettes or solid bio fuel pellets	2.5%	-

Schedule II – 6%

S. No.	Chapter / Heading	Description of Goods	Old rate	New rate
16	0804	Dates (soft or hard), figs, pineapples, avocados, guavas, mangoes (other than mangoes sliced, dried) and mangosteens, dried	6%	6%
65	3006	Pharmaceutical goods specified in Note 4 to this Chapter i.e. Sterile surgical catgut, similar sterile suture materials (including sterile absorbable surgical or dental yarns) and sterile tissue adhesives for surgical wound closure; sterile laminaria and sterile laminaria tents; sterile absorbable surgical or dental haemostatics; sterile surgical or dental adhesion barriers, whether or not absorbable; Waste pharmaceuticals, other than contraceptives and Ostomy appliances	6%	6%
70	3215	All Goods, including printing ink, writing or drawing ink and other inks, whether or not concentrated or solid, fountain pen ink, ball pen ink <div style="text-align: center; background-color: #76b82a; color: white; padding: 5px; margin-top: 5px;">Now -TAXABLE AT 9% ENTRY 54C UNDER SCH III</div>	6%	9%

S. No.	Chapter /Heading	Description of Goods	Old rate	New rate
85B	4107	Leather further prepared after tanning or crusting, including parchment-dressed leather, of bovine (including buffalo) or equine animals, without hair on, whether or not split, other than leather of heading 4114	2.5%	6%
85C	4112	Leather further prepared after tanning or crusting, including parchment-dressed leather, of sheep or lamb, without wool on, whether or not split, other than leather of heading 4114	2.5%	6%
85D	4113	Leather further prepared after tanning or crusting, including parchment-dressed leather, of other animals, without wool or hair on, whether or not split, other than leather of heading 4114	2.5%	6%
85E	4114	Chamois (including combination chamois) leather; patent leather and patent laminated leather; metallised leather	2.5%	6%

S. No.	Chapter /Heading	Description of Goods	Old rate	New rate
85F	4115	Composition leather with a basis of leather or leather fibre, in slabs, sheets or strip, whether or not in rolls; parings and other waste of leather or of composition leather, not suitable for the manufacture of leather articles; leather dust, powder and flour	2.5%	6%
120	4811	Aseptic packaging paper -	6%	9%
125A	4905	Maps and hydrographic or similar charts of all kinds, including atlases, wall maps, topographical plans and globes, printed	-	6%
176B	6815	"Fly ash bricks; Fly ash aggregates; Fly ash blocks"	6%	6%
187	8211	Knives with cutting blades, serrated or not (including pruning knives), other than knives of heading 8208, and blades therefore	6%	9%

Now -TAXABLE AT 9% ENTRY 301A UNDER SCH III

S. No.	Chapter /Heading	Description of Goods	Old rate	New rate
188	8214	Paper knives, Pencil sharpeners and blades therefor	6%	9%
189	8215	Spoons, forks, ladles, skimmers, cake-servers, fish-knives, butter-knives, sugar tongs and similar kitchen or tableware Now -TAXABLE AT 9% ENTRY 302B UNDER SCH III	6%	9%
192	8413	Power driven pumps primarily designed for handling water, namely, centrifugal pumps (horizontal and vertical), deep tube-well turbine pumps, submersible pumps, axial flow and mixed flow vertical pumps - Now -TAXABLE AT 9% ENTRY 317A UNDER SCH III	6%	9%
193	8414—20 10	Bicycle pumps Now -TAXABLE AT 9% ENTRY 327C UNDER SCH III	6%	9%
194A	8419 12	Solar water heater and system	2.5%	6%

S. No.	Chapter /Heading	Description of Goods	Old rate	New rate
195	8414 90 12	Parts of air or vacuum pumps and compressors of bicycle pumps Now -TAXABLE AT 9% ENTRY 317D UNDER SCH III	6%	9%
197	8433	Harvesting or threshing machinery, including straw or fodder balers; grass or hay mowers; parts thereof	6%	6%
198	8434	Milking machines and dairy machinery Now -TAXABLE AT 9% ENTRY 328B UNDER SCH III	6%	9%
205	8539	LED lamps	6%	9%
217	9017 20	Drawing and marking out instruments; Mathematical calculating instruments; pantographs; Other drawing or marking out instruments Now -TAXABLE AT 9% ENTRY 413 UNDER SCH III	6%	9%

221	9021	Splints and other fracture appliances; artificial parts of the body; other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability; intraocular lens other than orthopaedic appliances, such as crutches, surgical belts, and trusses, hearing aids	6%	2.5%
226	9405	LED lights or fixtures including LED lamps -	6%	9%
227	9405	LED (light emitting diode) driver and MCPCB (Metal Core Printed Circuit Board)	6%	9%

Schedule III – 9%

S. No.	Chapter / Heading	Description of Goods	Old rate	New rate
30A	2706	Tar distilled from coal, from lignite or from peat and other mineral tars, whether or not dehydrated or partially distilled, including reconstituted tars	2.5%	9%
54C	3215	All Goods, including printing ink, writing or drawing ink and other inks, whether or not concentrated or solid, fountain pen ink, ball pen ink	6%	9%
148	4811	Paper, paperboard, cellulose wadding and webs of cellulose fibres, coated, impregnated, covered, surface-coloured, surface-decorated or printed, in rolls or rectangular (including square) sheets, of any size, other than goods of the kind described in heading 4803, 4809 or 4810 Other than aseptic packaging paper	9%	9%
157B	4907	Unused postage, revenue or similar stamps of current or new issue in the country in which they have, or will have, a recognised face value; stamp-impressed paper; banknotes; cheque forms; stock, share or bond certificates and similar documents of title (other than Duty Credit Scrips); Cheques, loose or in book form (INSERTED)	9%	9%

S. No.	Chapter / Heading	Description of Goods	Old rate	New rate
182D	6815	Articles of stone or of other mineral substances (including carbon fibres, articles of carbon fibres and articles of peat), not elsewhere specified or included other than Fly ash bricks; Fly ash aggregates; Fly ash blocks	9%	9%
301A	8211	Knives with cutting blades, serrated or not (including pruning knives), other than knives of heading 8208, and blades therefor	6%	9%
302A	8214	Other articles of cutlery (for example, hair clippers, butchers' or kitchen cleavers, choppers and mincing knives,); manicure or pedicure sets and instruments (including nail files) other than paper knives, pencil sharpeners and blades therefor	9%	9%
302B	8215	Spoons, forks, ladles, skimmers, cake-servers, fish-knives, butter-knives, sugar tongs and similar kitchen or tableware	6%	9%
317A	8413	(a) Concrete pumps 8413 40 00; (b) other rotary positive displacement pumps 8413 60 (c) Power driven pumps primarily designed for handling water, namely, centrifugal pumps (horizontal and vertical), deep tube-well turbine pumps, submersible pumps, axial flow and mixed flow vertical pumps	6%	9%

S. No.	Chapter / Heading	Description of Goods	Old rate	New rate
317C	8414 20 10	Bicycle pumps	6%	9%
317D	8414 90 12	Parts of air or vacuum pumps and compressors of bicycle pumps	6%	9%
328A	8433	Machines for cleaning, sorting or grading eggs, fruit or other agricultural produce, other than machinery of heading 8437; parts thereof 8433 90 00	-	9%
328B	8434	Milking machines and dairy machinery	6%	9%
329A	8437	Machines for cleaning, sorting or grading, seed, grain or dried leguminous vegetables; machinery used in milling industry or for the working of cereals or dried leguminous vegetables other than farm type machinery and parts thereof.	2.5%	9%

S. No.	Chapter / Heading	Description of Goods	Old rate	New rate
371A	84 or 85	E-waste Explanation. – For the purpose of this entry, E-waste means electrical and electronic equipment listed in Schedule I of the E-Waste (Management) Rules, 2016 (published in the Gazette of India vide G.S.R. 338 (E) dated the 23rd March, 2016), whole or in part if discarded as waste by the consumer or bulk consumer”;	2.5%	9%
376AC	8509	Electro-mechanical domestic appliances, with self-contained electric motor, other than vacuum cleaners of heading 8508 other than wet grinder consisting of stone as a grinder	9%	9%
390	8539	Electrical Filament or discharge lamps including sealed beam lamp units and ultra-violet or infra-red lamps; arc lamps other than Light-Emitting Diode (LED) Light Sources	9%	9%
406A	8807	Parts of goods of heading 8801	NIL	9%

S. No.	Chapter / Heading	Description of Goods	Old rate	New rate
413	9017	Drawing, marking-out or mathematical calculating instruments (for example, drafting machines, pantographs, protractors, drawing sets, slide rules, disc calculators); instruments for measuring length, for use in the hand (for example, measuring rods and tapes, micrometers, callipers), not specified or included elsewhere in this chapter	6%	9%
438A	9405	Luminaires and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included other than kerosene pressure lantern and parts thereof including gas mantles; hurricane lanterns, kerosene lamp, petromax, glass chimney, and parts thereof; LED lights or fixtures including LED lamps; LED (light emitting diode) driver and MCPCB (Metal Core Printed Circuit Board)	9%	9%

Schedule VI – 0.125%

S. No.	Chapter Heading /	Description of Goods
1	7102	Rough diamonds or simply sawn diamonds, industrial or non-industrial
3	7104	Synthetic or reconstructed precious or semiprecious stones other than diamonds, whether or not worked or graded but not strung, mounted or set; ungraded synthetic or reconstructed precious or semiprecious stones other than diamonds, temporarily strung for convenience of transport; synthetic or reconstructed diamonds, unworked or simply sawn or roughly shaped

Schedule VII – 0.75%

S. No.	Chapter/ Heading	Description of Goods
1	7102	Goods other than those specified against S. No. 1 in Schedule VI (i.e Cut & Polished diamonds)
3	7104	Goods other than those specified against S. No. 3 in Schedule VI (i.e Cut & Polished diamonds)

Section 14 -Change in rate of tax in respect of supply of goods or services.

Notwithstanding anything contained in [section 12](#) or [section 13](#),

the time of supply, where there is a change in the rate of tax in respect of goods or services or both, shall be determined in the following manner, namely:—

(a) In case the goods or services or both have been supplied **before** the change in rate of tax

where the **invoice** for the same has been issued and the **payment** is also received after the change in rate of tax,

- the time of supply shall be the date of receipt of payment or the date of issue of invoice, whichever is earlier;

where the **invoice** has been issued prior to the change in rate of tax but **payment** is received after the change in rate of tax,

- the time of supply shall be the date of issue of invoice;

where the **payment** has been received before the change in rate of tax, but the **invoice** for the same is issued after the change in rate of tax,

- the time of supply shall be the date of receipt of payment;

Section 14 -Change in rate of tax in respect of supply of goods or services.

(b) In case the goods or services or both have been supplied after the change in rate of tax

where the **payment is received** after the change in rate of tax but the **invoice** has been issued prior to the change in rate of tax,

- the time of supply shall be the date of receipt of payment;

where the **invoice** has been issued and **payment** is received before the change in rate of tax,

- the time of supply shall be the date of receipt of payment or date of issue of invoice, whichever is earlier

where the **invoice** has been issued after the change in rate of tax but **the payment** is received before the change in rate of tax,

- the time of supply shall be the date of issue of invoice:

Provided that the **date of receipt of payment** shall be the date of credit in the bank account if such credit in the bank account is after four working days from the date of change in the rate of tax.

Explanation.—For the purposes of this section, "**the date of receipt of payment**" shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier.

**Time of supply of Goods/services in case of change in rate of tax (CRT) of supply of Goods/ services or both
– To summarize**

	Date of supply	Date of Invoice	Date of receipt of payment	Time of supply
1	Before CRT	After CRT	After CRT	Date of issue of invoice or date of receipt whichever is earlier. (AFTER)
2	Before CRT	Before CRT	After CRT	Date of issues of invoice (BEFORE)
3	Before CRT	After CRT	Before CRT	Date of receipt (BEFORE)
4	After CRT	Before CRT	After CRT	Date of receipt (AFTER)
5	After CRT	Before CRT	Before CRT	Date of issue of invoice or date of receipt whichever is earlier (BEFORE)
6	After CRT	After CRT	Before CRT	Date of issue of invoice (AFTER)

Note

- 1."The date of receipt of payment" shall be the date on which the payment is entered in the books of accounts of the suppliers or the date on which the payment is credited to his bank account, which ever is earlier:
- 2.When such credit in the bank account is after 4 working days from the date of change in the rate of tax, date of credit in the bank account shall be the date of receipt of payment.

HOTEL & RESTAURANT INDUSTRY



E- COMMERCE OPERATOR

REVERSE CHARGE MACHANISM ON ECO:

Section 9(5) of CGST Act,2017 and **Section 5(5) of IGST Act, 2017**, deals with the provisions of RCM on ECO, which are as under:

*It comes out from the bare language of sections that the government on the recommendation of GST council, **notify the category of services**, supplied through ECO, on which the tax on intra-state or inter-state supplies **shall be paid by the ECO by treating the same as supplier of such services**.*

*It is provided that if the ECO **does not have any physical presence in the taxable territory, any person representing such ECO** shall be liable to pay tax on the behalf of ECO.*

*It is further provided in law that if the ECO does not have physical presence in the taxable territory and also does not have a representative in the said territory, in such case ECO is **bound by law to appoint a person** in the taxable territory for the purpose of paying taxes under the GST Act, 2017.*

*It also clear that this section talks about **notified services** supplied through ECO. This section not applied on supply of goods through ECO.*

It also clear that this section talks about notified services supplied through ECO. **This section not applied on supply of goods through ECO.**

NOTIFIED SERVICES U/S 9(5) OF CGST ACT, 2017 AND 5(5) OF IGST ACT, 2017: (Not. 17/2017-CT (R) , Not. 23/2017)CT(R) , NN. 14/2017 IT (Rate)

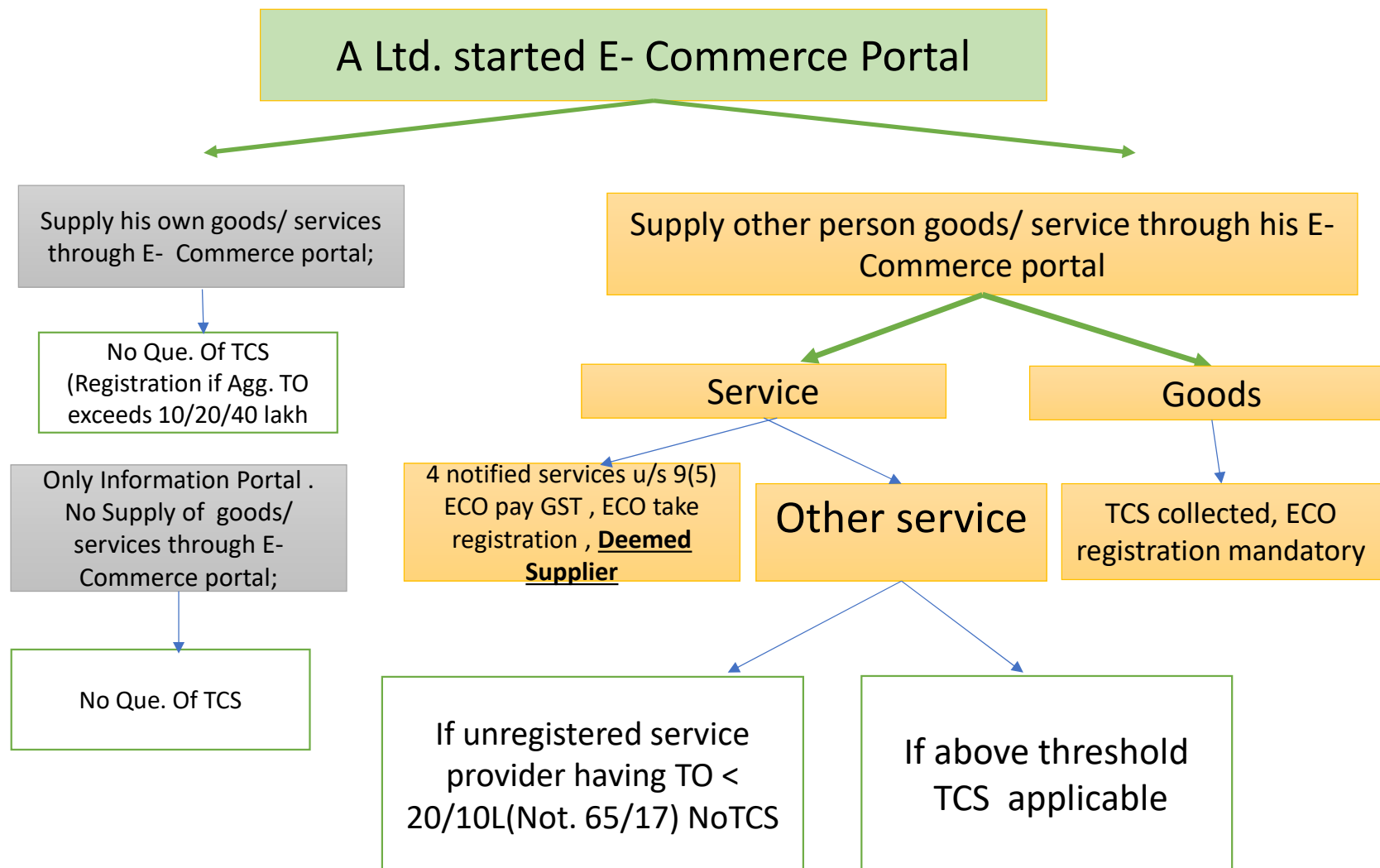
S. No.	Description of supply of Service	Supplier of service	Person Liable to Pay GST Deemed Supplier
(i)	<p>Transportation of passengers by a radio-taxi, motorcab, maxicab and motor cycle , motor cycle, omnibus or any other motor vehicle (Notification No.17/2021-Central Tax (Rate) w.e.f 01.01.2022 e.g OLA, UBER</p> <p>Note: Even the Exemption as per Sr. No. 15 & 17 (Not.12/2017-CTR) In case of Transport of passengers, with or without accompanied belongings, by (b) non-airconditioned contract carriage other than radio taxi, for transportation of passengers, excluding tourism, conducted tour, charter or hire; or (c) stage carriage other than airconditioned stage carriage, metered cabs or auto rickshaws (including e-rickshaws) will not be available , if provided through E-com operator and E Com will be liable as Deemed Supplier. Not 16/21 CTR)</p>	Any person	E-commerce operator
(ii)	<p>Providing accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes</p> <p>e.g Make My Trip</p> <p style="text-align: center;">Below Threshold Limit</p>	Any person except who is liable for registration under sub-section (1) of section 22 of the said CGST Act	E-commerce operator
(iii)	<p>Services by way of house- keeping, such as plumbing, carpentering etc</p> <p>e.g Urban Clap</p> <p style="text-align: center;">Below Threshold Limit</p>	Any person except who is liable for registration under sub-section (1) of section 22 of the said CGST Act	E-commerce operator
(iv)	<p>supply of restaurant service other than the services supplied by restaurant, eating joints etc. located at specified premises. (Notification No.17/2021-Central Tax (Rate) w.e.f 01.01.2022</p> <p style="text-align: center;">CA AANCHAL KAPOOR (M)9988692699</p>	Any Restuarant other than Restuarants in Hotel with Declared Tariff > 7500	E-commerce operator

CIRCULAR NO. 164/20/2021-GST

- The word 'restaurant service' is defined in [Notification No. 11/2017 - CTR](#) as below: —

'Restaurant service' means supply, by way of or as part of any service, of goods, being food or any other article for human consumption or any drink, provided by a restaurant, eating joint including mess, canteen, whether for consumption on or away from the premises where such food or any other article for human consumption or drink is supplied.'

- Service by an entity, by way of cooking and supply of food, even if it is exclusively by way of takeaway or door delivery or through or from any restaurant would be covered by restaurant service.
- Cloud kitchens/central kitchens INCLUDED in restaurant services.
- NO ITC allowed to E-Commerce for Restaurant Services.
- Deemed Supplier Concept, not RCM.
- Generally E commerce operators also charge delivery or packing charges Now, when the E commerce operator shall be presumed to be restaurant service provider, whether these ancillary services be clubbed together as composite or mixed supply or be isolated individually will depend upon facts of each case. However, it appears that ITC reversal on such services would be inevitable irrespective of the fact whether the supply is treated isolated or mixed or composite.
- E commerce operators shall have to reverse the credit related to services directly used in respect of such restaurant services (like ITC on packing, delivery, etc. when charged on order basis) and partially used for such services (like professional services taken for overall activities, etc.)
- GST payable even if Restaurant is unregistered. Composition Person not allowed to supply services/goods through E Commerce.



GST ON SERVICE SUPPLIED BY RESTAURANTS THROUGH E-COMMERCE OPERATORS

CIRCULAR NO. 167/23/2021- GST

1. Would ECO's HAVE TO COLLECT TCS IN ACCORDANCE WITH SECTION 52 OF GST Act,2017 ?

As "Restaurant service" has been notified under section 9(5) of the CGST Act, 2017, the ECO shall be liable to pay GST on restaurant services provided, with effect from 1ST January 2022, through ECO. Accordingly, the **ECOs will no longer be required to collect TCS** and file GSTR 8 in respect of restaurant services on which it pays tax.



2. Would ECOs have to mandatorily take a separate registration w.r.t supply of restaurant service [notified under 9(5)] through them even though they are registered to pay GST on services on their own account?

As ECOs are already registered in accordance with rule 8(in Form GST-REG 01) of the CGST Rules, 2017 (as a supplier of their own goods or services), there would be no mandatory requirement of taking separate registration by ECOs for payment of tax on restaurant service under section 9(5) of the CGST Act, 2017.

3. Would the ECOs be liable to pay tax on supply of restaurant service made by **unregistered business entities?**

Yes. **ECOs will be liable** to pay GST on any restaurant service supplied through them **including by an unregistered person**.

4. What would be the aggregate turnover of person supplying 'restaurant service' through ECOs?

It is clarified that the **aggregate turnover of person supplying restaurant service through ECOs** shall be computed as defined in section 2(6) of the CGST Act, 2017 **and shall include the aggregate value of supplies made by the restaurant through ECOs**. Accordingly, for threshold consideration or any other purpose in the Act, the person providing restaurant service through ECO shall account such services in his aggregate turnover.

5. Can the supplies of restaurant service made through ECOs be recorded as inward supply of ECOs (liable to reverse charge) in GSTR 3B?

No. ECOs are not the recipient of restaurant service supplied through them. Since these are not input services to ECO, these are not to be reported as inward supply (liable to reverse charge). **Not an Input Source**

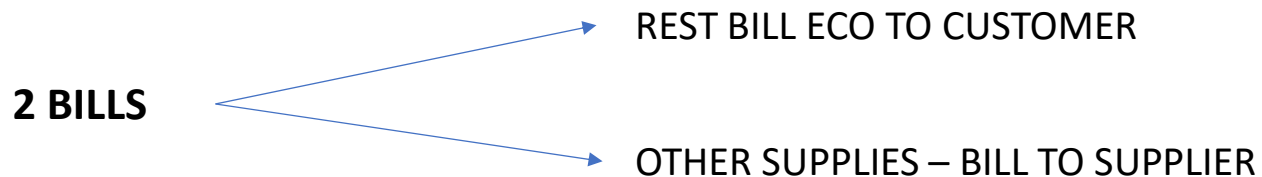
6. Would ECOs be liable to reverse proportional input tax credit on his input goods and services for the reason that input tax credit is not admissible on 'restaurant service'?

ECOs provide their own services as an electronic platform and an intermediary for which it would acquire inputs/input service on which ECOs avail input tax credit (ITC). The ECO charges commission/fee etc. for the services it provides. The ITC is utilized by ECO for payment of GST on services provided by ECO on its own account (say, to a restaurant). The situation in this regard remains unchanged even after ECO is made liable to pay tax on restaurant service. **ECO would be eligible to ITC as before. Accordingly, it is clarified that ECO shall not be required to reverse ITC on account of restaurant services on which it pays GST in terms of section 9(5) of the Act.**

It may also be noted that on restaurant service, ECO shall pay the entire GST liability in cash (No ITC could be utilized for payment of GST on restaurant service supplied through ECO)

7. Would 'restaurant service' and goods or services other than restaurant service sold by a restaurant to a customer under the same order be billed differently? Who shall be liable for raising invoices in such cases?

Considering that liability to pay GST on supplies other than 'restaurant service' through the ECO, and other compliances under the Act, including issuance of invoice to customer, continues to lie with the respective suppliers (and ECOs being liable only to collect tax at source (TCS) on such supplies), it is advisable that ECO raises separate bill on restaurant service in such cases where ECO provides other supplies to a customer under the same order.



8. Who will issue invoice in respect of restaurant service supplied through ECO -whether by the restaurant or by the ECO?

The invoice in respect of restaurant service supplied through ECO under section 9(5) will be issued by ECO.

9. Clarification may be issued as regard reporting of restaurant services, value and tax liability etc. in the GST return.

A number of other services are already notified under section 9(5). In respect of such services, ECO operators are presently paying GST by furnishing details in GSTR 3B. The ECO may, on services notified under section 9 (5) of the CGST Act,2017, including on restaurant service provided through ECO, may continue to pay GST by **furnishing the details in GSTR 3B**, reporting them as outward taxable supplies for the time being.

Besides, ECO may also, for the time being, furnish the details of such supplies of restaurant services under section 9(5) in Table 7A(1) or Table 4A of GSTR-1, as the case maybe, for accounting purpose.

Registered persons supplying restaurant services through ECOs under section 9(5) will report such supplies of restaurant services made through ECOs in Table of GSTR-1 and Table 3.1 (c) of GSTR-3B, for the time being.

E- COMMERCE OPERATOR

- GST on hotel tariff or restaurant bill will normally be levied as per the prescribed rates.
- GST will be 18% on commission paid to e-commerce operators.

Example: Hotel Industry

Sl. No.	Particulars	Amount (Rs.)
1	Room Tariff Charges	10,000.00
2	Discount 30% of 1	3,000.00
3	Net Bill Value (1-2)	7,000.00
4	GST @ 12% on room tariff (5% of 3)	840.00
5	Total Payable by Customer (3+4)	7,840.00
6	Service Fee of E-Commerce Operator (40% of 3)	2,800.00
7	GST @ 18% on Service Fee (SAC 996813) [18% of 6]	504.00
8	Total Bill of E-Commerce Operator (6+7)	3,304.00
9	Net Payable to Hotel by E-Commerce Operator (5-8)	4,536.00

Example: Restaurant Industry

Sl. No.	Particulars	Amount (Rs.)
1	Restaurant bill value	100.00
2	Restaurant Discount 10%	10.00
3	Net Bill Value (1-2)	90.00
4	GST @ 5% on food bill (3*5%)	4.50
5	Total Payable by Customer (3+4)	94.50
6	Service Fee of E-Commerce Operator	10.00
7	GST @ 18% on Service Fee (SAC 996813) [6*18%]	1.80
8	Total Bill of E-Commerce Operator (6+7)	11.80
9	Net Payable to Restaurant by E-Commerce Operator (5-8)	82.70

Supply of ice-cream as goods and not as a service, even if the supply has certain ingredients of service. Accordingly, it is clarified that ice-cream sold by a parlor or any similar outlet would attract GST at the rate of 18%.

SUPPLY OF ICE CREAM BY ICE CREAM PARLORS



- Ice cream parlors **sell already manufactured ice-cream** and they do not have a character of a restaurant.
- Ice-cream parlors **do not engage in any form of cooking** at any stage, whereas, restaurant service involves the aspect of cooking/preparing during the course of providing service.
- Thus, supply of ice-cream parlor stands on a different footing than restaurant service. Their activity entails **supply of ice cream as goods (a manufactured item) and not as a service**, even if certain ingredients of service are present.
- That ice cream sold by a parlor or any similar outlet would attract GST at the rate of 18%.

Nitrogen Ice Cream

Parlours , Waffle ?

ICE CREAM PARLOURS

- Ice cream parlors sell already manufactured ice-cream and they do not have a character of a restaurant.
- Ice-cream parlors do not engage in any form of cooking at any stage, whereas, restaurant service involves the aspect of cooking/preparing during the course of providing service.
- Thus, supply of ice-cream parlor stands on a different footing than restaurant service. Their activity entails supply of ice cream as goods (a manufactured item) and not as a service, even if certain ingredients of service are present.
- That ice cream sold by a parlor or any similar outlet would attract GST at the rate of 18%.

Nitrogen Ice Cream

Parlours , Waffle ?

Circular No.177/02/2022

Rate of GST applicable on supply of ice-cream by ice-cream parlors during the period from 01.07.2017 to 05.10.2021

1) On the recommendation of the GST Council in its 45th meeting, it was clarified vide circular 164/20/2021-GST dated 06.10.2021 that ice cream parlors sell already manufactured ice-cream and **they do not have a character of a restaurant and hence, ice cream sold by a parlour or any similar outlet attracts standard rate of GST @ 18% with ITC.**

2) Representations have been received requesting that GST at 18% may be levied on supply of ice-cream by ice-cream parlors with effect from 06.10.2021

3) It has been represented that ice cream parlors which paid GST @ 5% without ITC in view of prevailing doubt before the issuance of the Circular dated 6.10.2021 did not avail ITC and paid 5% in cash. Such ice-cream parlors have thus foregone significant ITC benefit.

4) Considering the overall circumstances of the case, it is clarified that past cases of payment of GST on supply of ice-cream by ice-cream parlors @ 5% without ITC shall be treated as fully GST paid to avoid unnecessary litigation. Since the decision is only to regularize the past practice, no refund of GST shall be allowed, if already paid at 18%. With effect from 6.10.2021, **the ice Cream parlors are required to pay GST on supply of ice-cream at the rate of 18% with ITC.**

SI. No. 7
HEADING 9963

HOTEL ACCOMODATION



-In the item (i), the words “above one thousand rupees but” shall be **OMITTED**

SI. No. of NN 11/2017 CT(R)	Description	Rate
7	(i) Supply of —hotel accommodation having value of supply of a unit of accommodation above one thousand rupees but less than or equal to seven thousand five hundred rupees per unit per day or equivalent.	6%

Hotel Accommodation Rate w.e.f 18.07.2022	VALUE OF SUPPLY	RATE
	Up to Rs 1000	12%
	More than 1000 but not exceed Rs 7500	
	More than Rs 7500	18%

**Sl. No. 7
HEADING 9963**

Accommodation, Food and Beverage services

Sl. No. of NN 11/2017 CT(R)	Description	Rate
7	(i) Supply of —hotel accommodation having value of supply of a unit of accommodation above one thousand rupees but less than or equal to seven thousand five hundred rupees per unit per day or equivalent.	6%
	(ii) Supply of 'restaurant service' other than at specified premises	2.5%
	(iii) Supply of goods, being food or any other article for human consumption or any drink, by the Indian Railways or Indian Railways Catering and Tourism Corporation Ltd. or their licensees, whether in trains or at platforms.	2.5%
	(iv) Supply of 'outdoor catering', at premises other than 'specified premises' provided by any person other than— (a) suppliers providing 'hotel accommodation' at 'specified premises', or (b) suppliers located in 'specified premises'	2.5%

Sl. No. of NN 11/2017 CT(R)	Description	Rate
7	(v) <i>Composite supply of 'outdoor catering'</i> together with renting of premises (including hotel, convention center, club, pandal, shamiana or any other place, specially arranged for organising a function) at premises other than 'specified premises' provided by any person other than— (a) suppliers providing 'hotel accommodation' at 'specified premises', or (b) suppliers located in 'specified premises'.	2.5%
	(vi) Accommodation, food and beverage services other than (i) to (v) above	9%

EXPLANATION

(a) For the removal of doubt, it is hereby clarified that, supplies covered by items (ii), (iii), (iv) and (v) in column (3) shall attract central tax prescribed against them in column (4) subject to conditions specified against them in column (5), which is a mandatory rate and shall not be levied at the rate as specified under this entry.

(b) This entry covers supply of 'restaurant service' at 'specified premises'.

(c) This entry covers supply of 'hotel accommodation' having value of supply of a unit of accommodation above seven thousand five hundred rupees per unit per day or equivalent.

(d) This entry covers supply of 'outdoor catering', provided by suppliers providing 'hotel accommodation' at 'specified premises', or suppliers located in 'specified premises'.

(e) This entry covers composite supply of 'outdoor catering' together with renting of premises (including hotel, convention center, club, pandal, shamiana or any other place, specially arranged for organising a function) provided by suppliers providing 'hotel accommodation' at 'specified premises', or suppliers located in 'specified premises'.

Place of Supply

Section 12 of the IGST Act, 2017

12(3) The place of supply of services,

- (b) by way of lodging accommodation by a hotel, inn, guest house, home stay, club or campsite, by whatever name called, and including a house boat or any other vessel; or
- (c) by way of accommodation in any immovable property for organising any marriage or reception or matters related thereto, official, social, cultural, religious or business function including services provided in relation to such function at such property; or

shall be the location at which the immovable property or boat or vessel, as the case may be, is located or intended to be located

12(4) The place of supply of restaurant and catering services, personal grooming, fitness, beauty treatment, health service including cosmetic and plastic surgery shall be the location where the services are actually performed.

Thus it is clear that

- *In the case of the hotel industry* the place of supply will be the location of immovable property and
- *In the case of restaurant* location where the services are actually performed.

FAQs on Hotel Services

Q1. Food is serviced to outsiders as well as in-room service is made. Whether such in-room service can be considered as composite supply?

- **It is not a Composite supply.** Because the guests are free to go outside and consume food or can eat in the hotel itself, if they prefer.
- **Accommodation and Restaurant Service are to be treated as individual supplies** and rate of GST shall be applied accordingly.
- However, **the complimentary breakfast provided to guests shall be composite supply** as both are naturally bundled in ordinary course of business.

Q2.

When the Supplier and Recipient registered in Separate States?

In such cases, the location of the hotel will be considered as the place of supply, and CGST and State Government GST will be levied and not IGST. Additionally, the recipient of service will not be able to avail ITC of the tax paid on such transactions as GST paid in state is not eligible in state GST of the recipient.

Example :

X, a registered person in Amritsar, visited Mumbai and stayed in ABC Hotel. The Hotel charged CGST and SGST.

Whether X can claim ITC while discharging the CGST and SGST in Punjab ?



ANCILLARY SERVICES ALONG WITH ACCOMODATION BY HOTEL

SERVICES	GST RATE	CONDITIONS
Room Lent out	12% (upto 7500) 18% (above 7500)	
Dine-in	5%	Without ITC
Banquet Hall	18%	With ITC
Miscellaneous Services (such as laundry etc)	18%	With ITC

2022] 136 taxmann.com 223
AUTHORITY FOR ADVANCE RULINGS, RAJASTHAN
Kalani Infrastructure (P.) Ltd.

Accommodation service along with ancillary services such as food facility, playroom, gym etc. is in nature of a mixed supply; GST is payable at highest rate amongst the various services provided

Accommodation service with ancillary services - Advance ruling is sought on question as to whether provision of hostel accommodation along with food facility, playroom, gym and housekeeping against consolidated charges would be treated as composite supply

- HELD: Provision of hostel accommodation along with ancillary services are not naturally bundled and same is not composite supply - Hostel accommodation could be a principal supply but ancillary services cannot be said to arise naturally with principal service - Different elements are easily available separately and they are not integral to one overall supply - Ancillary services like gym, housekeeping, playroom, TV in dining hall are not naturally bundled with principal supply of accommodation service - Services supplied are in nature of mixed supply as they are provided for a single price -

Circular

No.178/02/2022

Cancellation charges

A supply contracted for, such as booking of hotel accommodation, an entertainment event or a journey, may be cancelled by a customer or may not proceed as intended due to his failure to show up for availing the same at the designated place and time. **The supplier may allow cancelation of supply by the customer within a certain specified time period on payment of cancellation fee as per commercial terms of the contract.** In case the customer does not show up for availing the service, the supplier may retain or forfeit part of the consideration or security deposit or earnest money paid by the customer for the intended supply.

11.1 It is a common business practice for suppliers of services such as hotel accommodation, tour and travel, transportation etc. to provide the facility of cancellation of the intended supplies within a certain time period on payment of cancellation fee.

Cancellation fee can be considered as the charges for the costs involved in making arrangements for the intended supply and the costs involved in cancellation of the supply, such as in cancellation of reserved tickets by the Indian Railways.

11.2 Services such as transportation travel and tour constitute a bundle of services. The transportation service, for instance, starts with booking of the ticket for travel and lasts at least till exit of the passenger from the destination terminal.

All services such as :

- making available an online portal or convenient booking counters with basic facilities at the transportation terminal or in the city,
- to reserve the seats and issue tickets for reserved seats much in advance of the travel,
- giving preferred seats with or without extra cost,
- lounge and waiting room facilities at airports, railway stations and bus terminals, provision of basic necessities such as soap and other toiletries in the wash rooms,
- clean drinking water in the waiting area etc.

form part and parcel of the transportation service; they constitute the various elements of passenger transportation service, a composite supply.

The facilitation service of allowing cancellation against payment of cancellation charges is also a natural part of this bundle.

It is invariably supplied by all suppliers of passenger transportation service as naturally bundled and in conjunction with the principal supply of transportation in the ordinary course of business.

11.3 Therefore, facilitation supply of allowing cancellation of an intended supply against payment of cancellation fee or retention or forfeiture of a part or whole of the consideration or security deposit in such cases should be assessed as the principal supply. **For example, cancellation charges of railway tickets for a class would attract GST at the same rate as applicable to the class of travel (i.e., 5% GST on first class or air-conditioned coach ticket and nil for other classes such as second sleeper class). Same is the case for air travel.**

11.4 Accordingly, the amount forfeited in the case of non-refundable ticket for air travel or security deposit or earnest money forfeited in case of the customer failing to avail the travel, tour operator or hotel accommodation service or such other intended supplies should be assessed at the same rate as applicable to the service contract, say air transport or tour operator service, or other such services.

11.5 However, as discussed above, forfeiture of earnest money by a seller in case of breach of 'an agreement to sell' an immovable property by the buyer or such forfeiture by Government or local authority in the event of a successful bidder failing to act after winning the bid for allotment of natural resources, is a mere flow of money, as the buyer or the successful bidder does not get anything in return for such forfeiture of earnest money.

Forfeiture of earnest money is stipulated in such cases not as a consideration for tolerating the breach of contract but as a compensation for the losses suffered and as a penalty for discouraging the non-serious buyers or bidders. Such payments being merely flow of money are not a consideration for any supply and are not taxable.

Hotel?



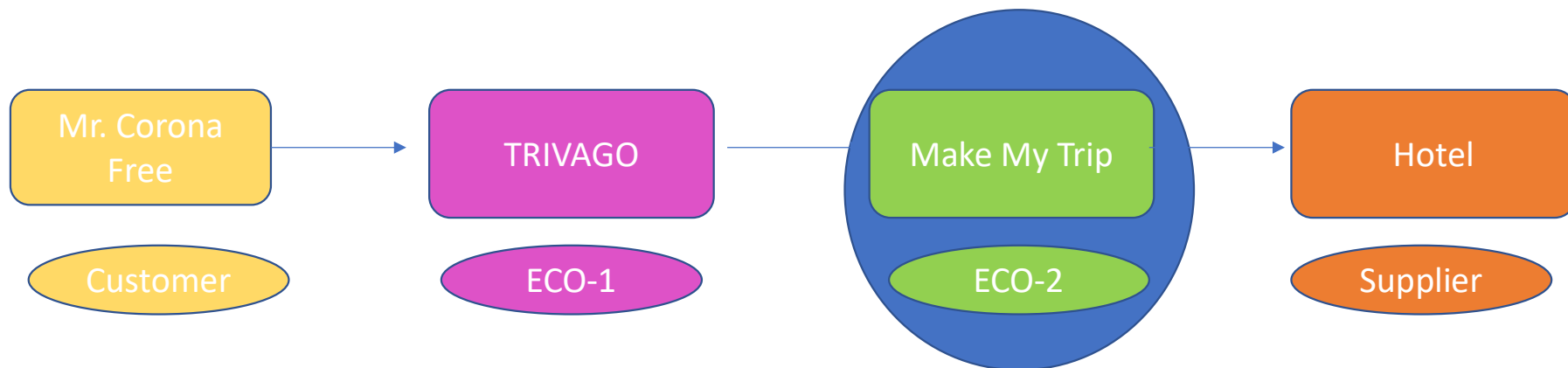
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QUES: Customer books a Hotel via ECO-1 who in turn is integrated with ECO-2 who has agreement with the hotelier. In this case, ECO-1 will not have any GST information of the hotelier. Under such circumstances, which e-commerce operator should be liable to collect TCS?

ANS: TCS is to be collected by that e-Commerce operator who is making payment to the supplier for the particular supply happening through it, which is in this case will be ECO-2.



COMPOSITE SUPPLY

Composite supply means a supply made by a taxable person to a recipient

- consisting of two or more taxable supplies of goods or services or both, or any combination thereof,
- which are naturally bundled
- and supplied in conjunction with each other
- in the ordinary course of business, one of which is a principal supply.

For Example:

Machinery (supply of goods) + warranty and maintenance contract (supply of service)

Here, there are two or more supplies, naturally bundled and supply of machine is the principal supply.

For Example:

A hotel provides a package of 4 days and 3 nights with the facility of breakfast. This is a natural bundling of services. The service will be treated as service of providing Hotel Accommodation

An orange scroll banner with a white background, featuring a vertical strip on the left side that looks like a scroll edge. The banner has rounded corners and a slight shadow effect.

COMPOSITION LEVY

	Threshold	Composition	Normal
Turnover	10L/20L/40L	50L/ 75L/1.5Cr	
Tax benefits	No tax payable	Tax is payable@ Composite Rate	
Registration	Not required	Compulsory	Compulsory
GST Invoice	Not required	Bill of supply	Tax Invoice
ITC	Not required	No	Yes
GST Return	Not Required	(1) GSTR-4, GSTR-9A Annually (2) Quarterly Statement- CMP-08 (3) Payment of tax- Quarterly	1)GSTR1, 3B, 9 2) Quarterly for notified category.

Section 10: Eligibility criteria for Composition Levy

(1)

Notwithstanding anything to the contrary contained in this Act **but subject to the provisions of sub-sections (3) and (4) of section 9**, a **registered person**, whose **aggregate turnover** in the **preceding financial year** did not exceed fifty lakh rupees, may opt to pay, ⁴⁷[in lieu of the tax payable by him under sub-section (1) of section 9, an amount of tax calculated at such rate] as may be prescribed, but not exceeding,—

(a) **one per cent of the turnover in State or turnover in Union territory** in case of a **manufacturer**,

(b) **two and a half per cent of the turnover in State or turnover in Union territory** in case of persons engaged in making supplies referred to in **clause (b) of paragraph 6 of Schedule II**, and

(c) **half per cent of the turnover in State or turnover in Union territory** in case of **other suppliers**,

subject to such conditions and restrictions as may be prescribed:

Actual rate of tax under Composition Scheme notified in Rule 7 of CGST Rules,2017

Amended by N/N 50/2020 CT dt 24/06/2020

Sr No.		Categories of registered person	Central GST Rate	State/UT GST Rate	Total Rate	Basis of Calculation
1	Sec. 10(1) and Sec. 10(2)	Manufacturers, other than manufacturers of such goods as may be notified by the Government	0.5%	0.5%	1%	Turnover in State
2	Sec. 10(1) and Sec. 10(2)	Suppliers making supplies referred to in clause (b) of paragraph 6 of Schedule II	2.5%	2.5%	5%	Turnover in State
3	Sec. 10(1) and Sec. 10(2)	Any other supplier eligible for composition levy under sub-sections (1) and (2) of section 10	0.5%	0.5%	1%	Turnover of taxable supplies of goods and services in the State or Union territory
4	Sec.10(2A)	Registered persons not eligible under the composition levy under sub-sections (1) and (2), but eligible to opt to pay tax under sub-section (2A), of section 10	3%	3%	6%	Turnover of supplies of goods and services in the State or Union territory.

Section 2(6)

"aggregate turnover" means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-State supplies of persons having the same Permanent Account Number, to be computed on all India basis but excludes central tax, State tax, Union territory tax, integrated tax and cess.

Explanation 1.—For the purposes of computing **aggregate turnover** of a person for determining his eligibility to pay tax under this section, the expression "aggregate turnover" shall include the value of supplies made by such person from the 1st day of April of a financial year upto the date when he becomes liable for registration under this Act, but **shall not include the value of exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.**

Section 2(112)

"turnover in State" or "turnover in Union territory" means the aggregate value of

- all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis) and
- exempt supplies made within a State or Union territory by a taxable person,
- exports of goods or services or both and
- inter-State supplies of goods or services or both made from the State or Union territory by the said taxable person

but excludes central tax, State tax, Union territory tax, integrated tax and cess

Explanation 2.—For the purposes of determining the tax payable by a person under this section, the expression "turnover in State or turnover in Union territory" **shall not include the value of following supplies**, namely:-

- (i) supplies from the first day of April of a financial year upto the date when such person becomes liable for registration under this Act; and
- (ii) exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.]

1st Proviso

Provided that the Government may, by notification, increase the said limit of fifty lakh rupees to such higher amount, not exceeding [one crore and fifty lakh rupees], as may be recommended by the Council

NN. 14/2019-CT DATED 7-3-2019

THRESHOLD LIMIT FOR COMPOSITION SCHEME

An eligible registered person, whose aggregate turnover in the preceding financial year did not exceed one crore and fifty lakh rupees, may opt to pay, in lieu of the tax payable by him under sub-section (1) of section 9 of the said Act, an amount of tax as prescribed under rule 7 of the Central Goods and Services Tax Rules, 2017

Provided that the said aggregate turnover in the preceding financial year shall be seventy-five lakh rupees in the case of an eligible registered person, registered under section 25 of the said Act, in any of the following States, namely: —

(i) Arunachal Pradesh

(v) Nagaland

(ii) Manipur

(vi) Sikkim

(iii) Meghalaya

(vii) Tripura

(iv) Mizoram

(viii) Uttarakhand

2st Proviso

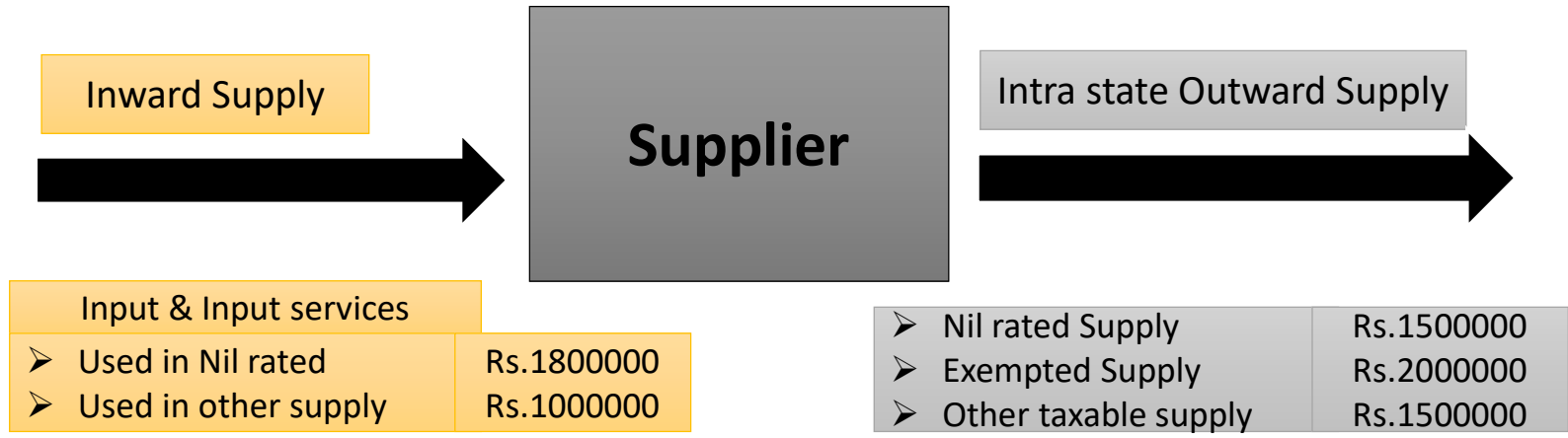
Provided further that a person who opts to pay tax under clause (a) or clause (b) or clause (c) may supply services (other than those referred to in clause (b) of paragraph 6 of Schedule II), of value not exceeding **ten per cent of turnover in a State or Union territory in the preceding financial year or five lakh rupees, whichever is higher.**

Explanation

For the purposes of second proviso, the value of exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount shall not be taken into account **for determining the value of turnover in a State or Union territory.**

Following examples assume turnover in PFY does not exceed Rs1.5Cr.

Example 1: If supplier does not opt for composition



Calculate net tax payable. If input & output rate of GST is 12%.

Solution:

Particulars	Value of supply	GST
1) Outward Supply		
➤ Nil Rated	1500000	-
➤ Exempted	2000000	-
➤ Other taxable Supply	1500000	1800000
2) ITC		
➤ Nil	1800000	
➤ Other	1000000	(120000)
	Therefore Net liability	60000

Example 2: If supplier opt for composition

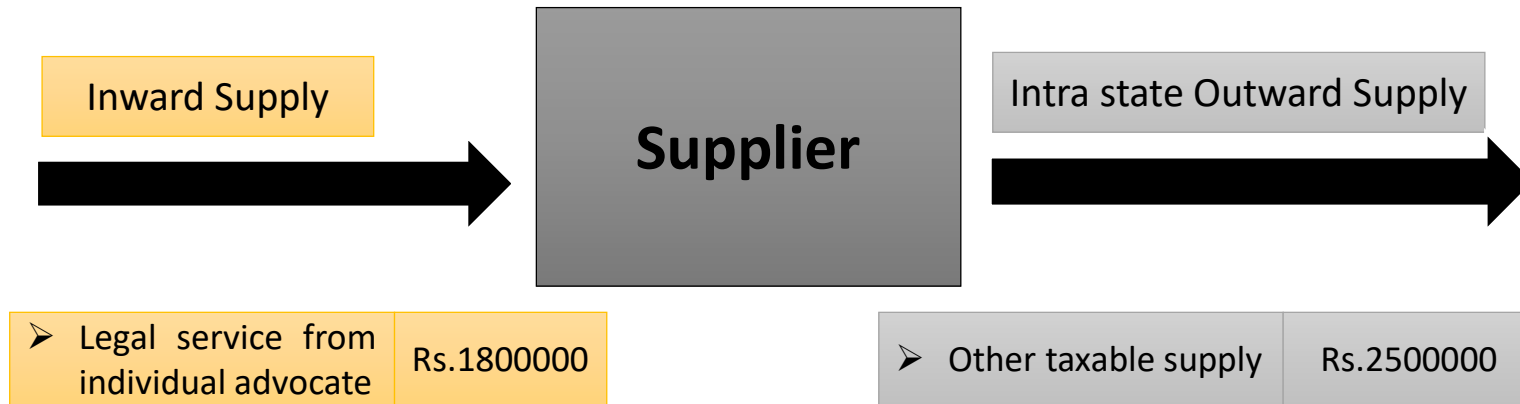


Calculate net tax payable. If input rate of GST is 12% and composite rate is 1%.

Solution:

Particulars	Manufacturer	Trader
➤ Nil Rated	1500000	-
➤ Exempted	2000000	-
➤ Other taxable	1500000	1500000
Turnover	5000000	1500000
GST @ 1%	50000	15000

Example 3: If supplier opt for composition



Calculate net tax payable. If input & output rate of GST is 12%.

Solution:

Particulars	Value of supply	GST
Tax payable under Composition levy on outward supply @0.5%	12500	12500
Tax payable under RCM @ 18%	162000	162000
Total	174500	174500

Sec.10(2)

The registered person shall be eligible to opt under sub-section (1), if--

(a)

save as provided in sub-section (1), he is not engaged in the supply of services;

Thus the person who is opting for composition levy u/s 10(1) (i.e. Manufacturer, restaurant/caterers, Trader) cannot supply any service (Taxable or Exempt) except as allowed in proviso 2 of section 10(1).

(b)

he is **not engaged in making any supply of goods [or services]** which are not leviable to tax under this Act

A person who is engaged in supply of alcoholic liquor for human consumption or any of the 5 petroleum products cannot opt for composition scheme for any of his other GST supplies.

(c)

he is not engaged in making any **inter-state outward supply of goods or services**

Cannot make inter-state outward supplies of goods including stock transfers to own branches outside of the state as it is also a supply as per the GST law. However, there is no restriction on inter-state inward supplies.

(d)

he is not engaged in making any supply of goods [or services] through an electronic commerce operator who is required to collect tax at source under section 52

(e)

he is not a **manufacturer of such goods** as may be notified by the Government on the recommendations of the [Council; and]

<i>Sl. No.</i>	<i>Tariff item, sub-heading, heading or Chapter</i>	<i>Description</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
1.	2105 00 00	Ice cream and other edible ice, whether or not containing cocoa.
2.	2106 90 20	Pan masala.
2A	2202 10 10	<i>Aerated Water</i>
3.	24	All goods, <i>i.e.</i> Tobacco and manufactured tobacco substitutes.

(f)

he is **neither a casual taxable person nor a non-resident taxable person**

Provided that where more than one registered persons are having the same Permanent Account Number [issued under the Income-tax Act, 1961 (43 of 1961)], **the registered person shall not be eligible to opt for the scheme under subsection (1) unless all such registered persons opt to pay tax under that subsection.**

Sec.10(2A)

Notwithstanding anything to the contrary contained in this Act, but subject to the provisions of sub-sections (3) and (4) of section 9, a registered person, not eligible to opt to pay tax under sub-section (1) and sub-section (2), whose aggregate turnover in the preceding financial year did not exceed fifty lakh rupees, may opt to pay, in lieu of the tax payable by him under sub-section (1) of section 9, an amount of tax calculated at such rate as may be prescribed, but not exceeding three per cent of the turnover in State or turnover in Union territory, if **he is not-**

- (a) engaged in making any supply of goods or services which are not leviable to tax under this Act;
- (b) engaged in making any inter-State outward supplies of goods or services;
- (c) engaged in making any supply of goods or services through an electronic commerce operator who is required to collect tax at source under section 52;
- (d) a manufacturer of such goods or supplier of such services as may be notified by the Government on the recommendations of the Council; and
- (e) a casual taxable person or a non-resident taxable person

Sec.10(3)

The option availed of by a registered person under sub-section (1) [or sub-section (2A), as the case may be,] shall **lapse with effect from the day on which his aggregate turnover during a financial year exceeds the limit specified under sub-section (1)** [or sub-section (2A), as the case may be]

Sec.10(4)

A taxable person to whom the provisions of sub-section (1) [or, as the case may be, sub-section (2A)] apply **shall not collect any tax from the recipient on supplies made by him nor shall he be entitled to any credit of input tax.**

Sec.10(5)

If the proper officer has **reasons to believe** that a taxable person has paid tax under sub-section (1) [or sub-section (2A), as the case may be,] despite not being eligible, such person shall, in addition to any tax that may be payable by him under any other provisions of this Act, **be liable to a penalty and the provisions of section 73 or section 74 shall, mutatis mutandis, apply for determination of tax and penalty.**

Capping of Late fee for delay in filing GSTR 4

Not. 21/2021-CT dated 01.06.2021

Late fees for delay in furnishing **FORM GSTR 4 by composition taxpayers** to be capped to:

Category of taxpayers	Late fee
Taxpayers having NIL amount of Tax Payable	INR 500/- (INR 250- each for CGST & SGST) per return
Other taxpayers	INR 2000/- (INR 1000- each for CGST & SGST) per return

Issue

Whether exclusion of small scale manufacturers of ice-cream from benefit of section 10(1) is correct?

Del Small Ice Cream Manufacturers Welfare's Association (Reg.) v. Union of India [2021] 126 taxmann.com 60 (Delhi)

Facts

- GST Council in its Seventeenth meeting held on 18-6-2017, in exercise of powers under section 10(2)(e), recommended for exclusion of ice-cream from benefits of Composition Scheme under section 10(1).
- Assessee contended before High Court that said exclusion was in violation of spirit of articles 14 and 19 of Constitution of India and against principles of natural justice
- It further contended that ice-cream comprised of a large number of other components which were assessable to GST and thus reasoning emanating from minutes of impugned meeting of GST Council for excluding ice-cream from benefit of section 10(1) was fallacious.

Held

GST Council was directed to reconsider exclusion of small scale manufacturers of ice-cream from benefit of section 10(1), including on two parameters, i.e., component used in ice-cream and GST payable thereon and other similar goods having similar tax effect continuing to enjoy benefit .

It was decided in favour of assessee.

Issue

Whether Turnover in VAT regime is to be excluded while computing tax liability in terms of section 10?

**Godway Furnicrafts v. State of Andhra Pradesh
[2021] 128 taxmann.com 345 (Andhra Pradesh)**

Facts

- Petitioner registered under GST w.e.f. 1-7-2017 opted for paying tax under composite scheme as per section 10(1) which postulates payment of 1 per cent of GST of turnover
- Petitioner's claim was rejected on ground that turnover of petitioner for 'previous year' under VAT regime was Rs. 2.09 crores

Held

Since turnover in VAT regime is to be included while computing tax liability under section 10, there was no illegality in taking into consideration previous year's turnover (under VAT regime) for purpose of extending benefits under composite scheme

Issue

Whether assessee has to pay fine for late filing of return due to delay in registration?

**Loafers Corner Café v. Union of India
[2020] 121 taxmann.com 354 (Kerala)**

Facts

- Under original registration assessee opted for payment of tax on normal basis - It applied for cancellation of its original registration on 22-5-2018 - It further applied for a new registration on 19-6-2018 and opted Composition Scheme for payment of tax
- New registration sought for was allotted to assessee subsequently.
- During period between date of application for new registration and grant of same consequent to cancellation of earlier registration returns filed by assessee under Composition Scheme could not be uploaded into system, since system recognised only earlier registration which was not under Composition Scheme.
- Assessee filed writ petition seeking a direction to GST Authorities to make necessary changes in portal so as to enable it to file returns for period from October, 2018 to March, 2020 without charging any late fee or other charges for delayed uploading.

Held

- **GST Authorities took time to process applications of assessee and pass orders thereon approving cancellation application as also granting new registration could not be a reason to treat interim period as one in which assessee could not get benefit of Composition Scheme which it had opted through application for new registration**
- **GST Authorities were to be directed to make necessary changes in portal so as to enable assessee to file returns for period aforementioned without charging any late fee or other charges**

A horizontal orange scroll graphic with rounded corners and a vertical strip on the left side, resembling a rolled-up document. The text "RULE 43" is centered on the scroll.

RULE 43

	Integrated Tax				
Capital Goods	Input Tax Credit (As per Invoice)	Usage	Date of Purchase	Date of Shifting	
No.1	700000	Used Exclusively for Taxable supply	January, 2020	-	
No.2	200000	Used Exclusively for Exempt Supply	January, 2020	-	
No. 3	400000	Commonly used	January, 2020	-	
No. 4	480000	1stly used for taxable supply then common	May, 2018	January, 2020	Full Credit of Rs. 480000 would have already availed in May,2018
No. 5	600000	1stly used for Exempt supply then common	July,2019	January, 2020	No credit wud have been availed in July, 2019
Exempt Sales for Jan, 2020	4 crores				
Total Sales for Jan, 2020	10 crores				
For the Month of January,2020					
No. 1	Full Credit	700000	Rule 43(1)(b)		
No. 2	Credit	0	Rule 43(1)(a)		
No. 3	Credit	400000	Rule 43(1)©	Common Use	
No. 4	Credit	0	Already Availed	Now Common Use	Shift from (b) to ©
No. 5	Credit	600000		Now Common Use	Shift from (a) to ©
Amount to be added in ECL in Jan, 2020		1700000			

Reversal Calculation

Tie on CG No. 5 @5% per Quarter	Rule 43(1)© Proviso	60000	600000*.05*2	(Amendment)	
Rule 43(1)© Common Credit					
No. 3	A	400000			
No. 4	A	480000			
No. 5	A	600000		(Amendment)	
Rule 43(1)(d)	Tc	1480000	Only those Assets to be taken whose life remains during Tax Period		
Rule 43(1)€	Tm=Tc/60	24666.67			
Rule 43(1)(g)	Te=Tm*E/F	9866.667	Reversal of Credit on Capital Goods owing to Common Usage		
Amount to be Reversed in January, 2020		69866.67			
In the Month of Feb, 2020					
No. 6	200000	Commonly used	February, 2020		
Amount to be added in ECL in Feb, 2020	200000				

Reversal Calculation			
Tie on CG No. 5 @5% per Quarter		0	
Rule 43(1)© Common Credit			
No. 3	A	400000	
No. 4	A	480000	
No. 5	A	600000	
No. 6	A	200000	
		1680000	
Rule 43(1)€	$T_m = T_c / 60$	28000	
Rule 43(1)(g)	$T_e = T_m * E / F$	11200	Reversal of Credit on Capital Goods owing to Common Usage
			(Assuming Same Sales this month)
Amount to be Reversed in Feb, 2020		11200	



Circular No.177/02/2022

Clarifications regarding applicable GST rates & exemptions on certain services

16 ISSUES DISCUSSED IN THIS CIRCULAR ARE AS FOLLOWS :

1. Rate of GST applicable on supply of **ice-cream by ice-cream parlors** during the period from 01.07.2017 to 05.10.2021;
2. Applicability of GST on application **fee charged for entrance or the fee charged for issuance of eligibility certificate** for admission or for issuance of migration certificate by educational institutions;
3. Whether **storage or warehousing of cotton in baled or ginned form** is covered under entry 24B of Notification No. 12/2017-Central Tax (Rate) which exempted services by way of storage and warehousing of raw vegetable fibres such as cotton before 18.07.2022;
4. Whether **exemption under Sl. No. 9B of notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 covers services associated with transit cargo both to and from Nepal and Bhutan;**
5. Applicability of GST on **sanitation and conservancy services supplied to Army** and other Central and State Government departments;
6. Whether the **activity of selling of space for advertisement in souvenirs** is eligible for concessional rate of 5%;
7. Taxability and applicable rate of GST on transport of minerals from mining pit head to railway siding, beneficiation plant etc., by vehicles deployed with driver for a specific duration of time;

8. Whether location charges or preferential location charges (PLC) collected in addition to the lease premium for long term lease of land constitute part of the lease premium or upfront amount charged for long term lease of land and are eligible for the same tax treatment;
9. Applicability of GST on payment of honorarium to the Guest Anchors;
10. Whether the additional toll fees collected in the form of higher toll charges from vehicles not having fastag is exempt from GST;
11. Applicability of GST on services in the form of Assisted Reproductive Technology (ART)/ In vitro fertilization (IVF);
12. Whether sale of land after levelling, laying down of drainage lines etc., is taxable under GST;
13. Situations in which corporate recipients are liable to pay GST on renting of motor vehicles designed to carry passengers;
14. Whether hiring of vehicles by firms for transportation of their employees to and from work is exempt under Sr. No. 15(b) of Notification No. 12/2017-Central Tax (Rate) transport of passengers by non-air conditioned contract carriage;
15. Whether supply of service of construction, supply, installation and commissioning of dairy plant on turn-key basis constitutes a composite supply of works contract service and is eligible for concessional rate of GST prior to 18.07.2022;
16. Applicability of GST on tickets of private ferry used for passenger transportation.

1.

Rate of GST applicable on supply of ice-cream by ice-cream parlors during the period from 01.07.2017 to 05.10.2021

1) On the recommendation of the GST Council in its 45th meeting, it was clarified vide circular 164/20/2021-GST dated 06.10.2021 that ice cream parlours sell already manufactured ice-cream and **they do not have a character of a restaurant and hence, ice cream sold by a parlour or any similar outlet attracts standard rate of GST @ 18% with ITC.**

2) Representations have been received requesting that GST at 18% may be levied on supply of ice-cream by ice-cream parlors with effect from 06.10.2021

3) It has been represented that **ice cream parlors which paid GST @ 5% without ITC in view of prevailing doubt before the issuance of the Circular dated 6.10.2021 did not avail ITC and paid 5% in cash.** Such ice-cream parlors have thus foregone significant ITC benefit.

4) Considering the overall circumstances of the case, it is clarified that past cases of payment of GST on supply of ice-cream by ice-cream parlors @ 5% without ITC shall be treated as fully GST paid to avoid unnecessary litigation. Since the decision is only to regularize the past practice, no refund of GST shall be allowed, if already paid at 18%. With effect from 6.10.2021, **the ice Cream parlors are required to pay GST on supply of ice-cream at the rate of 18% with ITC.**

2.

Applicability of GST on application fee charged for entrance or the fee charged for issuance of eligibility certificate for admission or for issuance of migration certificate by educational institutions

1) Representations have been received regarding applicability of GST on application fee charged for entrance or the fee charged for issuance of eligibility certificate for admission or for issuance of migration certificate by educational institutions.

3) Therefore, it can be seen that **all services supplied by an 'educational institution' to its students are exempt from GST.**

Consideration charged by the educational institutes by way of entrance fee for conduct of entrance examination is also exempt.

The exemption is wide enough to cover the amount or fee charged for admission or entrance, or amount charged for application fee for entrance, or the fee charged from prospective students for issuance of eligibility certificate to them in the process of their entrance/admission to the educational institution. **Services supplied by an educational institution by way of issuance of migration certificate to the leaving or ex-students are also covered by the exemption. Accordingly, such activities of educational institution are also exempt.**

2) In this regard, it is stated that **educational services supplied by educational institutions to its students are exempt from GST vide entry 66 of the notification No. 12/2017 Central Tax (Rate)** dated 28.06.2017 relevant portion of which reads as under-

“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;]...”

4) Accordingly, it is clarified that the amount or fee charged from prospective students for entrance or admission, or for issuance of eligibility certificate to them in the process of their entrance/admission as well as the fee charged for issuance of migration certificates by educational institutions to the leaving or ex-students is **covered by exemption under Sl. No. 66 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017.**

3.

Whether storage or warehousing of cotton in baled or ginned form is covered under entry 24B of Notification No. 12/2017-Central Tax (Rate) which exempted services by way of storage and warehousing of raw vegetable fibres such as cotton before 18.07.2022.

1) Representations have been received regarding applicability of GST exemption on the service of storage or warehousing of cotton in baled or ginned form.

2) Prior to 18.07.2022, entry 24 B of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 exempted services by way of storage and warehousing of, inter alia, raw vegetable fibers such as cotton, flax, jute etc.

Cotton Fiber glossary by barnhardtcotton.net defines 'cotton staple, virgin cotton or raw cotton' as cotton fibers that are removed from the cotton seed by the gin.

Further, CESTAT Chandigarh in the case of R.K.& Sons vs CCE, Rohtak dated 14th July 2016 has observed as under:

"Cotton (with seeds) as plucked from cotton plants can hardly be called cotton fibre in which case cotton fibre would come into existence only after the seeds are ginned away from cotton plucked from cotton plants. Cotton fibre obtained by ginning cotton plucked cotton plants is nothing but raw cotton fibre because there cannot be rawer form of cotton fibre obtained from cotton-with-seeds plucked from cotton plants."

3) Accordingly, it is clarified that service by way of storage or warehousing of cotton in ginned and or baled form **was covered under entry 24B of notification No. 12/2017- Central Tax (Rate)** dated 28.06.2017 in the category of raw vegetable fibres such as cotton. It may however be noted that this exemption has been withdrawn w.e.f 18.07.2022

4.

Whether exemption under Sl. No. 9B of notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 covers services associated with transit cargo both to and from Nepal and Bhutan

1) Representations have been received regarding applicability of GST on transportation of empty containers returning from Nepal and Bhutan after delivery of transit cargo, to India.

3) Accordingly, as recommended by the GST Council, it is clarified **that exemption under Sl. No. 9B of Notification 12/2017- Central Tax (Rate) covers services associated with transit cargo both to and from Nepal and Bhutan.**

4) It is also **clarified that movement of empty containers from Nepal and Bhutan, after delivery of goods there, is a service associated with the transit cargo to Nepal and Bhutan and is therefore covered by the exemption**

2) **GST on supply of services associated with transit cargo to Nepal and Bhutan was exempted w.e.f 29.09.2017** based on recommendations of the 20th GST Council Meeting. The opening sentence of the Agenda Item 7(ix) placed before the GST Council on this issue, **makes it clear that the proposal was to exempt supply of services associated with transit cargo both to and from Nepal and Bhutan.**

5) Needless to say that the cargo has to be transshipped / transited to Nepal and Bhutan, as per Regulations under the Customs Act read with the Treaties for Trade & Transit with Nepal & Bhutan.

Under the regulations/procedures, the container number, which is a unique alpha numeric identifier for the container, is declared. Further, the Customs broker / shipping line / carrier is responsible for making available a track and trace facility for locating goods brought for transshipment.

4.

Applicability of GST on application fee charged for entrance or the fee charged for issuance of eligibility certificate for admission or for issuance of migration certificate by educational institutions

6) With respect to transit or transshipment of cargo to Nepal, specific regulations namely Transshipment of Cargo to Nepal under Electronic Cargo Tracking System Regulations, 2019 have been notified.

It is relevant to mention here that as per these regulations also, the authorized carrier has to execute a general bond for an amount as directed by the proper officer. The authorized carrier also has to procure ECTS (Electronic Cargo Tracking System) from a bi-laterally appointed managed service provider. In order to discharge the bond, the proper officer of customs has to extract trip reports from the ECTS web application as proof of completion of transshipment. The reconciliation of transshipment of consignments shall be carried out on the basis of trip report, by the proper officer at the Ports of Kolkata, Haldia or Visakhapatnam, as the case may be, and then only the general bond submitted by the authorised carrier will be re-credited or discharged.

7) As can be seen from the above, the regulations governing transit / transshipment have to be followed in addition to the ensuring that an electronic track and trace facility is in place. This facility uses container numbers to locate the cargo. Thus, it is verifiable that the empty container returning from Nepal or Bhutan is the same container which was used to deliver goods to Nepal or Bhutan.

5.

Applicability of GST on sanitation and conservancy services supplied to Army and other Central and State Government departments;

1) Municipalities and Panchayats and other local authorities such as Cantonment Boards listed in Section 2(69) of the Central Goods and Services Tax act, 2017 carry out functions entrusted to them under articles 243W & 243G of the Constitution respectively. Functions that may be entrusted to panchayats and municipalities are listed in Schedule 11 & 12 of the Constitution. Central Government, State Governments & Union Territories also perform functions listed in Schedule 11 & 12 such as irrigation, public health etc.

2) The exemption under entry 3& 3A of notification 12/2017-Central Tax (Rate) dated 28.06.2017 has been given on pure services & composite supplies procured by Central Government, State Government, Union Territories or local authorities for performing functions listed in the 11th and 12th schedule of the constitution.

3) Services by Central Government, State Government, Union Territory or any local authority by way of any activity in relation to a function entrusted to a Panchayat under article 243G of the constitution or to a municipality under article 243W of the constitution have been declared as 'neither a supply of goods nor a supply of service' vide notification no. 14/2017- Central Tax (Rate) dated 28.06.2017.

4) It is clarified that if **such services are procured by Indian Army or any other Government Ministry/Department which does not perform any functions listed in the 11th and 12th Schedule, in the manner as a local authority does for the general public, the same are not eligible for exemption under Sl. No. 3 and 3A of Notification 12/2017- Central Tax (Rate).**

6.

Whether the activity of selling of space for advertisement in souvenirs is eligible for concessional rate of 5%.

1) Representation has been received regarding the GST rate applicable on selling of space for advertisement in souvenirs published in the form of books by different institutions/organizations like educational institutions, social, cultural and religious organizations including clubs etc.

3) Further, sub-section (1) of section 1 of the Press and Registration of Books Act, 1867 defines 'book' as follows:

"Book" includes every volume, part or division of a volume, and pamphlet, in any language and every sheet of music, map, chart or plan separately printed.

4) It therefore appears that 'book' has been defined in the Press and Registration of Books Act, 1867 in an inclusive manner with a wide ambit which would cover souvenir book also.

2) As per serial number (i) of entry 21 of notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 selling of space for advertisement in print media attracts GST @ 5%. The term 'print media' has been defined in clause (zt) of notification No.12/2017-Central Tax (Rate) dated 28.06.2017 as under:

"print media" means, —

- i. *'book' as defined in sub-section (1) of section 1 of the Press and Registration of Books Act, 1867 (25 of 1867), but does not include business directories, yellow pages and trade catalogues which are primarily meant for commercial purposes;*
- ii.

5) Accordingly, as recommended by the GST Council, it is clarified sale of space for advertisement in souvenir book is covered under serial number (i) of entry 21 of Notification No. 11/2017-Central Tax (Rate) and attracts GST @ 5%.

7.

Taxability and applicable rate of GST on transport of minerals from mining pit head to railway siding, beneficiation plant etc., by vehicles deployed with driver for a specific duration of time.

1) Representations have been received to clarify the taxability of transport of minerals within a mining area, say from mining pit head to railway siding, beneficiation plant etc., by vehicles deployed with driver for a specific duration of time and whether the same would be covered under Sr. No. 18 of notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 which exempts transport of goods by road except by a GTA.

2) Usually in such cases the vehicles such as tippers, dumpers, loader, trucks etc., are given on hire to the mining lease operator. Expenses for fuel are generally borne by the recipient of service. The vehicles with driver are at the disposal of the mining lease operator for transport of minerals within the mine area (mining pit to railway siding, beneficiation plant etc.) as per his requirement during the period of contract.

3) Such services are nothing but “rental services of transport vehicles with operator” which fall under heading 9966 and attract GST @ 18% under Sr. No. 10 part (iii) of notification No. 11/2017- Central Tax (Rate) dated 28.06.2017.

The person who takes the vehicle on rent defines how and when the vehicles will be operated, determines schedules, routes and other operational considerations. **The person who gives the vehicles on rent with operator can not be said to be supplying the service by way of transport of goods.**

4) Accordingly, as recommended by the GST Council, it is clarified that such renting of trucks and other freight vehicles with driver for a period of time is a service of renting of transport vehicles with operator falling under Heading 9966 and not service of transportation of goods by road.

This being so, it is not eligible for exemption under Sl. No. 18 of notification No. 12/2017- Central Tax (Rate) dated 28.06.2017. On such rental services of goods carriages where the cost of fuel is included in the consideration charged from the recipient of service, GST rate has been reduced from 18% to 12% with effect from 18.07.2022. Prior to 18.07.2022, it attracted GST at the rate of 18%.

8.

Whether location charges or preferential location charges (PLC) collected in addition to the lease premium for long term lease of land constitute part of the lease premium or of upfront amount charged for long term lease of land and are eligible for the same tax treatment;

1) As per entry 41 of the notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 upfront amount, which is defined as

“upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable in respect of service by way of granting of long term lease (of thirty years, or more) of industrial plots or plots for development of infrastructure for financial business, provided by the State Government Industrial Development Corporations or Undertakings or by any other entity having 20 per cent or more ownership of Central Government, State Government, Union territory to the industrial units or the developers in any industrial or financial business area”, is exempt from GST

2) Allowing choice of location of plot is integral part of supply of long-term lease of plot and therefore, location charge is nothing but part of consideration charged for long term lease of plot. Being charged upfront along with the upfront amount for the lease, the same is exempt.

3) Accordingly, as per recommendation of the GST Council, it is clarified that location charges or preferential location charges (PLC) paid upfront in addition to the lease premium for long term lease of land constitute part of upfront amount charged for long term lease of land and are eligible for the same tax treatment, and thus eligible for exemption under Sl. No. 41 of notification no. 12/2017- Central Tax (Rate) dated 28.06.2017.

9. Applicability of GST on payment of honorarium to the Guest Anchors

Representation has been received regarding applicability of GST on honorarium paid to Guest Anchors.

Sansad TV and other TV channels invite guest anchors for participating in their shows and pays remuneration to them in the form of honorarium.

Some of the guest anchors have requested payment of GST @ 18% on the honorarium paid to them for such appearances.

It is clarified that **supply of all goods & services are taxable unless exempt or declared as 'neither a supply of goods nor a supply of service'**.

Services provided by the guest anchors in lieu of honorarium attract GST liability. However, guest anchors whose aggregate turnover in a financial year does not exceed Rs 20 lakhs (Rs 10 lakhs in case of special category states) shall not be liable to take registration and pay GST.

10.

Whether the additional toll fees collected in the form of higher toll charges from vehicles not having fastag is exempt from GST

Representation has been received regarding taxability of additional toll fees collected by the Concessionaires from the vehicles which is not having Fastag.

Entry 23 of notification No.12/2017-Central Tax (Rate) dated 28th June, 2017 exempts service by way of access to a road or a bridge on payment of toll charges.

Ministry of Road Transport & Highways (MORTH) vide circular dated 16.02.2021 has directed to collect **additional amount from the users of the road to the extent of two times of the fees applicable to that category of vehicle which is not having a valid functional Fastag.**

Essentially, **the additional amount collected from the users of the road not having a functional Fastag, is in the nature of Toll Charges and should be treated as additional toll charges.**

On a similar issue of collection of overloading charges in the form of a higher toll (2/4/6/7 times of the base rate of toll), it has already been clarified vide circular number 164/20/2021-GST dated 06.10.2021, which was issued on the basis of recommendation of GST Council that **overloading charges at toll 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.**

11.

Applicability of GST on services in form of Assisted Reproductive Technology (ART)/ In vitro fertilization (IVF)

Health care services provided by a clinical establishment, an authorized medical practitioner or para-medics are exempt. [Sl. No. 74 of notification No. 12/2017- Central Tax (Rate) dated 28.06. 2017].

The abnormality/disease/ailment of infertility is treated using ART procedure such as IVF.

It is clarified that services by way of IVF are also covered under the definition of health care services for the purpose of above exemption notification.

Health care services is defined vide 2(zg) of the notification No. 12/2017- Central Tax (Rate) dated 28.06. 2017 as –

“health care services” means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India and includes services by way of transportation of the patient to and from a clinical establishment, but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma.”

12.

Whether sale of land after levelling, laying down of drainage lines etc., is taxable under GST

As per Sl no. (5) of Schedule III of the Central Goods and Services Tax Act, 2017, **'sale of land' is neither a supply of goods nor a supply of services, therefore, sale of land does not attract GST.**

Land may be sold either as it is or after some development such as levelling, laying down of drainage lines, water lines, electricity lines, etc.

It is clarified that sale of such developed land is also sale of land and is covered by Sr. No. 5 of Schedule III of the Central Goods and Services Tax Act, 2017 and accordingly does not attract GST.

However, it may be noted that **any service provided for development of land, like levelling, laying of drainage lines (as may be received by developers) shall attract GST at applicable rate for such services.**

13.

Situations in which corporate recipients are liable to pay GST on renting of motor vehicles designed to carry passengers

In case of **services provided by a non-body corporate to a body corporate by way of renting of any motor vehicle for transport of passengers**, tax is required to be paid by the body corporate under RCM.

Representations have been received to clarify **whether RCM is applicable on service of transportation of passengers (Heading 9964) or on renting of motor vehicle designed to carry passengers (Heading 9966).**

Renting of motor vehicle with operator for transport of passengers falls under Heading 9966. According to the explanatory notes to heading 9966, **the service covered here is renting of motor vehicle for transport of passengers for a period of time where the renter defines how and when the vehicles will be operated, determining schedules, routes and other operational considerations.** ₂

'Passenger transport services' on the other hand fall under Heading 9964. According to the explanatory notes Heading 9964 covers passenger transport services over pre-determined routes on pre-determined schedules.

Therefore, a clear distinction exists in service of transport of passengers and renting of a vehicle that is used for transport.

Accordingly, as recommended by the GST Council, it is clarified that where the body corporate hires the motor vehicle (for transport of employees etc.) for a period of time, during which the motor vehicle shall be at the disposal of the body corporate, the service would fall under Heading 9966, and the body corporate shall be liable to pay GST on the same under RCM.

It may be seen that reverse charge thus would apply on act of renting of vehicles by body corporate and in such a case, it is for the body corporate to use in the manner as it likes subject to agreement with the person providing vehicle on rent.

However, **where the body corporate avails the passenger transport service for specific journeys or voyages and does not take vehicle on rent for any particular period of time, the service would fall under Heading 9964 and the body corporate shall not be liable to pay GST on the same under RCM.**

14.

Whether hiring of vehicles by firms for transportation of their employees to and from work is exempt under Sr. No. 15(b) of Notification No. 12/2017-Central Tax (Rate) transport of passengers by non-air conditioned contract carriage

1) Representations have been received to clarify whether the engagement of non-air conditioned contract carriages by firms for transportation of their employees to and from work is **exempt under entry at Sr. No. 15(b) of notification No. 12/2017-Central Tax (Rate) dated 28.06.2017.**

2) It is clarified that **'charter or hire' excluded from the above exemption entry is charter or hire of a motor vehicle for a period of time, where the renter defines how and when the vehicles will be operated, determining schedules, routes and other operational considerations.**

3) **Sr. No. 15 (b) of notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 exempts**

"transport of passengers, with or without accompanied belongings, by non-air conditioned contract carriage, other than radio taxi, for transport of passengers, excluding tourism, conducted tour, charter or hire."

4) In other words, the said exemption would apply to passenger transportation services by non-air conditioned contract carriages falling under Heading 9964 where according to explanatory notes, transportation takes place over pre-determined route on a pre-determined schedule. **The exemption shall not be applicable where contract carriage is hired for a period of time, during which the contract carriage is at the disposal of the service recipient and the recipient is thus free to decide the manner of usage (route and schedule) subject to conditions of agreement entered into with the service provider.**

15.

Whether supply of service of construction, supply, installation and commissioning of dairy plant on turn-key basis constitutes a composite supply of works contract service and is eligible for concessional rate of GST prior to 18.07.2022.

1) In case of a turn key project for construction, supply, installation and commissioning of a 2.00 LLPD dairy plant, it has been held by Advance Ruling Authorities of Bihar and Gujarat that the same does not result into an immovable property and is therefore not a supply of works contract.

This being so, **such supply is not eligible for concessional rate of 12% applicable on works contract supplied by way of construction, erection, commissioning, or installation of original works pertaining to mechanized food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages.**

2) In this regard, it may be seen that prior to 18.07.2022, serial number 3(v)(f) of notification no. 11/2017 Central Tax (Rate) dated 28.06.2017 prescribes GST rate of 12 % on the composite supply of works contract by way of construction, erection, commissioning, or installation of original works pertaining to *mechanized food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages*

3) It is clarified that a **contract of the nature described here for construction, installation and commissioning of a dairy plant constitutes supply of works contract. There is no doubt that dairy plant which comes into existence as a result of such contracts is an immovable property.**

4) It is also clarified that such **works contract services were eligible for concessional rate of 12% GST under serial number 3(v)(f) of notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 prior to 18.07.2022. With effect from 18.07.2022, such works contract services would attract GST at the rate of 18% in view of amendment carried out in notification No. 11/2017- Central Tax (Rate) vide notification No. 03/2022- Central Tax (Rate).**

16.

Applicability of GST on tickets of private ferry used for passenger transportation.

1) Representations have been received seeking clarification on applicability of GST on private ferry tickets. It has been stated that these private ferries are used as means of transport from one island to another in Andaman and Nicobar Islands.

3) It is clarified that this exemption would apply to tickets purchased for transportation from one point to another irrespective of whether the ferry is owned or operated by a private sector enterprise or by a PSU/government.

2) As per Sl. No 17 (d) of notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 "*transportation of passengers by public transport, other than predominantly for tourism purpose, in a vessel between places located in India*" is exempted.

4) It is further clarified that, the expression 'public transport' used in the exemption notification only means that the transport should be open to public. It can be privately or publicly owned. **Only exclusion is on transportation which is predominantly for tourism, such as services which may combine with transportation, sightseeing, food and beverages, music, accommodation such as in shikara, cruise etc.**



Circular No.178/02/2022

GST applicability on liquidated damages, compensation and penalty arising out of breach of contract or other provisions of law

1.

In certain cases/instances, questions have been raised regarding **taxability of an activity or transaction as the supply of service of agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act.**

- **Applicability of GST on payments in the nature of liquidated damage, compensation, penalty, cancellation charges, late payment surcharge etc. arising out of breach of contract or otherwise and**
- **Scope of the entry at para 5 (e) of Schedule II of Central Goods and Services Tax Act, 2017 (hereinafter referred to as, "CGST Act") in this context has been examined in the following paragraphs of this circular.**

2.

“Agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act” has been specifically declared to be a supply of service in para 5 (e) of Schedule II of CGST Act if the same constitutes a “supply” within the meaning of the Act.

The said expression has following three limbs: -

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

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

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

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

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

c. Agreeing to the obligation to do an act-

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

3.

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

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

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

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

4.

In Service Tax law, **'Service'** was defined as any activity carried out by a person for another for consideration. As discussed in service tax education guide, the concept **'activity for a consideration'** involves an element of contractual relationship wherein the person doing an activity does so at the desire of the person for whom the activity is done in exchange for a **consideration**. An activity done without such a relationship i.e., without the express or implied contractual reciprocity of a consideration would not be an **'activity for consideration'**. The element of contractual relationship, where one supplies goods or services at the desire of another, is an essential element of supply.

5.

The description of the declared service in question, namely, agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act in para 5 (e) of Schedule II of CGST Act is strikingly similar to the definition of contract in the Contract Act, 1872.

The Contract Act defines **'Contract'** as a set of promises, forming consideration for each other. **'Promise'** has been defined as willingness of the **'promisor'** to do or to abstain from doing anything. **'Consideration'** has been defined in the Contract Act as what the **'promisee'** does or abstains from doing for the promises made to him.

6.

This goes to show that the service of agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act is nothing but a contractual agreement.

A contract to do something or to abstain from doing something cannot be said to have taken place unless there are two parties, one of which expressly or impliedly agrees to do or abstain from doing something and the other agrees to pay consideration to the first party for doing or abstaining from such an act. There must be a necessary and sufficient nexus between the supply (i.e. agreement to do or to abstain from doing something) and the consideration.

6.1 A perusal of the entry at serial 5(e) of Schedule II would reveal that it comprises the aforementioned three different sets of activities viz.

- (a) the obligation to refrain from an act,
- (b) obligation to tolerate an act or a situation and
- (c) obligation to do an act. All the three activities must be under an “agreement” or a “contract” (whether express or implied) to fall within the ambit of the said entry.

In other words, one of the parties to such agreement/contract (the first party) must be under a contractual obligation to either

- (a) refrain from an act, or
- (b) to tolerate an act or a situation or
- (c) to do an act.

Further some “consideration” must flow in return from the other party to this contract/agreement (the second party) to the first party for such (a) refraining or (b) tolerating or (c) doing. Such contractual arrangement must be an independent arrangement in its own right. Such arrangement or agreement can take the form of an independent stand- alone contract or may form part of another contract. Thus, a person (the first person) can be said to be making a supply by way of refraining from doing something or tolerating some act or situation to another person (the second person) if the first person was under an obligation to do so and then performed accordingly.

Agreement to do or refrain from an act should not be presumed to exist

7.

There has to be an express or implied agreement; oral or written, to do or abstain from doing something against payment of consideration for doing or abstaining from such act, for a taxable supply to exist.

An agreement to do an act or abstain from doing an act or to tolerate an act or a situation cannot be imagined or presumed to exist just because there is a flow of money from one party to another. Unless there is an express or implied promise by the recipient of money to agree to do or abstain from doing something in return for the money paid to him, it cannot be assumed that such payment was for doing an act or for refraining from an act or for tolerating an act or situation.

Payments such as liquidated damages for breach of contract, penalties under the mining act for excess stock found with the mining company, forfeiture of salary or payment of amount as per the employment bond for leaving the employment before the minimum agreed period, penalty for cheque dishonour etc. are not a consideration for tolerating an act or situation. They are rather amounts recovered for not tolerating an act or situation and to deter such acts; such amounts are for preventing breach of contract or non-performance and are thus mere 'events' in a contract.

Further, such amounts do not constitute payment (or consideration) for tolerating an act, because there cannot be any contract:

- (a) for breach thereof, or
- (b) for holding more stock than permitted under the mining contract, or
- (c) for leaving the employment before the agreed minimum period or
- (d) for doing something leading to the dishonour of a cheque.

As has already been stated, unless payment has been made for an independent activity of tolerating an act under an independent arrangement entered into for such activity of tolerating an act, , such payments will not constitute 'consideration' and hence such activities will not constitute "supply" within the meaning of the Act.

Taxability of these transactions is discussed in greater detail in the following paragraphs.

7.1

Liquidated Damages

Breach or non-performance of contract by one party results in loss and damages to the other party.

Therefore, the law provides in Section 73 of the Contract Act, 1972 that when a contract has been broken, the party which suffers by such breach is entitled to receive from the other party compensation for any loss or damage caused to him by such breach. The compensation is not by way of consideration for any other independent activity; it is just an event in the course of performance of that contract.

7.1.1 It is common for the parties entering into a contract, to specify in the contract itself, the compensation that would be payable in the event of the breach of the contract. Such compensation specified in a written contract for breach of non-performance of the contract or parties of the contract is referred to as liquidated damages. Black's Law Dictionary defines 'Liquidated Damages' as *cash compensation agreed to by a signed, written contract for breach of contract, payable to the aggrieved party.*

7.1.2 Section 74 of the Contract Act, 1972 provides that when a contract is broken, if a sum has been named or a penalty stipulated in the contract as the amount or penalty to be paid in case of breach, the aggrieved party shall be entitled to receive reasonable compensation not exceeding the amount so named or the penalty so stipulated

7.1.3 It is argued that performance is the essence of a contract. Liquidated damages cannot be said to be a consideration received for tolerating the breach or non-performance of contract. They are rather payments for not tolerating the breach of contract. Payment of liquidated damages is stipulated in a contract to ensure performance and to deter non-performance, unsatisfactory performance or delayed performance. Liquidated damages are a measure of loss and damage that the parties agree would arise due to breach of contract. They do not act as a remedy for the breach of contract. They do not reconstitute the aggrieved person. It is further argued that a contract is entered into for execution and not for its breach. The liquidated damages or penalty are not the desired outcome of the contract. By accepting the liquidated damages, the party aggrieved by breach of contract cannot be said to have permitted or tolerated the deviation or non-fulfilment of the promise by the other party.

7.1.4 In this background a reasonable view that can be taken with regard to taxability of liquidated damages is that where the amount paid as 'liquidated damages' is an amount paid only to compensate for injury, loss or damage suffered by the aggrieved party due to breach of the contract and there is no agreement, express or implied, by the aggrieved party receiving the liquidated damages, to refrain from or tolerate an act or to do anything for the party paying the liquidated damages, in such cases liquidated damages are mere a flow of money from the party who causes breach of the contract to the party who suffers loss or damage due to such breach. Such payments do not constitute consideration for a supply and are not taxable.

7.1.5

- **Examples of such cases are damages resulting from damage to property, negligence, piracy, unauthorized use of trade name, copyright, etc.**
- Other examples that may be covered here are the penalty stipulated in a contract for delayed construction of houses.
- It is a penalty paid by the builder to the buyers to compensate them for the loss that they suffer due to such delayed construction and not for getting anything in return from the buyers. Similarly, forfeiture of earnest money by a seller in case of breach of 'an agreement to sell' an immovable property by the buyer or by Government or local authority in the event of a successful bidder failing to act after winning the bid, for allotment of natural resources, is a mere flow of money, as the buyer or the successful bidder does not get anything in return for such forfeiture of earnest money. Forfeiture of Earnest money is stipulated in such cases not as a consideration for tolerating the breach of contract but as a compensation for the losses suffered and as a penalty for discouraging the non-serious buyers or bidders.
- **Such payments being merely flow of money are not a consideration for any supply and are not taxable. The key in such cases is to consider whether the impugned payments constitute consideration for another independent contract envisaging tolerating an act or situation or refraining from doing any act or situation or simply doing an act. If the answer is yes, then it constitutes a 'supply' within the meaning of the Act, otherwise it is not a "supply".**

7.1.6

- **If a payment constitutes a consideration for a supply, then it is taxable irrespective of by what name it is called; it must be remembered that a “consideration” cannot be considered de hors an agreement/contract between two persons wherein one person does something for another and that other pays the first in return.**
- If the payment is merely an event in the course of the performance of the agreement and it does not represent the ‘object’, as such, of the contract then it cannot be considered ‘consideration’. For example, a contract may provide that payment by the recipient of goods or services shall be made before a certain date and failure to make payment by the due date shall attract late fee or penalty. A contract for transport of passengers may stipulate that the ticket amount shall be partly or wholly forfeited if the passenger does not show up.
- A contract for package tour may stipulate forfeiture of security deposit in the event of cancellation of tour by the customer. Similarly, a contract for lease of movable or immovable property may stipulate that the lessee shall not terminate the lease before a certain period and if he does so he will have to pay certain amount as early termination fee or penalty. Some banks similarly charge pre- payment penalty if the borrower wishes to repay the loan before the maturity of the loan period.
- Such amounts paid for acceptance of late payment, early termination of lease or for pre-payment of loan or the amounts forfeited on cancellation of service by the customer as contemplated by the contract as part of commercial terms agreed to by the parties, constitute consideration for the supply of a facility, namely, of acceptance of late payment, early termination of a lease agreement, of pre-payment of loan and of making arrangements for the intended supply by the tour operator respectively.
- **Therefore, such payments, even though they may be referred to as fine or penalty, are actually payments that amount to consideration for supply, and are subject to GST, in cases where such supply is taxable. Since these supplies are ancillary to the principal supply for which the contract is signed, they shall be eligible to be assessed as the principal supply, as discussed in detail in the later paragraphs. Naturally, such payments will not be taxable if the principal supply is exempt.**

Compensation for cancellation of coal blocks

In the year 2014, coal block/mine allocations were cancelled by the Hon'ble Supreme Court vide order dated 24.09.2014. Subsequently, Coal Mines (Special Provisions) Act, 2015 was enacted to provide for allocation of coal mines and vesting of rights, title and interest in and over the land and mines infrastructure together with mining leases to successful bidders and allottees. In accordance with section 16 of the said Act, prior (old) allottee of mines were given compensation in the year 2016 towards the transfer of their rights/ titles in the land, mine infrastructure, geological reports, consents, approvals etc. to the new entity (successful bidder) as per the directions of Hon'ble Supreme Court.

7.2.1

There was no agreement between the prior allottees of coal blocks and the Government that the previous allottees shall agree to or tolerate cancellation of the coal blocks allocated to them if the Government pays compensation to them. No such promise or offer was made by the prior allottees to the Government. The allottees had no option but to accept the cancellation. The compensation was given to them for such cancellation, not under a contract between the allottees and the Government, but under the provisions of the statute and in pursuance of the Supreme Court Order.

Therefore, it would be incorrect to say that the prior allottees of the coal blocks supplied a service to the Government by way of agreeing to tolerate the cancellation of the allocations made to them by the Government or that the compensation paid by the Government for such cancellation in pursuance to the order of the Supreme Court was a consideration for such service. Therefore, the compensation paid for cancellation of coal blocks pursuant to the order of the Supreme Court in the above case was not taxable.

7.3

Cheque dishonor fine/ penalty

No supplier wants a cheque given to him to be dishonoured. It entails extra administrative cost to him and disruption of his routine activities and cash flow. The promise made by any supplier of goods or services is to make supply against payment within an agreed time (including the agreed permissible time with late payment) through a valid instrument. There is never an implied or express offer or willingness on part of the supplier that he would tolerate deposit of an invalid, fake or unworthy instrument of payment against consideration in the form of cheque dishonour fine or penalty. The fine or penalty that the supplier or a banker imposes, for dishonour of a cheque, is a penalty imposed not for tolerating the act or situation but a fine, or penalty imposed for not tolerating, penalizing and thereby deterring and discouraging such an act or situation. Therefore, cheque dishonor fine or penalty is not a consideration for any service and not taxable.

7.4

Penalty imposed for violation of laws

Penalty imposed for violation of laws such as traffic violations, or for violation of pollution norms or other laws are also not consideration for any supply received and are not taxable, which are also not taxable. Same is the case with fines, penalties imposed by the mining Department of a Central or State Government or a local authority on discovering mining of excess mineral beyond the permissible limit or of mining activities in violation of the mining permit. Such penalties imposed for violation of laws cannot be regarded as consideration charged by Government or a Local Authority for tolerating violation of laws. Laws are not framed for tolerating their violation. They stipulate penalty not for tolerating violation but for not tolerating, penalizing and deterring such violations. There is no agreement between the Government and the violator specifying that violation would be allowed or permitted against payment of fine or penalty. There cannot be such an agreement as violation of law is never a lawful object or consideration. The service tax education guide issued in 2012 on advent of negative list regime of services explained that fines and penalties paid for violation of provisions of law are not considerations as no service is received in lieu of payment of such fines and penalties.

7.4.1

It was also clarified vide Circular No. 192/02/2016-Service Tax, dated 13.04.2016 that fines and penalty chargeable by Government or a local authority imposed for violation of a statute, bye-laws, rules or regulations are not leviable to Service Tax. The same holds true for GST also.

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

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

8.

Compensation for not collecting toll charges

In the wake of demonetization, NHAI directed the concessionaires (toll operators) to allow free access of toll roads to the users from 8.11.2016 to 1.12.2016 for which the loss of toll charge was paid as compensation by NHAI as per the instructions of Ministry of Road Transportation and Highways. The toll reimbursements were calculated based on the average monthly collection of toll. A question arose whether the compensation paid to the concessionaire by project authorities (NHAI) in lieu of suspension of toll collection during the demonetization period (from 8.11.2016 to 1.12.2016) was taxable as a service by way of agreeing to refrain from collection of toll from users.

8.1

It has been clarified vide Circular No. 212/2/2019-ST dated 21.05.2019 that the service that is provided by toll operators is that of access to a road or bridge, toll charges being merely a consideration for that service. During the period from 8.11.2016 to 1.12.2016, the service of access to a road or bridge continued to be provided without collection of toll from users. Consideration came from the project authority. The fact that for this period, for the same service, consideration came from a person other than the actual user of service does not mean that the service has changed.

9.

Late payment surcharge or fee

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

10.

Fixed Capacity charges for Power

The price charged for electricity by the power generating companies from the State Electricity Boards (SEBs)/DISCOMS or by SEBs/DISCOMs from individual customers has two components, namely, a minimum fixed charge (or capacity charge) and variable per unit charge. The minimum fixed charges have to be paid by the SEBs/DISCOMS/individual customers irrespective of the quantity of electricity scheduled or purchased by them during a month. They take care of the fixed cost of generating/supplying electricity. The variable charges are charged per unit of electricity purchased and increase or decrease every month depending on the quantity of electricity consumed.

10.1 The fact that the minimum fixed charges remain the same whether electricity is consumed or not or it is scheduled/consumed below the contracted or available capacity or a minimum threshold, does not mean that minimum fixed charge or part of it is a charge for tolerating the act of not scheduling or consuming the minimum the contracted or available capacity or a minimum threshold.

10.2 Both the components of the price, the minimum fixed charges/capacity charges and the variable/energy charges are charged for sale of electricity and are thus not taxable as electricity is exempt from GST. Power purchase agreements may have provisions that the power producer shall not supply electricity to a third party without approval of buyer. Such agreements which ensure assured supply of power to State Electricity Boards/DISCOMS are ancillary arrangements; the contract is essentially for supply of electricity.

11.

Cancellation charges

A supply contracted for, such as booking of hotel accommodation, an entertainment event or a journey, may be cancelled by a customer or may not proceed as intended due to his failure to show up for availing the same at the designated place and time. **The supplier may allow cancellation of supply by the customer within a certain specified time period on payment of cancellation fee as per commercial terms of the contract.** In case the customer does not show up for availing the service, the supplier may retain or forfeit part of the consideration or security deposit or earnest money paid by the customer for the intended supply.

11.1 It is a common business practice for suppliers of services such as hotel accommodation, tour and travel, transportation etc. to provide the facility of cancellation of the intended supplies within a certain time period on payment of cancellation fee.

Cancellation fee can be considered as the charges for the costs involved in making arrangements for the intended supply and the costs involved in cancellation of the supply, such as in cancellation of reserved tickets by the Indian Railways.

11.2 Services such as transportation travel and tour constitute a bundle of services. The transportation service, for instance, starts with booking of the ticket for travel and lasts at least till exit of the passenger from the destination terminal.

All services such as :

- making available an online portal or convenient booking counters with basic facilities at the transportation terminal or in the city,
- to reserve the seats and issue tickets for reserved seats much in advance of the travel,
- giving preferred seats with or without extra cost,
- lounge and waiting room facilities at airports, railway stations and bus terminals, provision of basic necessities such as soap and other toiletries in the wash rooms,
- clean drinking water in the waiting area etc.

form part and parcel of the transportation service; they constitute the various elements of passenger transportation service, a composite supply.

The facilitation service of allowing cancellation against payment of cancellation charges is also a natural part of this bundle.

It is invariably supplied by all suppliers of passenger transportation service as naturally bundled and in conjunction with the principal supply of transportation in the ordinary course of business.

11.3 Therefore, facilitation supply of allowing cancellation of an intended supply against payment of cancellation fee or retention or forfeiture of a part or whole of the consideration or security deposit in such cases should be assessed as the principal supply. **For example, cancellation charges of railway tickets for a class would attract GST at the same rate as applicable to the class of travel (i.e., 5% GST on first class or air-conditioned coach ticket and nil for other classes such as second sleeper class). Same is the case for air travel.**

11.4 Accordingly, the amount forfeited in the case of non-refundable ticket for air travel or security deposit or earnest money forfeited in case of the customer failing to avail the travel, tour operator or hotel accommodation service or such other intended supplies should be assessed at the same rate as applicable to the service contract, say air transport or tour operator service, or other such services.

11.5 However, as discussed above, forfeiture of earnest money by a seller in case of breach of 'an agreement to sell' an immovable property by the buyer or such forfeiture by Government or local authority in the event of a successful bidder failing to act after winning the bid for allotment of natural resources, is a mere flow of money, as the buyer or the successful bidder does not get anything in return for such forfeiture of earnest money.

Forfeiture of earnest money is stipulated in such cases not as a consideration for tolerating the breach of contract but as a compensation for the losses suffered and as a penalty for discouraging the non-serious buyers or bidders. Such payments being merely flow of money are not a consideration for any supply and are not taxable.



Circular No.179/02/2022

Clarification regarding GST rates & classification
(goods)

1.

Electric vehicles whether or not fitted with a battery pack, attract GST rate of 5%:

1) Representations have been received seeking clarification regarding the applicable rate of GST on electrically operated vehicle without any battery fitted to it.

2) The explanation of '**Electrically operated vehicles**' in entry 242A of Schedule I of notification No. 1/2017-Central Tax (Rate) reads as: 'Electrically operated vehicles which run solely on electrical energy derived from an external source or from one or more electrical batteries fitted to such road vehicles and shall include E-bicycles.'

3) As is evident from the explanation above, electrically operated vehicle including three wheeled electric vehicle means vehicle that runs solely on electrical energy derived from an external source or from electrical batteries. Therefore, the fitting of batteries cannot be considered as a concomitant factor for defining a vehicle as an electrically operated electric vehicle.

4) It is also pertinent to state that the WCO's HSN Explanatory notes have also not considered batteries to be a component, whose absence changes the essential character of an incomplete, unfinished or unassembled vehicle.

5) Also, the HSN explanatory notes for Chapter 87 have clearly stated that Motor Chassis fitted with cabs i.e. the chassis fitted with cabin body falls under 87.02 to 87.04 and not in heading 87.06.

6) In view of the above, it is clarified that electrically operated vehicle is to be classified under HSN 8703 even if the battery is not fitted to such vehicle at the time of supply and thereby attract GST at the rate of 5% in terms of entry 242A of Schedule I of notification No. 1/2017-Central Tax (Rate).

2.

Stones otherwise covered in S. No. 123 of Schedule-I (such as Napa stones), which are not mirror polished, are eligible for concessional rate under said entry:

1) Representations have been received seeking clarification regarding the applicable GST rates on building stones, in particular Napa Stones, which are ready to use and polished in ways other than mirror-polished

3) Therefore, it is clarified that S. No. 123 in schedule-I to the notification No. 1/2017-Central Tax (rate) dated 28.06.2017 covers minor polished stones.

2). Napa Stone is a variety of dimensional limestone, which is a brittle stone and cannot be subject to extensive mirror polishing. Currently, S. No. 123 of Schedule-I prescribes GST rate of 5% for '**Ecaussine and other calcareous monumental or building stone**; alabaster [other than marble and travertine], other than mirror polished stone which is ready to use.' However, being brittle in nature, stones like Napa Stone, even though ready for use, are not subject to extensive polishing. Therefore, such minor polished stones do not qualify as mirror polished stones.

3.

Mangoes under CTH 0804 including mango pulp, but other than fresh mangoes and sliced, dried mangoes, attract GST at 12% rate:

1) Mangoes under CTH 0804 including mango pulp, but other than fresh mangoes and sliced, dried mangoes, attract GST at 12% rate:

3) Accordingly, it is hereby clarified that mangoes, fresh falling under heading 0804 are exempt; Mangoes, sliced and dried, falling under 0804 are chargeable to a concessional rate of 5%; while all other forms of dried mango, including Mango pulp, attract GST at the rate of 12%. To bring absolute clarity, the relevant entry at S. No. 16 of Schedule-II of notification no. 1/2017-Central Tax (Rate), dated 28th June, 2017, has been amended vide notification No. 6/2022-Central Tax (Rate), dated the 13th July, 2022

2) On the basis of the recommendation of the GST Council in its 22nd Meeting, the GST rate on 'Mangoes sliced, dried', falling under heading 0804, was reduced from 12% to 5% [S. No. 30A of Schedule I of notification No. 1/2017-Central Tax (Rate) dated the 28th June, 2017]. However, the GST rate on all forms of dried mangoes (other than sliced and dried mangoes), falling under heading 0804, including mango pulp, was always meant to be at the rate of 12%.

4) Fresh mangoes, falling under heading 0804, continue to remain exempt from GST [S. No. 51 of notification No. 2/2017-Central Tax (Rate), dated the 28th June, 2017].

4.

Treated sewage water attracts Nil rate of GST1

1) Representations have been received seeking clarification regarding the applicable GST rate on treated sewage water. Treated sewage water was not meant to be construed as falling under “purified” water for the purpose of levy of GST.

2) In general, Water, falling under heading 2201, with certain specified exclusions, is exempt from GST vide entry at S. No. 99 of notification No. 2/2017-Central Tax (Rate), dated the 28th June, 2017.

3) Accordingly, it is hereby clarified that supply of treated sewage water, falling under heading 2201, is exempt under GST. Further, to clarify the issue, the word 'purified' is being omitted from the above-mentioned entry vide notification No. 7/2022-Central Tax (Rate), dated the 13th July, 2022.

5.

Nicotine Polacrilex Gum attracts a GST rate of 18%:

1) Representations have been received seeking clarification regarding the classification and applicable GST rate on Nicotine Polacrilex gum.

2) The WCO 2022 HS Codes has inter alia introduced a new entry 2404 91 00 comprising of products for oral application containing nicotine and intended to assist tobacco use cessation with effect from 01.01.2022. Accordingly, a technical change, without any consequential rate change, has been made vide notification No. 18/2021 – Central Tax (Rate), dated the 28th December, 2021, wherein S. No. 26B in Schedule III of notification no. 1/2017-Central Tax (Rate), dated the 28th June, 2017, has been inserted to include products for oral application containing nicotine and intended to assist in cessation of use of tobacco, and falling under tariff item 2404 91 00. The same is supplemented by the HS Explanatory notes 2022 which states that heading 2404 includes nicotine containing products for recreational use, as well as nicotine replacement therapy (NRT) products intended to assist tobacco use cessation, which are taken as part of a nicotine intake reduction programme in order to lessen the human body's dependence on this substance.

3) Accordingly, it is hereby clarified that the Nicotine Polacrilex gum which is commonly applied orally and is intended to assist tobacco use cessation is appropriately classifiable under tariff item 2404 91 00 with applicable GST rate of 18% [Sl. No. 26B in Schedule III of notification no. 1/2017-Central Tax (Rate), dated the 28th June, 2017].

6.

Fly ash bricks and aggregate - condition of 90% fly ash content applied only to fly ash aggregate, and not fly ash bricks:

1) Representations have been received seeking clarification regarding the applicable rate on the fly ash bricks and fly ash aggregates.

3) Therefore, it is clarified that the condition of 90 per cent. or more fly ash content applied only to Fly Ash Aggregates and not to fly ash bricks and fly ash blocks. Further, with effect from 18th July, 2022 the condition is omitted from the description.

2) Hitherto, as per entry at S. No. 176B of the Schedule II the items of description “Fly ash bricks or fly ash aggregate with 90 per cent. or more fly ash content; Fly ash blocks” attracts a GST rate of 12%. Confusion has arisen about the applicability of 90 per cent. condition on fly ash aggregates and fly ash bricks. As per the recommendations of the GST Council in the 23rd Meeting, the condition of 90% or more fly ash content was applicable only for fly ash aggregate.

7.

Applicability of GST on by-products of milling of Dal/ Pulses such as Chilka, Khanda and Churi:

1) Representations have been received seeking clarification regarding the applicable GST rate on by-products of milling of Dal/ Pulses such as Chilka, Khanda and Churi.

2) The by-products of milling of pulses/ dal such as Chilka, Khanda and Churi are appropriately classifiable under heading 2302 that consists of goods having description as bran, sharps and other residues, whether or not in the form of pellets, derived from the sifting, milling or other working of cereals or of leguminous plants.

3) The applicable GST rate on goods falling under heading 2302 is detailed in the Table below:

Entry and notification No.	Description	GST Rate
S. No. 102 of notification No. 2/2017-Central Tax (Rate), dated the 28 th June, 2017	Aquatic feed including shrimp feed and prawn feed, poultry feed & cattle feed, including grass, hay & straw, supplement & husk of pulses, concentrates & additives, wheat bran & de-oiled cake [other than rice bran]	Nil
S. No. 103A of Schedule-I of notification No.1/2017-Central Tax (Rate), dated 28th June,2017	Bran, sharps and other residues, whether or not in the form of pellets, derived from the sifting, milling or other working of cereals or of leguminous plants [other than aquatic feed including shrimp feed and prawn feed, poultry feed and cattle feed, including grass, hay and straw, supplement and husk of pulses, concentrates and additives, wheat bran and de-oiled cake]	5%
S. No. 103B of Schedule-I of notification No.1/2017-Central Tax (Rate), dated 28th June,2017	Rice bran (other than de-oiled rice bran)	5%

7.

Applicability of GST on by-products of milling of Dal/ Pulses such as Chilka, Khanda and Churi:

4) The dispute in applicable GST rate revolves around the central argument as to whether the above-mentioned by-products are meant for direct consumption as cattle feed and therefore attract exemption under S. No. 102 of notification No. 2/2017-Central Tax (Rate) dated 28th June, 2017 or are otherwise not meant for direct consumption and thus covered under S. No. 103A of notification No. 1/2017- Central Tax (Rate) dated 28th June, 2017 attracting a GST rate of 5%.

6) The GST Council examined the issue and recommended that a clarification be issued in this regard. It also recommended that in view of the prevailing multiple interpretations and genuine doubts regarding the applicability of GST, the issue for past periods may be regularized on as is basis.

5) While milling of pulses/ dal, a wide range of by-products such as chilka, khanda, churi, among others, are obtained which are preferred as cattle feed by dairy industry for better palatability and higher nutritive value. The mentioned by-products are required to go Page 5 of 5 through varying degrees of processing in order to customize the color, size, aroma, nutrition, purity, etc., of the cattle feed so produced, depending upon the dietary and nutritional requirement of the cattle and the budget availability of the customer(s). Further, as per the Indian Standards 2052:2009 -Compounded Feeds for Cattle—Specification, issued by the Bureau of Indian Standards, Ministry of Consumer Affairs, Food & Public Distribution, Government of India, grain by-products have been categorized as one of the ingredients of the compounded cattle feed.

7) Accordingly, it is hereby clarified that the subject goods which inter alia is used as cattle feed ingredient are appropriately classifiable under heading 2302 and attract GST at the rate of 5% vide S. No. 103A of Schedule-I of notification no. 1/2017-Central Tax (Rate), dated the 28th June, 2017 and that for the past, the matter would be regularized on as is basis as mentioned in para 8.6.



INSTRUCTION NO. 03/2022-23

GUIDELINES ON ISSUANCE OF SUMMONS UNDER SECTION 70 OF THE CGST ACT, 2017

SECTION 70

70(1) Summons are issued by PO to any person whose attendance is considered necessary either for giving evidence or producing a document or anything in an inquiry in the same manner, as provided in the case of civil court under Code of Civil Procedure, 1905

70(2) Securing such documentary and oral evidence under the said legal provision shall be deemed to be a “judicial proceeding”.



GUIDELINES IN MATTERS RELATED TO INVESTIGATION :

WHO SHALL ISSUE THE SUMMON

- i. Power to issue summons are generally exercised by Superintendents, though higher officers may also issue summons. Summons by Superintendents should be **issued after obtaining prior written permission from an officer not below the rank of Deputy/ Assistant Commissioner with the reasons for issuance of summons to be recorded in writing.**
- ii. Where for operational reasons **it is not possible to obtain such prior written permission, oral/telephonic permission from such officer must be obtained** and the same should be reduced to writing and intimated to the officer according such permission at the earliest opportunity.

HOW TO ISSUE SUMMON

- iii. In all cases, where summons are issued, the officer issuing summons **should record in file about appearance/non-appearance of the summoned person and place a copy of statement recorded in file.**
- iv. Summons should normally **indicate the name of the offender(s) against whom the case is being investigated** unless revelation of the name of the offender is detrimental to the cause of investigation, so that the **recipient of summons has prima-facie understanding as whether he has been summoned as an accused, co- accused or as witness.**
- v. The **summoning officer must present at the time and date for which summons is issued.** In case of any exigency, the summoned person must be informed in advance in writing or orally.

WHERE
NO
SUMMON
IS ISSUED

- vi. Issuance of summons may be avoided to call upon statutory documents which are digitally/ online available in the GST portal.
- vii. **Senior management officials such as CMD/ MD/ CEO/ CFO/ similar officers of any company or a PSU** should **not generally be issued summons in the first instance**. They should be summoned where there are clear indications in the investigation of their involvement in the decision making process which led to loss of revenue.

Attention is also invited to Board's Circular No. 122/41/2019-GST dated 5th November, 2019 which makes generation and quoting of **Document Identification Number (DIN) mandatory on communication issued by officers of CBIC to tax payers and other concerned persons for the purpose of investigation.**

Format of summons has been prescribed under Board's Circular No. 128/47/2019-GST dated 23rd December, 2019.

- viii. All persons summoned are bound to appear before the officers concerned, **the only exception being women who do not by tradition appear in public or privileged persons. The exemption so available to these persons under Section 132 and 133 of CPC, may be kept in consideration while investigating the case.**
- ix. **Issuance of repeated summons without ensuring service of the summons must be avoided.** Sometimes it may so happen that summoned person does not join investigations even after being repeatedly three summons at reasonable intervals, a complaint should be filed with the jurisdictional magistrate alleging that the accused has committed offence under Sections 172 of Indian Penal Code (absconding to avoid service of summons or other proceedings) AND /OR 174 of Indian Penal Code (non-attendance in obedience to an order from public servant), as inquiry under Section 70 of CGST Act has been deemed to be a “judicial proceedings” within the meaning of Section 193 and Section 228 of the Indian Penal Code. Before filling such complaints, it must be ensured that summons have adequately been served upon the intended person in accordance with Section 169 of the CGST Act. However, this does not bar to issue further summons to the said person under Section 70 of the Act.

THANK YOU

Disclaimer

The views expressed are solely of the author and the content of this document is solely for information purpose and not to be construed as a professional advice. In cases where the reader has any legal issues, he/she must in all cases seek independent legal advice.



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